

UNDERSTANDING THE LAWS REQUIRING CRIMINAL BACKGROUND CHECKS

A Technical Brief on Implementing Background Checks in Settings Serving Seniors

Sixth Edition

Summary of Criminal Background Check Requirements

Background Studies for all Facilities, Agencies and Programs

Kari Koskinen Manager Background Check Act

Criminal Background Check Laws

References

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Minnesota

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Sixth Edition



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LeadingAge Minnesota gratefully acknowledges Michelle R. Klegon, Klegon Law Office, for her work in preparing this Sixth Edition of *Understanding the Laws Requiring Criminal Background Checks*.

LeadingAge Minnesota is driven to transform and enhance the experience of aging. Our members provide quality, compassionate care to nearly 55,000 older adults every day in all the places they call home, including adult day programs, independent senior housing, assisted living communities, in-home care and skilled nursing facilities. LeadingAge Minnesota is a state partner of LeadingAge and a state affiliate of Argentum.

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[**Note:** For ease of reference, the Appendix lists key Minnesota statutes governing and relating to background studies. Because statutes are subject to change during each legislative session, we have elected to link to electronic versions of these laws, rather than reproducing the language in the manual, to ensure users will consistently have access to the most current information. Links may be embedded into references below. Where the reference is to a series of sections, the link is to the first identified section.]

INTRODUCTION

LeadingAge Minnesota is pleased to present this Sixth Edition of *Understanding the Laws Requiring Criminal Background Checks: A Technical Brief on Implementing Background Checks in Settings Serving Seniors*.

This manual will answer the who, what, when and how of implementing a criminal background check policy for all types of organizations providing services to senior populations, from adult day centers and home care agencies to assisted living facilities and nursing homes.

This Sixth Edition includes information about *NETStudy 2.0*, the enhanced background study system implemented by the Minnesota Department of Human Services beginning in 2016, along with other helpful updates.

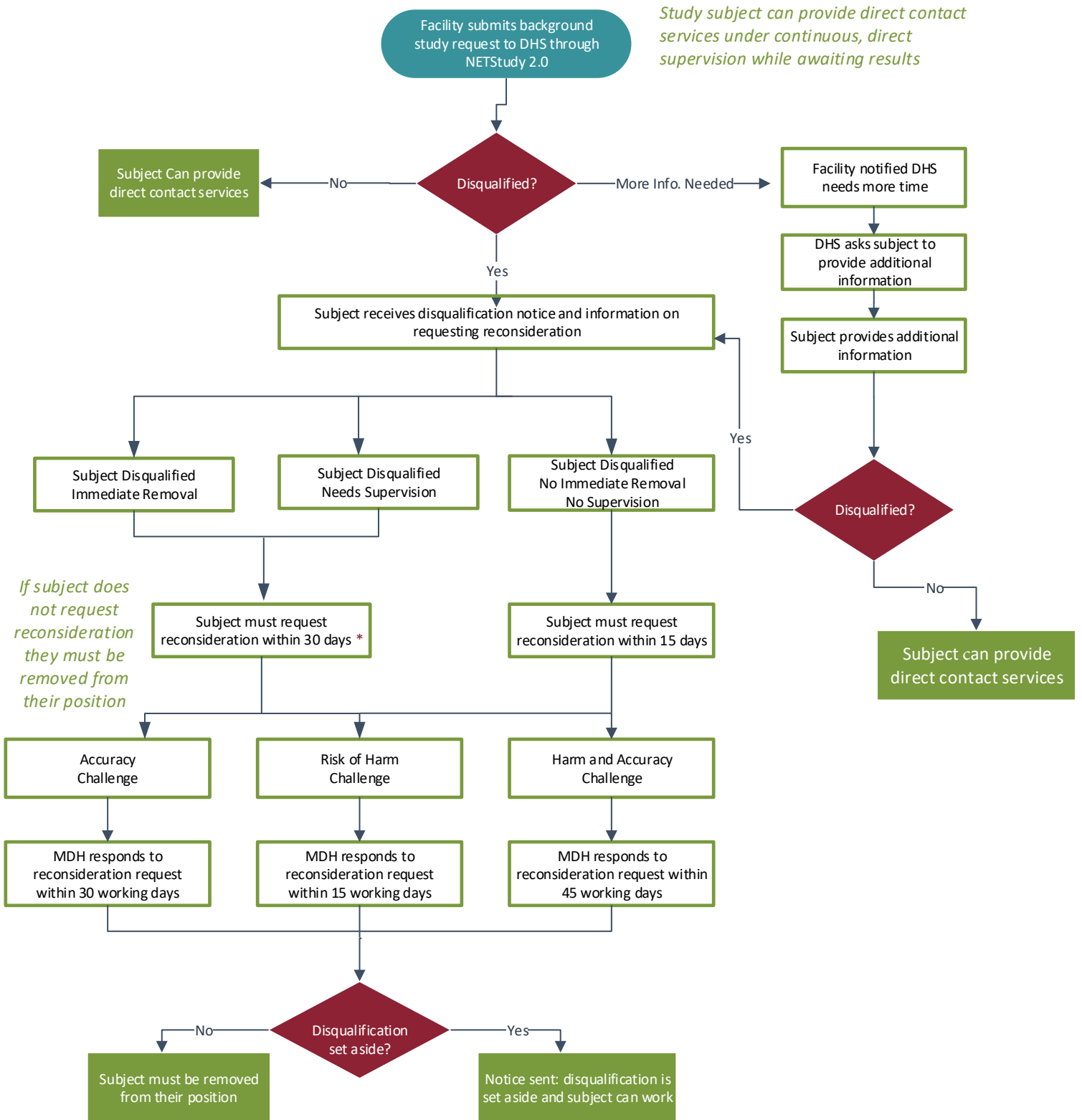
We hope this material will serve as a working document and reference tool, providing human resources professionals and other staff leaders with answers to questions you may have about the various Minnesota laws and regulations relating to criminal background checks for individuals who provide services to seniors.

[Note: The scope of this manual is limited to Minnesota’s Department of Human Services Background Studies Act and Kari Koskinen Manager Background Check Act. A variety of other laws are applicable to employee screening, but those additional laws are beyond the scope of this Manual. For example, any time you use an applicant’s or employee’s background information to make an employment decision, regardless of how you got the information, you must comply with federal laws that protect applicants and employees from discrimination. These laws are enforced by the Equal Employment Opportunity Commission (EEOC) and the Minnesota Department of Human Rights. In addition, when you run background checks through a company in the business of compiling background information, you must comply with the Fair Credit Reporting Act (FCRA). The Federal Trade Commission (FTC) enforces the FCRA. Please consult your organization’s human resources professionals or legal counsel with questions.]

All of the information contained within this manual was accurate and current as of July 1, 2023. Please contact LeadingAge Minnesota or your legal counsel if you have any questions about changes that may have occurred since the publication of this manual. Nothing in this manual constitutes legal advice and users should not construe it as legal advice.

FLOW CHART ILLUSTRATING DHS BACKGROUND STUDY PROCESS

DHS Background Study Process

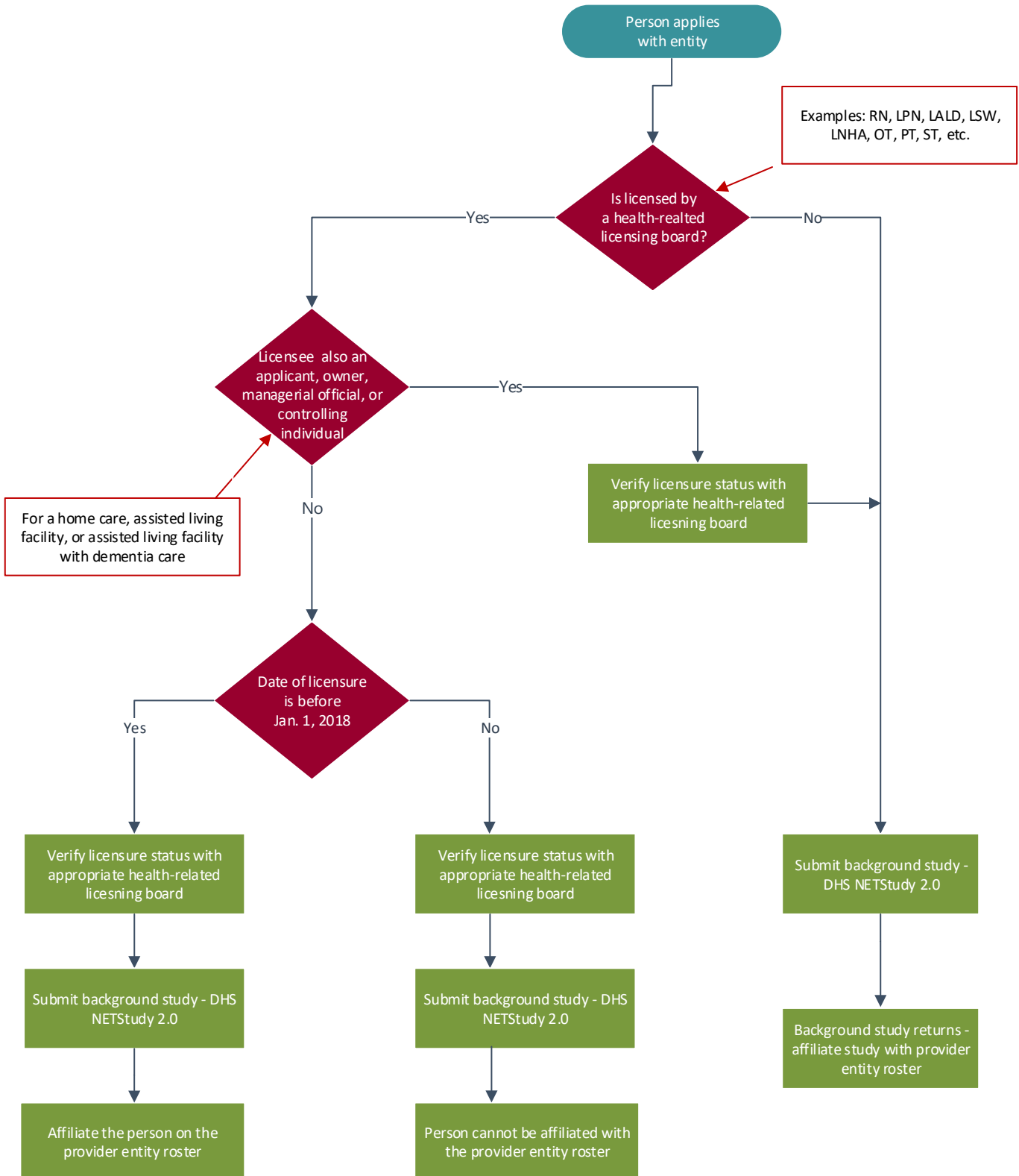


Other options exist for this individual - contact LeadingAge Minnesota staff for details

If reason for disqualification is a nanent disqualifying event, subject annot apply for reconsideration.

FLOW CHART ILLUSTRATING HLB BACKGROUND STUDY PROCESS

Health Licensing Board Background Study Process



SECTION 1: QUICK REFERENCE GUIDES TO BACKGROUND STUDY REQUIREMENTS

Table A: Which Providers Must Request Background Checks on Staff Under the Department of Human Services Background Studies Act and Kari Koskinen Manager Background Check Act

Provider / Organization	DHS Background Studies Act Minn. Stat. Ch. 245C	Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
Adult Day Care	X	
Assisted Living	X	X
Adult Foster Care	X	
Board and Lodge		X
Board and Lodge with Special Services	X	
Boarding Care (includes non-certified)	X	
Chemical Dependency Treatment Programs	X	
Child Care Centers and Programs	X	
Child Foster Care	X	
Children’s Residential Facilities	X	
Children’s Therapeutic Service and Support Providers	X	
Community First Services and Supports Organizations	X	
Condominium / Cooperatives		Could apply if the owner sublets the unit.
Day Training and Habilitation Service Providers	X	
Educational Programs	X	
Federally Subsidized Rental	Applies to home care staff who provide services in this setting.	X

Provider / Organization	DHS Background Studies Act Minn. Stat. Ch. 245C	Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
HCBS Waiver Programs	X	
Home Care Agencies	X	
Hospice Providers	X	
Hospitals	X	
Housing Support Providers	X	Could apply if the owner sublets the unit.
Intermediate Care Facilities	X	
Market Rate Rental	Applies to home care staff who provide services in this setting.	X
Mental Health Treatment Programs	X	
Nursing Homes	X	
Outpatient Surgical Centers	X	
Personal Care Assistance / Provider Organizations	X	
Personnel Agencies	X	
Professional Services Agencies	X	
Semi-Independent Living Services Providers	X	
Sex Offender Treatment Programs	X	
Special Transportation Service Providers	X	
Substance Use Disorder Treatment Field Programs	X	
Supplemental Nursing Services Agencies	X	

Table B: Summary of the Department of Human Services Background Studies Act and Kari Koskinen Manager Background Check Act Requirements

Requirements	DHS Background Studies Act Minn. Stat. Ch. 245C	Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
Organizations and Facilities Covered	Please refer to Table A on the preceding page.	All multi-unit residential rental housing including: apartment buildings, and board and lodging establishments. (Board and lodging establishments registered to provide special services are specifically exempted from this law)
Individuals Required to be Checked	Except as provided in the next row of this table: <ul style="list-style-type: none"> • Persons providing “direct contact services,” including employees (including contractors), volunteers, and student volunteers under the organization’s control, and applicants for a license or a license holder. • All employees of assisted living facilities. • All employees of nursing homes / boarding care homes. • Owners and controlling individuals. • Managerial officials. • Individuals with unsupervised access to vulnerable adults at in-home adult foster and day care. 	Anyone hired by the building owner who has access to tenants’ dwelling units within the scope of his or her on-going job duties.

Requirements	DHS Background Studies Act Minn. Stat. Ch. 245C	Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<p>Effective as of June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075.</p> <p>However, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.</p> <p>For more information about health-related licensing board individuals, see the MDH FAQ document (https://www.health.state.mn.us/about/org/hrd/docs/hlbbgsfaq.pdf) describing how DHS and MDH will implement this new requirement.</p>	
Organizations Authorized to Conduct the Criminal Background Check required by the Law	Minnesota Department of Human Services only (<i>NETStudy 2.0</i>)	<p>Bureau of Criminal Apprehension (BCA), a local law enforcement agency or a private business.</p> <p>Federal Bureau of Investigation (FBI) in some cases.</p> <p>DHS check is equivalent in some cases.</p>

Requirements	DHS Background Studies Act Minn. Stat. Ch. 245C	Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
Information Checked	<p>Always:</p> <ul style="list-style-type: none"> • BCA criminal conviction records • Substantiated cases of maltreatment of vulnerable adults and/or minors. • Professional licenses and certified nurse aide registry. • List of OIG Excluded Individuals and Entities. • MN court information system. • MN predatory offender registry. <p>In certain circumstances:</p> <ul style="list-style-type: none"> • Information from juvenile courts. • FBI records. <p>When there is reasonable cause to look further:</p> <ul style="list-style-type: none"> • County conviction records. • Information from other states. 	<p>Statewide convictions for targeted misdemeanors, gross misdemeanors and felonies.</p> <p>All arrest information, all juvenile records, all court information and convictions more than 15 years old.</p> <p>If the individual has not resided in Minnesota for past 10 years, an FBI check or state records check of states where person has resided for past 10 years is conducted.</p>
What Disqualifies a Person	<ul style="list-style-type: none"> • Misdemeanor, gross misdemeanor and felony convictions for specified crimes (includes plea arrangements) (see Table D below). • Finding of substantiated serious or recurring maltreatment of a vulnerable adult or minor. • Preponderance of evidence that disqualifying event has occurred. • Refusal to cooperate with background study process. 	<ul style="list-style-type: none"> • Felony conviction for specified crimes • Attempt to commit any of the specified crimes • Non-felony conviction for stalking • Attempt to commit stalking

Requirements	DHS Background Studies Act Minn. Stat. Ch. 245C	Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
Length of Disqualification	<ul style="list-style-type: none"> • Permanently disqualified for a list of serious crimes such as murder, assault and criminal sexual conduct. • 15 years after discharge of imposed sentence for a felony conviction for a disqualifying crime. • 10 years after discharge of imposed sentence for a gross misdemeanor conviction for a disqualifying crime. • 7 years after discharge of imposed sentence for a misdemeanor conviction for a disqualifying crime or 7 years after a finding of substantiated serious or recurring maltreatment of a vulnerable adult or minor • Corresponding disqualification periods exist for aiding and abetting, attempting to commit or conspiring to commit a listed offense (e.g., conviction for aiding or abetting, attempt to commit or conspiracy to commit offense carrying 10-year disqualification period results in 10-year disqualification). 	Some crimes disqualify a person for life; others for 10 years after discharge of sentence.
Appeals, Exemptions, Reconsideration Process	<p>All but permanently disqualified individuals can request that a disqualification be set aside by the department that licenses the organization where the individual provides services.</p> <p>The basis for requesting that a disqualification be set aside must be:</p> <ul style="list-style-type: none"> • The information was inaccurate; or • The individual does not pose imminent risk of harm to those served by the licensed program; or • Both the information was inaccurate and the individual does not pose a risk of harm. 	<p>Employees hired before July 1, 1995, with a disqualifying criminal background may continue employment if all current and future tenants are notified and permitted to terminate their leases.</p> <p>The only appeal process for disqualified individuals is under Minn. Stat. §13.04, which allows an individual to challenge the accuracy and completeness of information contained within the report or record.</p>

Table C: Applicability of Background Check Requirements to Staff and Others

Position	Assisted Living Facilities and Nursing Homes	Home Care Providers	Adult Day	Apartments, Board and Lodging and Board and Lodging w/ Special Services
Administrator, Owner, Controlling Individual, Managerial Official	Except as noted in the next row of this table, DHS checks controlling individual or license holder under Minn. Stat. Ch. 245C (per Minn. Stat. Ch. 245A, a controlling individual includes a managerial official)	Except as noted in the next row of this table, DHS checks certain owners and managerial officials as defined in the home care licensing law (Minn. Stat. Ch. 144A)	DHS checks controlling individual or license holder under Minn. Stat. Ch. 245C (per Minn. Stat. Ch. 245A, a controlling individual includes a managerial official)	If individual has means to enter units and works for the owner, owner must check the individual under the Kari Koskinen Act. If services are provided in a multi-unit housing setting under a home care license, DHS check under Minn. Stat. Ch. 245C is equivalent and required.
Administrator, Owner, Controlling Individual, Managerial Official	<p>Effective as of June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075.</p> <p>However, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.</p> <p>For more information about health-related licensing board</p>			

Position	Assisted Living Facilities and Nursing Homes	Home Care Providers	Adult Day	Apartments, Board and Lodging and Board and Lodging w/ Special Services
	individuals, see the MDH FAQ document (https://www.health.state.mn.us/about/org/hrd/docs/hlbbgsfaq.pdf) describing how DHS and MDH will implement this new requirement.			
Aides and Others Providing “Direct Contact”	Except as noted in the row immediately above this one, DHS checks under Minn. Stat. Ch. 245C.	Except as noted in the row immediately above this one, DHS checks under Minn. Stat. Ch. 245C.	DHS checks under Minn. Stat. Ch. 245C.	If individual has means to enter units and works for owner, must check under the Kari Koskinen Act, but the DHS check is equivalent. If individual works under home care license, DHS check is required.
Volunteers	If “direct contact” <i>and</i> no “continuous, direct supervision” DHS checks under Minn. Stat. Ch. 245C.	If “direct contact” <i>and</i> no “continuous, direct supervision” DHS checks under Minn. Stat. Ch. 245C.	If “direct contact” <i>and</i> no “continuous, direct supervision” DHS checks under Minn. Stat. Ch. 245C.	Not employees; therefore, no check under the Kari Koskinen Act, even if they have access to units.
Housekeepers / Homemakers	DHS checks under Minn. Stat. Ch. 245C.	Not a typical position for this provider type.	Not a typical position for this provider type. If position exists, and “direct contact,” DHS checks under Minn. Stat. Ch. 245C.	If individual has access to units, owner must check under the Kari Koskinen Act.
Maintenance Workers	DHS checks under Minn. Stat. Ch. 245C.	Not a typical position for this provider type.	If position exists and has “direct contact,” DHS checks under Minn. Stat. Ch. 245C.	If individual has means to enter units and person is an employee under the Kari Koskinen Act; no check for contractors.

Table D: Disqualifying Crimes Under the Department of Human Services Background Studies Act and the Kari Koskinen Manager Background Check Act

Symbol	Meaning
7	Individual is disqualified if the maltreatment was committed 7 years prior to the background check or 7 years after completion of one’s sentence under this law.
10	Disqualified for 10 years after completion of one’s sentence including probation under this law.
15	Disqualified for 15 years after completion of one’s sentence including probation under this law.
P	Permanent disqualification under this law.
(R)	A conviction for repeat offenses of this crime.
NONE	No disqualification prescribed under this law.
N/A	Not contained in list of disqualifying crimes, but the crime would still be a disqualifier if individual was convicted at this level. If an individual is convicted of a crime that is on the list but is sentenced at a lesser level of offense, then the look-back period is consistent with the sentence for the crime. For example: felony simple robbery is a disqualifying crime. Gross misdemeanor simple robbery is not included in the list of disqualifying crimes. However, if someone is convicted of felony misdemeanor simple robbery, but is sentenced at the gross misdemeanor level, it is still considered a disqualifying crime. The disqualification period would be the same as any other gross misdemeanor, 10 years.

[**Note:** The table that follows is based on Minn. Stat. [§245C.15](#) and [§299C.67](#). If you would prefer to review the list disqualifying crimes in a format that is organized by length of disqualification (permanent, 15 years, 10 years, 7 years, etc.), please click on the reference to each statute in the preceding sentence, and you will be linked to its full text.]

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
A conviction in another jurisdiction that would be a violation of one of the disqualifying crimes if committed in this state. If a conviction in another jurisdiction is for a permanent disqualifying event, the convicted individual would be permanently disqualified from providing direct contact services and having access to individuals served by a license holder	15	10	7	It is a P if a conviction permanently disqualifies the individual. It is 10 if a conviction for the crime disqualifies the individual for 10 years.
Aiding or abetting any disqualifying crimes prescribed by the criminal background study law	Same amount of time as committing crime.			NONE
Attempts to commit any disqualifying crimes prescribed by the criminal background study law	Same amount of time as committing crime.			P if crime would have been P or 10 if crime would have been 10
Abduction Minn. Stat. §609.265	N/A	10	N/A	NONE
Adulteration Minn. Stat. §609.687	15	N/A	N/A	NONE
Aggravated robbery Minn. Stat. §609.245	P	P	P	10
Aggravated forgery Minn. Stat. §609.625	15	N/A	N/A	NONE
Aggravated tampering with a witness- first degree Minn. Stat. §609.498, subd. 1 or 1b	15	N/A	N/A	NONE
Aiding an offender Minn. Stat. §609.495	15	N/A	N/A	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Aiding suicide or aiding attempted suicide Minn. Stat. §609.215	15	N/A	N/A	NONE
Arson- first degree Minn. Stat. §609.561	P	P	P	P
Arson- second degree Minn. Stat. §609.562	15	N/A	N/A	NONE
Arson- third degree Minn. Stat. §609.563	15	N/A	N/A	NONE
Assault - first degree Minn. Stat. §609.221	P	10	7	P
Assault- second degree Minn. Stat. §609.222	P	10	7	P
Assault- third degree Minn. Stat. §609.223	15	10	7	P
Assault- fourth degree Minn. Stat. §609.2231	15	10	7	10
Assault- fifth degree Minn. Stat. §609.224	15 (R)	10	7	10
Assault by a caregiver against a vulnerable adult- fifth degree Minn. Stat. §609.224, subd. 2, para. (c)	N/A	10	N/A	NONE
Assault of an unborn child- first degree Minn. Stat. §609.267	15	N/A	N/A	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Assault of an unborn child- second degree Minn. Stat. §609.2671	15	N/A	N/A	NONE
Assault of an unborn child- third degree Minn. Stat. §609.2672	N/A	N/A	7	NONE
Attempt to coerce Minn. Stat. §609.275	15	10	N/A	NONE
Bringing stolen goods into Minnesota Minn. Stat. §609.525	15	10	7	NONE
Burglary- first degree Minn. Stat. §609.582, subd. 1	15	10	N/A	10
Burglary- second degree Minn. Stat. §609.582, subd. 2	15	10	N/A	10
Burglary- third degree Minn. Stat. §609.582, subd. 3	15	10	N/A	NONE
Burglary- fourth degree Minn. Stat. §609.582, subd. 4	15	10	N/A	NONE
Carjacking- first degree Minn. Stat. §609.247, subd. 2	P	P	P	10
Carjacking- second degree Minn. Stat. §609.247, subd. 3	P	P	P	10
Carjacking- third degree Minn. Stat. §609.247, subd. 4	15	N/A	N/A	10
Certain persons not to possess firearms Minn. Stat. §624.713	15	N/A	N/A	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Check forgery; offering a forged check Minn. Stat. §609.631	15	10	N/A	NONE
Child abuse or neglect Minn. Stat. §§609.2242 and 609.2243	P	N/A	N/A	NONE
Coercion Minn. Stat. §609.27	15	N/A	7	NONE
Conspiracy to commit any disqualifying crimes prescribed by the criminal background study law	Same amount of time as committing crime.			NONE
Crimes against children Minn. Stat. §§609.2242 and 609.2243	P	N/A	N/A	NONE
Crimes committed for benefit of a gang Minn. Stat. §609.229	15	N/A	N/A	NONE
Criminal abuse of a vulnerable adult Minn. Stat. §609.2325	15	10	N/A	NONE
Criminal neglect of a vulnerable adult Minn. Stat. §609.233	N/A	10	N/A	NONE
Criminal sexual conduct- first degree Minn. Stat. §609.342	P	P	P	P
Criminal sexual conduct- second degree Minn. Stat. §609.343	P	P	P	P
Criminal sexual conduct- third degree Minn. Stat. §609.344	P	P	P	P
Criminal sexual conduct- fourth degree Minn. Stat. §609.345	P	P	P	P

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Criminal sexual conduct- fifth degree Minn. Stat. §609.3451	P	P	P	NONE
Criminal sexual predatory conduct Minn. Stat. §609.3453	P	P	P	NONE
Criminal vehicular homicide and injury Minn. Stat. §609.21	15	10	7	10
Dangerous weapons Minn. Stat. §609.66	15	10	7	NONE
Disorderly house Minn. Stat. §609.33	N/A	10	N/A	NONE
Disorderly conduct against a vulnerable adult Minn. Stat. §609.72, subd. 3	N/A	10	N/A	NONE
Domestic assault Minn. Stat. §609.2242	P	10		NONE
Domestic assault, repeat offense Minn. Stat. §609.2243	P	10	N/A	NONE
Domestic assault by strangulation Minn. Stat. §609.2247	P	P	P	NONE
Drive-by shooting Minn. Stat. §609.66, subd. 1e	P	P	P	NONE
Failure to report Minn. Stat. §609.234	N/A	10	7	NONE
False imprisonment Minn. Stat. §609.255	15	N/A	N/A	10

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Felon ineligible to possess a firearm Minn. Stat. §609.165	15	N/A	N/A	NONE
Felony conviction involving alcohol or drug use	15	N/A	N/A	NONE
Financial exploitation of a vulnerable adult Minn. Stat. §609.2335	15	10	7	NONE
Financial transaction card fraud Minn. Stat. §609.821	15	10	7	NONE
Food Stamp Program (federal) fraud Minn. Stat. §393.07, subd. 10(c)	15	10	7	NONE
Forgery Minn. Stat. §609.63	15	N/A	N/A	NONE
Fraud Minn. Stat. §268.182	15	10	7	NONE
Fraud in obtaining credit Minn. Stat. §609.82	15	10	7	NONE
Great bodily harm caused by distribution of drugs Minn. Stat. §609.228	P	N/A	N/A	NONE
Harassment or stalking Minn. Stat. §609.749	P	10	N/A	Felony P; Non-felony 10
Harmful materials; dissemination and display to minors Minn. Stat. §617.293	N/A	10	7	NONE
Identity theft Minn. Stat. §609.527	15	10	7	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Incest Minn. Stat. §609.365	P	P	P	NONE
Indecent exposure involving a minor Minn. Stat. §617.23, subd. 2, clause 1 or subd. 3, clause 1	P	P	P	NONE
Indecent exposure (not involving a minor) Minn. Stat. §617.23	15	10	7	NONE
Indecent literature, distribution Minn. Stat. §617.243	N/A	10	N/A	NONE
Injury or death of an unborn child in the commission of a crime Minn. Stat. §609.268	15	N/A	N/A	NONE
Insurance fraud Minn. Stat. §609.611	15	10	7	NONE
Interference with privacy Minn. Stat. §609.746	N/A	10 (R)	7	NONE
Issuance of dishonored checks Minn. Stat. §609.535	15	10	7	NONE
Kidnapping Minn. Stat. §609.25	P	P	P	P
Letter, telegram, or package; opening; harassment Minn. Stat. §609.795	N/A	N/A	7	NONE
Machine guns and short-barreled shot guns (Unlawfully owning, possessing or operating) Minn. Stat. §609.67	15	N/A	N/A	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Malicious punishment of a child Minn. Stat. §609.377	P	10	N/A	NONE
Manslaughter of an unborn child- first degree Minn. Stat. §609.2664	15	N/A	N/A	NONE
Manslaughter of an unborn child- second degree Minn. Stat. §609.2665	15	N/A	N/A	NONE
Manslaughter- first degree Minn. Stat. §609.20	P	P	P	P
Manslaughter- second degree Minn. Stat. §609.205	P	P	P	10
Medical Assistance fraud Minn. Stat. §609.466	15	10	7	NONE
Mistreatment of confined persons, Minn. Stat. §609.23	N/A	10	N/A	NONE
Mistreatment of Residents or patients Minn. Stat. §609.231	N/A	10	N/A	NONE
Murder- first degree Minn. Stat. §609.185	P	P	P	P
Murder- second degree Minn. Stat. §609.19	P	P	P	P
Murder- third degree Minn. Stat. §609.195	P	P	P	10
Murder of an unborn child- first degree Minn. Stat. §609.2661	P	P	P	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Murder of an unborn child- second degree Minn. Stat. §609.2662	P	P	P	NONE
Murder of an unborn child- third degree Minn. Stat. §609.2663	P	P	P	NONE
Neglect or endangerment of a child Minn. Stat. §609.378	P	10	N/A	NONE
Obscene materials and performances Minn. Stat. §617.241	15 (R)	10	N/A	NONE
Obscene or harassing telephone calls Minn. Stat. §609.79	N/A	N/A	7	NONE
Obtaining signature by false pretense Minn. Stat. §609.635	15	N/A	N/A	NONE
Other prohibited acts (minor engaged in prostitution) Minn. Stat. §609.324, subd. 1	P	N/A	N/A	NONE
Other prohibited acts (housing minor engaged in prostitution) Minn. Stat. §609.324, subd. 1a	N/A	10	N/A	NONE
Possession of burglary tools Minn. Stat. §609.59	15	10	N/A	NONE
Possession of shoplifting gear Minn. Stat. §609.521	15	N/A	N/A	NONE
Possession of pictorial representations of minors Minn. Stat. §617.247	P	P	P	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Receiving stolen property Minn. Stat. §609.53	15	10	7	NONE
Riot Minn. Stat. §609.71	15	10	N/A	NONE
Setting a spring gun Minn. Stat. §609.665	N/A	N/A	7	NONE
Shooting in or at a public transit vehicle or facility Minn. Stat. §609.855, subd. 5	P	P	P	NONE
Simple robbery Minn. Stat. §609.24	15	N/A	N/A	10
Solicitation, inducement, and promotion of prostitution Minn. Stat. §609.322	P	P	P	NONE
Solicitation of children to engage in sexual conduct Minn. Stat. §s 609.352	P	P	P	NONE
Spousal abuse Minn. Stat. §§609.2242 and 609.2243	P	N/A	N/A	NONE
Substantiated serious or recurring maltreatment of a minor Minn. Stat. §626.556	N/A	N/A	7	NONE
Substantiated serious or recurring maltreatment of a vulnerable adult Minn. Stat. §626.557	N/A	N/A	7	NONE
Suicide Minn. Stat. §609.215	15	N/A	N	NONE

Disqualifying Crime	DHS Background Studies Act Minn. Stat. Ch. 245C			Kari Koskinen Act Minn. Stat. §§299C.66 to 299C.71
	<i>Felony</i>	<i>Gross Misdemeanor</i>	<i>Misdemeanor</i>	<i>Felony (unless otherwise indicated)</i>
Tampering with a witness- first degree Minn. Stat. §609.498, subd. 1 or 1b	15	N/A	N/A	NONE
Termination of parental rights Minn. Stat. §260C.301, subd. 1, para. (b), or subd. 3	15	15	15	NONE
Terroristic threats Minn. Stat. §609.713	15	N/A	N/A	10
Theft Minn. Stat. §609.52	15	10	7	10
Use of minors in sexual performance Minn. Stat. §617.246	P	P	P	NONE
Use of drugs to injure or facilitate a crime Minn. Stat. §609.235	15	N/A	N/A	NONE
Violation of an order for protection Minn. Stat. §609.3232	N/A	N/A	7	NONE
Violation of an order for protection issued under Domestic Abuse Act Minn. Stat. §518B.01, subd. 14	N/A	10	7	NONE
Violation of predatory offender registration law Minn. Stat. §243.166	P	P	P	NONE
Wrongfully obtaining assistance Minn. Stat. §256.98	15	10	7	NONE

SECTION 2: BACKGROUND STUDIES FOR ALL FACILITIES, AGENCIES, AND PROGRAMS LICENSED OR REGISTERED BY THE DEPARTMENTS OF HEALTH AND HUMAN SERVICES

A. Background

Since October 1995, certain programs licensed by the Minnesota Department of Health (MDH) and the Minnesota Department of Human Services (DHS) have been required to conduct criminal background studies on specified owners, managerial officials, and employees, as well as on certain contractors and volunteers. As described below, and in the tables above, this includes providers of older adult services across the spectrum of care, including adult day services, home care, assisted living facilities and nursing homes.

This section of the manual focuses on the DHS background study program, called *NETStudy 2.0*.

In 2012, DHS received a \$3 million grant to enhance Minnesota's criminal background study process (then called simply *NETStudy*), with a specific focus on long-term care facilities and other licensed programs. From the work done under this grant, the *NETStudy 2.0* system emerged. In 2014, the Minnesota Legislature passed laws structuring the new system, which DHS began implementing in January 2016. The implementation phase of *NETStudy 2.0* concluded in 2017, and all providers are now using the new system. *NETStudy 2.0* features enhancements to the prior background study process that are designed to improve the accuracy of study results. Specifically, it is designed to reduce "false positives" and duplicate determinations. It also able to capture previously missed criminal histories of individuals. This updated manual incorporates the important changes to the background study system that occurred with the transition to *NETStudy 2.0*.

NETStudy 2.0 operates with the authority and specifications of Minn. Stat. Ch. 245C, entitled Department of Human Services Background Studies Act. As a handy reference tool, a link to the complete text of Minn. Stat. Ch. 245C is included in the Appendix to this manual.

B. Key Definitions

[**Note:** As used in this Manual, the term "*assisted living facility*" includes both assisted living facilities and assisted living facilities with dementia care.]

The Department of Human Services Background Studies Act defines many key terms that appear throughout this manual:

"*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. (Minn. Stat. §245C.02, subd. 2)

"*Background study*" means (1) the collection and processing of a background study subject's fingerprints, including the process of obtaining a background study subject's classifiable fingerprints and photograph as required by §245C.05, subd. 5, para. (b); and (2) the review of records conducted by the commissioner to determine whether a subject is disqualified from

direct contact with persons served by a program and, where specifically provided in statutes, whether a subject is disqualified from having access to persons served by a program. (Minn. Stat. §245C.02, subd. 5)

“*Minn. Stat. Ch. 245C*” or the “*Department of Human Services (DHS) Background Studies Act*,” is the chapter of law governing the policies and procedures for conducting background studies on a variety of individuals, including those individuals associated with programs licensed or registered by MDH and DHS.

“*Commissioner*” means the commissioner of human services or the commissioner's designated representative including county agencies and private agencies. (Minn. Stat. §245C.02, subd. 7)

“*Continuous, direct supervision*” means an individual is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program. (Minn. Stat. §245C.02, subd.8)

“*Contractor*” formerly had its own definition for the purposes of the DHS Background Studies Act, but the concept is now incorporated into the definition of an “employee” below.

“*Direct contact*” means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program. (Minn. Stat. §245C.02, subd. 11)

“*Employee*” an individual who provides services or seeks to provide services for or through the entity with which they are required to be affiliated in *NETStudy 2.0* and who is subject to oversight by the entity. (Minn. Stat. §245C.02, subd. 11f)

“*Entity*” means any program, organization, license holder, or agency required to initiate or submit a background study. (Minn. Stat. §214.02, subd. 11c)

“*Health-related licensing board*” includes the following: Board of Examiners of Nursing Home Administrators, the Office of Unlicensed Complementary and Alternative Health Care Practice, Board of Medical Practice, Board of Nursing, Board of Chiropractic Examiners, Board of Optometry, Board of Physical Therapy, Board of Psychology, Board of Social Work, the Board of Marriage and Family Therapy, Office of Mental Health Practice, Board of Behavioral Health and Therapy, Board of Dietetics and Nutrition Practice, Board of Dentistry, Board of Pharmacy, Board of Podiatric Medicine and Board of Veterinary Medicine. (Minn. Stat. §214.01, subd. 2)

“*Minn. Stat. §144.057*” is the section of the law that identifies entities licensed or otherwise regulated by MDH that are required to conduct background studies through the *NETStudy 2.0* system for certain identified individuals. [Note: Minn. Stat. §144G.13 and §144G.42 also address background studies for assisted living providers, and Minn. Stat. §144A.476 addresses requirements for home care agencies.]

“*NETStudy 2.0*” means DHS’ system that replaces both *NETStudy* and DHS’ internal background study processing system.

"National criminal history record check" means a check of records maintained by the Federal Bureau of Investigation (FBI) through submission of fingerprints through the Minnesota Bureau of Criminal Apprehension (BCA) to the FBI, when specifically required by law. (Minn. Stat. §245C.02, subd. 13c(a))

"Professional services agency" is a term used by DHS that refers to providers of professionals from one or more types of professions, like physical therapists or occupational therapists, etc.

"Provider" for the purposes of this manual refers to any facility, agency or program that is either licensed by the MDH or DHS and that is required to request a background study under Minn. Stat. Ch. 245C. This includes, but is not limited to, hospitals, nursing homes, boarding care homes, assisted living facilities, home care agencies, supplemental nursing services agencies, adult day care programs and corporate adult foster care providers.

"Reasonable cause to require a national criminal history record check" means (a) information or circumstances exist that provide the commissioner with articulable suspicion that further pertinent information may exist concerning a background study subject that merits conducting a national criminal history record check on that subject. The commissioner has reasonable cause to require a national criminal history record check when: (1) information from the BCA indicates that the subject is a multistate offender; (2) information from the BCA indicates that multistate offender status is undetermined; (3) the commissioner has received a report from the subject or a third party indicating that the subject has a criminal history in a jurisdiction other than Minnesota; or (4) information from the BCA for a state-based name and date of birth background study in which the subject is a minor that indicates that the subject has a criminal history. (b) In addition to the circumstances described in para. (a), the commissioner has reasonable cause to require a national criminal history record check if the subject is not currently residing in Minnesota or resided in a jurisdiction other than Minnesota during the previous five years. (Minn. Stat. §245C.02, subd. 15)

"Recurring maltreatment" means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment. (Minn. Stat. §245C.02, subd. 16)

"Results" means a determination that a study subject is eligible, disqualified, set aside, granted a variance, or that more time is needed to complete the background study.

"Roster" means the electronic method used to identify the entity or entities required to conduct background studies under Minn. Stat. Ch. 245C with which a background subject is affiliated. There are three types of rosters: active roster, inactive roster, and master roster. (Minn. Stat. §245C.02, subd. 17a(a))

"Serious maltreatment" means sexual abuse, maltreatment resulting in death, neglect resulting in serious injury which reasonably requires the care of a physician, advanced practice registered nurse, or physician assistant whether or not the care of a physician, advanced practice registered nurse, or physician assistant was sought, or abuse resulting in serious injury. For purposes of this definition, *"care of a physician, advanced practice registered nurse, or physician assistant"* is treatment received or ordered by a physician, physician assistant, advanced practice registered

nurse, or nurse practitioner, but does not include: (1) diagnostic testing, assessment, or observation; (2) the application of, recommendation to use, or prescription solely for a remedy that is available over the counter without a prescription; or (3) a prescription solely for a topical antibiotic to treat burns when there is no follow-up appointment. For purposes of this definition, "*abuse resulting in serious injury*" means: bruises, bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite and other frostbite for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke. Serious maltreatment includes neglect when it results in criminal sexual conduct against a child or vulnerable adult. (Minn. Stat. §245C.02, subd. 18)

"*Subject of a background study*" means an individual on whom a background study is required or completed. (Minn. Stat. §245C.02, subd. 19)

"*Supplemental nursing services agency*" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, and orderlies. Supplemental nursing services agency does not include an individual who only engages in providing the individual's services on a temporary basis to health care facilities. A supplemental nursing services agency does not include a professional home care agency licensed under Minn. Stat. §144A.471 that only provides staff to other home care providers. (Minn. Stat. §144A.70, subd. 6)

"*Volunteer*" means an individual who provides or seeks to provide services for or through an entity without direct compensation for services provided, is required to be affiliated in *NETStudy 2.0* with the entity and is subject to oversight by the entity. (Minn. Stat. §245C.02, subd. 22)

C. Commonly Asked Questions

Which providers does the DHS Background Studies Act apply to?

The following entities¹ licensed by DHS or MDH are required to conduct background studies through the *NETStudy 2.0* system:

- Adult day services
- Adult foster care providers
- Assisted living facilities
- Board and lodging establishments registered to provide special services
- Boarding care homes

¹ This list includes providers that work in or in relation to older adult services. The DHS Background Studies Act also covers other provider types (e.g., childcare) that are not within the scope of this manual.

- Home care agencies
- Home and Community-Based Services (HCBS) providers
- Hospice providers
- Hospitals
- Nursing homes
- Outpatient surgical centers
- Personal Care Provider Organizations (PCPOs) / Personal Care Assistance Organizations
- Personnel Agencies, Educational Programs and Professional Services Agencies
- Supplemental Nursing Services Agencies (SNSAs)

Noncompliance with background study requirements is a license violation and providers are subject to related citations and fines.

Senior Housing

A separate criminal background study law – the Kari Koskinen Manager Background Check Act – applies to apartments and other residential buildings. For further information regarding the Kari Koskinen Manager Background Check Act, please refer to Section 3 of this manual. You may also review Table A in Section 1 for a description of which laws apply to which providers.

Supplemental Nursing Service Agencies

Except as noted in the next two paragraphs, registered supplemental nursing services agencies are required under Minn. Stat. §144.057 to request criminal background studies through DHS on their employees who provide direct contact services in health care facilities and on controlling persons of the agency.

Effective as of June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075.

However, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.

All requests must be submitted electronically. Background study requests on supplemental nursing service agency controlling persons must be submitted at the time an application for registration is submitted. Background study requests on SNSA employees must be submitted before beginning positions that allow direct contact with persons served by the supplemental nursing service agency. Further, the licensed program must receive a copy of the SNSA employee's background study notice prior to allowing that employee to provide any direct

contact services. [**Note:** For general information about regulation of SNSAs see Minn. Stat. §§144A.70 to 144A.74, the Supplemental Nursing Services Agency Registration Act.]

Personnel Agencies, Educational Programs and Professional Services Agencies

Most personnel agencies are covered under the Supplemental Nursing Services Agency Registration Act and therefore, are required to submit annual background studies on their employees. However, other personnel agencies, educational training programs and professional services agencies *are not required* to conduct background studies on their employees. Nonetheless, these individuals must have a DHS background study if they are providing direct contact services in your organization. Many of these agencies and programs request criminal background studies from DHS. Such requests must be submitted electronically. DHS will conduct background studies on these individuals if they provide direct contact services in DHS- or MDH-licensed programs.

If one of these types of agencies sends an individual to a provider organization, the provider's responsibilities are as follows:

1. Ensure that a DHS background study has been completed by the agency or program; *and*
2. Obtain from the agency or program a copy of a background study result for the individual and maintain this information in the organization's records; *or*
3. If the agency or program did not conduct a background study on the individual, initiate (or have the agency or program initiate) a background study on the individual before he/she begins direct contact with those individuals served by the provider; *or*
4. If the individual is licensed by one of the health-related licensing boards (HLBs) that is excepted from the DHS background study, then a provider should obtain and retain a copy of their current license. A person who is serving as the managerial agent or controlling individual for a licensed assisted living, assisted living with dementia care, or home care agency is required to have a DHS background study.

What happens if a personnel agency, educational program, or professional services agency fails to comply with the background study requirements?

If a personnel agency, educational program, or professional services agency fails to comply with the requirements for criminal background studies established in Minn. Stat. §144.057 or the DHS Background Studies Act (Minn. Stat. Ch. 245C), DHS has the right to refuse to complete criminal background studies for the agency. However, this does not mean that individuals who work for these agencies and who are placed at licensed providers no longer need criminal background studies through DHS. In these cases, the organizations for whom these individuals provide services will be required to submit background study requests on these individuals.

Which individuals must have background studies?

The following individuals must have a criminal background study conducted by DHS. This list identified in this section is not exhaustive. Rather, it is focused on those individuals who provide services in senior services settings. See also the next section of this manual for information about background studies for volunteers:

- 1. An applicant for license.** This applies to a person or persons applying for a DHS-issued license.
- 2. Employees who have or will have direct contact with residents, clients or patients.** This includes employees of adult day programs licensed by DHS under Minn. Stat. Ch. 245A and employees of home care agencies licensed by MDH under Minn. Stat. Ch. 144A.

“*Direct contact*” is defined as providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program.

This definition will trigger background studies on van and bus drivers who provide supervision of the resident or client while in their care.

MDH and DHS have interpreted face-to-face care to include beauty or barbershop staff when the shop is located within the provider. Therefore, those employees of the shop are subject to criminal background studies. If individuals providing beauty and barber shop services are not employees of the provider, they may still be required to have background studies as contractors. For the purposes of the DHS Background Studies Act, a contractor is considered an “employee” of the provider or license holder.² See the discussion below regarding contractors for further information.

Except in assisted living facilities, nursing homes and boarding care homes, dietary and kitchen staff will not need to have a background study unless they provide direct contact services or have unsupervised access to residents or clients.

For example, if a dietary staff person oversees a resident’s food intake, that person may be considered to be providing supervision of the resident. As a result, a background study would be needed. Also, if a dietitian reviews a resident’s meal plan with the resident, this is considered providing face-to-face care. In cases where the individual is merely making sure that a resident or client receives a special diet or food preference without supervising or having unsupervised access to the resident or client, that staff person will not need to be checked.

Housekeepers, maintenance staff, laundry or kitchen/dietary services may not meet the definition of providing direct contact services. If that’s the case, individuals working in these capacities would not be required by the law to have a background study *unless* they are employed by an assisted living facility or a nursing home or boarding care home.

² See Minn. Stat. §245C.02, subd. 11f.

Some providers may choose to conduct background studies on all staff, regardless of whether or not there will be direct contact. This is okay to do, and many consider it a best practice.

3. Employees of assisted living facilities, nursing homes and boarding care homes.

Except as noted in the next two paragraphs, assisted living facilities, nursing homes and boarding care homes must conduct a background on all employees, regardless of their role. This includes employees who do not have traditional “direct care” roles such as the CEO, administrator, housekeeping, maintenance, laundry, kitchen services, business office staff/accounting department, and so on.

Effective as of June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075.

However, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.

While a disqualification will not result in the individual being prohibited from working for the provider, it will result in the individual being prohibited from providing direct contact services or having access to residents of the facility. And so, as a practical matter, the effect of someone being disqualified may be that he or she is not able to continue working for the provider – depending on whether another position is available within the organization that does not involve either direct contact services or access to residents and on whether the individual is qualified for such a position.

4. All controlling individuals and owners.

Under the DHS Background Studies Act, a controlling individual includes an owner of a program or service provider licensed under Minn. Stat. Ch. 245A. It also includes each officer of the organization, including the chief executive officer and chief financial officer, the individual designated as the authorized agent for the organization, the individual designated as the compliance officer (if applicable) and each managerial official whose responsibilities include the direction of the management or policies of a program.³

Under the assisted living facility and home care laws, owners of an assisted living facility or licensed home care agency must have a criminal background study. The law defines an owner as someone who is: (a) a proprietor, (b) a general partner, (c) a limited partner with five percent or more equity interest in a limited partnership, (d) a person who owns or controls voting stock in a corporation in an amount equal to or greater than five percent of the shares issued and outstanding, or (e) a corporation that owns equity interest in a licensee or applicant for a license.⁴

³ Minn. Stat. §245A.02, subd. 5a.

⁴ Minn. Stat. §144A.43, subd. 17.

For purposes of triggering a criminal background study, an owner must be an individual whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the home care provider. An owner includes a sole proprietor, a general partner or any other individual whose individual ownership interest can affect the management and direction of the policies of the home care provider.⁵

As noted above, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.

5. All managerial officials.

Under the DHS Background Studies Act, a managerial official is considered a controlling individual. Specifically, a managerial official is an individual who has decision-making authority related to the operation of the program. A managerial official also has responsibility for the ongoing management of or direction of the policies, services, or employees of the program. A site director who has no ownership interest in the program is not considered to be a managerial official for purposes of this definition.⁶

Under the assisted living facility and home care laws, a managerial official is defined slightly differently. For assisted living purposes, a managerial official is an individual who has the decision-making authority related to the operation of the facility and the responsibility for the ongoing management or direction of the policies, services, or employees of the facility.⁷

For home care purposes, a managerial official is a person who is an administrator, director, officer, trustee or employee of a home care provider, however designated, who has the authority to establish or control business policy.⁸ If the managerial official provides direct contact to home care clients or has responsibility for the ongoing management or direction of the policies, services, or employees of the home care provider, that individual is subject to a background study.⁹ Providers should keep in mind that this may include members of an organization's governing body, such as its Board of Directors.

[**Note:** The position of MDH is that all members of a home care agency's governing Board are considered managerial officials and thus subject to a criminal background study.]

As noted above, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.

⁵ Minn. Stat. §144A.476, subd. 1(b).

⁶ Minn. Stat. §245A.02, subd. 5a(c).

⁷ Minn. Stat. §144G.08, subd. 36.

⁸ Minn. Stat. §144A.43, subd. 9.

⁹ Minn. Stat. §144A.476, subd. 1(c).

6. Contractors who have or will have direct contact with residents or clients.

As of July 2023, for the purposes of the DHS Background Studies Act, a contractor is considered an “employee” of the provider or license holder.¹⁰ Previously, the DHS Background Studies Act had its own definition of the term “contractor” and therefore contractor background studies. This changed with 2023 legislative session. [Note: Within this manual, we will continue to use the term contractor and reference a contractor study for ease of provider and license holder understanding.] While the 2023 change appears to remove contractor background studies from the overall study process, it simply removes the “contractor” term from the DHS Background Studies Act while simultaneously placing the concept within the definition of an “employee”. Therefore, there **is no practical impact** to provider or license holder background study processes for the purposes of initiating or submitting a contractor study with DHS. Those studies are simply now known as “employee” studies. This also means the contractor **is required to be affiliated** in the provider’s or license holder’s *NETStudy 2.0* roster.¹¹

Both current and prospective contractors who will have direct contact with those individuals served by the facility, agency or program are subject to the criminal background study requirements.¹² This includes physicians who provide on-site assessment or treatment for residents or clients; noting, however, that DHS shall not conduct a background study on an individual who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in §214.075. A provider should obtain and retain a copy of their current license.

It may also include clergy who provide counseling as part of the program’s services.

It is the responsibility of providers to request criminal background studies from DHS on those individuals not directly employed by the provider but providing program services for hire under the control of the provider. In the alternative, the provider must maintain documentation that the contractor has had a DHS check completed through his or her employer.

Here are some questions to ask to help determine which contractors must be checked:

- Does the provider determine the tasks to be completed by the individual?
- Are the services provided by the individual part of the required services offered by the provider (i.e., are the services required by or governed by the provisions of the provider’s regulations)?
- Does the provider supervise or observe the individual’s performance?
- Does the provider have the authority to choose which individual provides the service?

If the answer to any of the above questions is **yes**, that individual needs to have a background study.

¹⁰ See Minn. Stat. §245C.02, subd. 11f.

¹¹ Minn. Stat. §245C.02, subd. 11f.

¹² See Minn. Stat. §245C.03, subd. 1(a)(3).

Here are some examples of when background studies are and are not needed for contractors:

- Example #1: If the facility contracts with an individual to mow grass, paint, install carpeting, perform building remodeling, etc. a background study **is not** required as long as the individual: (i) is not providing face-to-face care, training, supervision, counseling, consultation or medication assistance to persons served by the program (i.e., does not have “direct contact”), and (ii) the individual also does not have unsupervised access to persons served by the program. **However**, if the contractor will have unsupervised access to persons served by the program, a criminal background study will **likely be needed**. For purposes of the DHS criminal background law, unsupervised access means physical access to individuals in the absence of a supervising person being within continuous earshot or eyesight of the contractor. The idea behind such continuous supervision is that someone is able to intervene at all times in order to protect the individuals served by the program.
- Example #2: If a family member of a resident or client arranges for an individual to provide direct contact services to the resident or client, a background study for that individual **would not** be required **unless** one or more of the criteria listed above is met.¹³ For example, if the family of a nursing home resident arranges for an individual to provide companion services to the resident, and those services include the provision of direct contact services, the requirement for the background study will be based on the control exercised by the facility. The facility must determine whether facility staff are required to observe, supervise, evaluate, or direct the services of the individual, and/or whether the facility directs the tasks to be completed by the individual, etc.
- Example #3: If services from another licensed agency, e.g., hospice services, are provided to a resident or client, whether arranged by the facility or by another individual, the other licensed agency **should have** initiated a background study on persons providing the direct contact services. The facility where the services are provided should obtain a copy of the DHS background study results from that agency.
- Example #4: Any physician who assesses or treats patients or residents in a hospital or nursing home **should have had** a background study conducted by the physician’s health-related licensing board. These services are direct contact services and are part of the facility’s program requirements. These services and the performance of required tasks are subject to review by the facility through the granting of privilege or a medical director review, etc. The facility where the services are provided should obtain a should obtain and retain a copy of the physician’s current license.
- Example #5: A resident’s or client’s personal spiritual advisor who visits the resident or client and provides spiritual services in a licensed facility **would not** be subject to a DHS background study. **However**, if the spiritual advisor is an employee of the facility or is

¹³ DHS has no authority to check friends, neighbors or other persons with whom the resident has a prior relationship unless that individual is providing direct contact services and is not under continuous, direct supervision.

contracted by the facility to be its chaplain or otherwise provide spiritual support services to residents and clients, the individual *would* be subject to a criminal background study.

- Example #6: A beautician who provides services in a licensed nursing home or assisted living facility pursuant to an arrangement with the provider *is required* to receive a DHS background study if the individual has unsupervised access to those persons served by the program or if other criteria identified above are met.

Other Examples: Contractors who need to be checked because they provide direct contact services include rehabilitative or supportive services or those providing nursing care such as:

- Occupational therapy
- Physical therapy
- Speech therapy
- Recreational therapy
- Psychological counseling
- Social services
- Pharmacist services
- Dietitian services
- Clergy hired by the provider
- X-ray services
- Phlebotomy services
- Doctors
- Hospice providers

Many of these occupations are licensed by health-related licensing boards defined in Minn. Stat. §214.01, subd. 2, and require the provider to follow the DHS Background Studies Act and health-related licensing board background study processes for such persons.

- 7. Individuals age 13 and over who live in the household where a program is operated but who do not receive licensed services from the program.**
- 8. Individuals age 10 to 12 who live in the household where the licensed services are provided, when the Commissioner has reasonable cause.**
- 9. An individual who does not provide direct contact but may have unsupervised access to vulnerable adults receiving services from a program.** The Commissioner must have reasonable cause to check someone under this clause.
- 10. 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.** See the next section.

When does a volunteer need a background study?

The DHS Background Studies Act directs entities to conduct a background study on an individual (including a volunteer or student volunteer) who: (a) provide direct contact services to residents or clients as part of program services; **and** (b) are not under continuous, direct supervision.¹⁴

"*Direct contact*" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program, and "continuous, direct supervision" means an individual is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons being served.

"*Continuous direct supervision*" means an individual is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program.

The position of MDH is that all "regularly scheduled" volunteers of the assisted living are subject to background studies **regardless** of any "direct contact." "*Regularly scheduled*" means ordered or planned to be completed at predetermined times or according to a predetermined routine per Minn. Stat. §144G.08, subd. 56.

Below are some examples of when background studies are and are not required for volunteers under the DHS Background Studies Act:

- Example #1: If a volunteer is involved in assisting nursing home residents to the dining room or to appointments or activities in the facility and the volunteer is not always within the sight or hearing of a facility employee, a background study **is required**.
- Example #2: If a volunteer's responsibility is to read to one or more residents of a nursing home and the volunteer is not always within the sight or hearing of a facility employee while doing this, a background study on the volunteer **is required**.
- Example #3: A person who is a member of a resident's church community and who picks up the resident for church-related activities is not providing a direct contact service for the facility and **does not require** a DHS background study. **However**, the facility **must assess** whether the resident is capable of attending the church activity without staff supervision or supervision by a facility volunteer who has received a DHS background study.
- Example #4: If a group of holiday carolers volunteers to provide entertainment in the lobby of an assisted living facility, a background check **is not required** because the group is not providing a direct contact service for the facility, as defined under the DHS Background Studies Act.

¹⁴ Minn. Stat. §245C.03, subd. 1.

If the DHS Background Studies Act does not require a provider to conduct a background study for a given person, can the provider still run a check on that individual?

Yes, however DHS is only authorized to conduct *NETStudy 2.0* background studies on the individuals listed above.

In cases where a provider would like to check individuals who are not required to have criminal background studies under Minn. Stat. §144.057, Minn. Stat. Ch. 245A (Adult Day licensees), or the DHS Background Studies Act, the provider may conduct background studies through the Minnesota Bureau of Criminal Apprehension (BCA) or a private employment screening agency. You may also seek information and guidance from your local law enforcement agency.

With appropriate consent from the individual who is the subject of the search, the BCA is authorized conduct certain types of background checks. For further information from the BCA, including sample consent forms, call (651) 793-2400, or visit the BCA website at <https://dps.mn.gov/divisions/bca/Pages/background-checks.aspx>.

For examples of private vendors who conduct criminal background studies, see Section 3 of this manual.

When must individuals be checked?

MDH-Licensed Facilities and Agencies

A study must be conducted upon a subject's hire or, if the subject is a contractor or volunteer, upon initiation of the relationship with the provider.¹⁵

DHS-Licensed Programs

Adult Day programs and other DHS-licensed programs are required under Minn. Stat. Ch. 245A and Ch. 245C to submit criminal background study requests to DHS if directly licensed by the department or to their county if the county has been delegated the licensing authority. A study must be conducted upon a subject's hire or, if the subject is a contractor or volunteer, upon initiation of the relationship with the provider.

Supplemental Nursing Services or Other Personnel Agencies, Professional Agencies or Educational Programs

For individuals who are affiliated with a supplemental nursing services agency, personnel agency, educational training program or professional services agency, DHS background studies must be conducted before beginning a direct contact position.

¹⁵ See Minn. Stat. §245C.05, subd. 8.

How often is a study required?

Once a background study has been completed and an individual has been added to a provider's active roster within *NETStudy 2.0*, repeat or future background studies are not required. However, if an individual is removed from a provider's active roster, a new background study will be needed.

Here are some specific scenarios you may encounter:

- Background Studies for Individuals Who Have Already Been Studied or Work for Multiple Providers

Under *NETStudy 2.0*, background studies are specific to the individual study subject, not the provider or program for whom the study subject works. As a result, once an individual has been fingerprinted and photographed, further fingerprinting and photographing should not be necessary if the individual included his or her Social Security number in the background study application. If the individual becomes affiliated with another provider, the new provider will still need to run a criminal background study. However, results should be almost instantaneous since the individual has been fingerprinted and photographed previously and is already in the *NETStudy 2.0* system. [Note: Multiple factors are considered regarding transferability of background studies; see the *NETStudy 2.0* User Manual for additional information.]

- Rehired, Intermittent and Substitute Employees

1. **Rehired Employee:** If an individual's affiliation with a provider ends, and the provider removes the person from the provider's active roster, a new DHS background study must be requested upon the individual's rehire. However, if the provider did not remove the individual from the provider's active roster after the affiliation ended, there would be no need to request a new background study at the time of rehire. As a best practice tip, however, the provider should confirm during the rehire process that the provider did not receive any disqualification or other notice concerning the individual from DHS during the period of separation.
2. **Intermittent Employment:** Individuals who work on an intermittent basis, such as students who work summers and during holiday breaks, would not have to undergo a new DHS background study provided they remain on the provider's active roster.
3. **Substitute Staff:** If an individual is continuously affiliated with a provider as a substitute staff person who is available to work on an on-call basis, a background study is not required to be submitted each time the substitute individual provides direct contact services if an initial DHS background study was conducted and as long as the individual has remained on the provider's active roster.

- Physicians, Advance Practice Registered Nurses, Physician Assistants

Repeat background studies are not necessary for physicians, advance practice registered nurses, or physician assistants licensed under Minn. Stat. Ch. 147A. Under the DHS Background

Studies Act, these professionals are presumed to be continuously affiliated with a provider upon the provider's receipt of the individual's background study results.¹⁶ Providers need to keep the results of each individual's background study on file. They can do this by making sure the individual is affiliated with the provider and on the provider's active roster.

What is a provider's active roster?

A roster is an electronic means of identifying those providers who are required to initiate background studies under the DHS Background Studies Act, as well as the background subjects with whom providers are affiliated.¹⁷ There are three types of rosters: active roster, inactive roster and master roster.

Active Roster

An *active roster* is the list of individuals specific to a provider who have been found to be eligible through the background study process to provide direct contact services for the provider and whom the provider has identified as being affiliated with the organization. An individual shall remain on a provider's active roster and will be considered affiliated with the provider until such time as either: (a) DHS determines that the individual is ineligible, or (b) the provider removes the individual from its active roster.¹⁸

Inactive (Separated) Roster

DHS maintains a list of individuals who are eligible to provide services but who are not identified on an active roster. This list is called an *inactive roster*. A person will remain on the inactive roster for no more than 180 consecutive days. However, a person can submit a written request to DHS asking to remain on the inactive roster for a longer period of time. If DHS receives information that may cause an individual on the inactive roster to be disqualified from providing direct contact services or from having access to persons served by a program, DHS will remove that individual from the inactive roster. If that individual seeks a position requiring a background study at some point in the future, he or she will be required to submit to a new background study.¹⁹

Master Roster

DHS maintains a list of all individuals who, as a result of a background study initiated under Minn. Stat. Ch. 245C, are determined to be eligible to provide services for one or more providers or programs. This list is called a *master roster* and is maintained without regard to an individual's affiliation with a provider or program.²⁰ In other words, even if an individual is not currently affiliated with a provider, he or she will be included on the master roster if the

¹⁶ See Minn. Stat. §245C.04, subd. 1(i).

¹⁷ See Minn. Stat. §245C.02, subd. 17a(a).

¹⁸ See Minn. Stat. §245C.02, subd. 17a(b).

¹⁹ See Minn. Stat. §245C.02, subd. 17a(c).

²⁰ See Minn. Stat. §245C.02, subd. 17a(d).

individual has submitted to a background study and been cleared to provide services. The master roster includes all background study subjects identified on the active and inactive rosters.

What happens if an individual has a future conviction for a disqualifying crime? How will the provider be notified?

Corrections agents and parole officers are required to report to DHS all future convictions for disqualifying crimes for individuals who specify that they work for an MDH- or DHS-licensed provider. When DHS receives this information, it takes the following action:

1. DHS determines if background studies have been conducted on the individual. In this case, DHS looks to see if the individual: (a) still works at the provider(s) that requested a background study; and (b) is required to have a DHS background study. This is confirmed by calling the provider where the individual works and asking what the individual's position is. Perhaps the individual is a maintenance worker at a hospital and is not required to be checked.
2. If the individual has had a DHS background study check in the past, then DHS will send a letter to all of the providers where the disqualified individual works or volunteers notifying them that the individual is disqualified and what his or her status is during the reconsideration process (i.e., immediate removal, continuous supervision or no continuous supervision).

Effective as of June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075.

However, DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual.

For more information about health-related licensing board individuals, see the MDH FAQ document (<https://www.health.state.mn.us/about/org/hrd/docs/hlbbgsfaq.pdf>) describing how DHS and MDH will implement this new requirement.

An individual with a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075, is not subject to the disqualification standards of *NETStudy 2.0*. Additionally, an individual licensed by a health-related licensing board is not part of *NETStudy 2.0*. Therefore, it is now the responsibility of each health-related licensing board to determine whether information received from an applicant for initial or renewal licensure, or from DHS or MDH regarding DHS, county, and OHFC substantiated maltreatment findings warrant discipline or other actions related to the individual's license.

Providers who are subject to federal regulations will need to provide proof of compliance with those federal regulations.

The practical result means providers should reach out to the appropriate health-related licensing board to verify a background check was completed, request confirmation from the health-related licensing board of that fact, and save the verification in the employee's personnel file.

This may include proof that the provider checked the Nursing Assistant Registry for any findings of maltreatment, proof of reasonable efforts undertaken to discover a prospective employee's criminal history prior to employment, or compliance with any other regulations specific to the provider type.

Who conducts the criminal background studies?

DHS is the only agency or business given authority under Minn. Stat. §144.057 and Ch. 245C to conduct criminal background studies on individuals in accordance with these laws. DHS delegates this authority to the various counties of Minnesota for programs they license.

Nothing prohibits a provider from initiating a criminal background study through a private business, such as an employment screening agency. However, a criminal background study by a private business cannot be conducted in lieu of a DHS study because it does not meet the background study requirements set forth in the DHS Background Studies Act. A provider may opt to conduct background studies through a private business on individuals not required to be checked under Minn. Stat. §144.057 or Ch. 245C, or to use a private study to supplement the DHS check.

What is NETStudy 2.0?

NETStudy 2.0 is the criminal background study system used by DHS. DHS began phasing in its use of this electronic system in 2016 and had converted all licensed programs over to *NETStudy 2.0* by mid-2017. The biggest change between *NETStudy 2.0* and the prior system is the use of fingerprints and photographs of each background study subject. In addition, the results of the background study attach to the subject rather than to the program or provider. This means that once an individual has been studied through *NETStudy 2.0* and submitted fingerprints and photographs, he or she should generally not have to undergo the fingerprinting/photographing process in the future (e.g., if he or she changes employment), so long as he or she provides his or her Social Security number at the time of the initial background study. Rather, any future employer will be able to submit a study request regarding the individual, see that he or she has been studied before and obtain instantaneous results. [Note: Multiple factors are considered regarding transferability of background studies; see the *NETStudy 2.0* User Manual for additional information.]

The *NETStudy 2.0* system was designed to enhance the protection of children and of vulnerable adults by improving the accuracy of background studies through fingerprint-based criminal record checks and by expanding the background studies to include a review of information from

the Minnesota Court Information System, as well as the national crime information database.²¹ Compared to the previously-used background study system, the newer *NETStudy 2.0* process increases efficiencies and speeds up the hiring process in a number of ways.

1. It provides access to and updates from public web-based data related to employment eligibility.
2. It decreases the need for repeat studies through electronic updates of background study subjects' criminal records.
3. It improves identity verification by using study subjects' Social Security numbers and photographs.
4. It uses electronic employer notifications rather than paper notifications sent via U.S. Mail.
5. It can issue immediate verification of study subjects' eligibility to provide services if the individual has already completed a study under the *NETStudy 2.0* system.²²

Several data privacy and security protections have been built into the criminal background study law specific to the *NETStudy 2.0* system. For example, neither DHS nor the BCA nor the FBI can retain a study subject's fingerprints.²³ In addition, although DHS' authorized fingerprint collection vendor is allowed to view a study subject's information for the purpose of establishing identity, the vendor is not permitted to keep a study subject's photograph, fingerprint or other information from *NETStudy 2.0*.²⁴ The only information the vendor is authorized to retain is the study subject's name and the date and time when the subject's fingerprints were recorded and sent, and even this permission is limited to the vendor's need to retain such information for auditing and billing purposes. Finally, the law sets forth specific security standards with respect to encrypting information both at the database level and as it travels electronically. Also, access to information by DHS employees is limited to the minimum amount necessary for them to perform their job duties under the background study law.

To further protect an individual's privacy, the DHS Background Studies Act gives a study subject the ability to submit a written request to DHS to destroy the information used to complete the individual's background study. Such a request can only be made if: (1) the individual has not been affiliated with any program or provider for the previous two years, and (2) the individual has no disqualifying characteristics.²⁵

In order to use the system, a *NETStudy 2.0* account must be established for the provider before background study requests can be submitted through the system.

²¹ See Minn. Stat. §245C.02, subd. 13e.

²² See Minn. Stat. §245C.02, subd. 13e.

²³ See Minn. Stat. §245C.05, subds. 2c, 2d, and 5(d).

²⁴ See Minn. Stat. §245C.05, subd. 5(e).

²⁵ See Minn. Stat. §245C.051(a).

Also, each provider using *NETStudy 2.0* must identify a Sensitive Information Person (SIP) to receive background study information on behalf of the provider. This person must be capable of determining whether an individual who is the subject of a background study is providing direct contact services and, if so, at what location. Those individuals designated as a SIP must complete a *NETStudy 2.0* User Agreement. Providers can change the person designated as the SIP online through the *NETStudy 2.0* system.

Once your organization is registered to use the system, you will find a variety of important resources in the Help section of *NETStudy 2.0*, including:

- *NETStudy 2.0* Onboarding Guide
- *NETStudy 2.0* Quick Start Guide: Initiating a DHS Background Study
- *NETStudy 2.0* User Manual
- Minnesota Department of Human Services *NETStudy 2.0* Training Videos

What is the process for initiating a background study?

There are three main steps in the background study process:

1. Study Request. The process begins when a licensed program submits a background study request. Programs must initiate background studies on-line through the DHS system called *NETStudy2.0*.

After an application is submitted, but before the study subject has his/her fingerprints and photo recorded (see below), the study subject must be under continuous and direct supervision.

Once the study subject is fingerprinted and photographed, DHS will notify the study subject and the program if the study subject must remain supervised while the background study is being completed, or if the study subject may provide unsupervised services.

2. Fingerprinting and Photographing. The person who is the subject of the background study must then provide fingerprints and be photographed at an approved location. The background study does not begin processing until the applicant is fingerprinted and photographed at a DHS authorized fingerprint and photo service location.

After an entity submits a background study request, the study subject will complete a pre-enrollment process through the State's vendor, IDEMIA, and this process is initiated through an email to the study subject. IDEMIA's pre-enrollment process replaces the Fingerprint Authorization Form used previously. The pre-enrollment process is an online system used by study subjects to: (1) confirm that their first name and date of birth are correctly entered in *NETStudy 2.0*, (2) select what type of identity document they will use at the fingerprint and photo service location to verify their identity, (3) locate an IDEMIA/IdentoGo fingerprint and photo service location using their ZIP code, and (4) schedule an appointment at an IDEMIA/IdentoGo fingerprint and photo service location.

There is a fee for the fingerprinting and photo, which is paid directly to the vendor. That fee may be paid ahead of time on-line or at the fingerprinting location. A program may pay the fee itself or may require the person who is the subject of the background study to pay the fee.

The study subject must also complete a separate consent and disclosure process through DHS. For entities that initiate the study subject's application and complete the data entry on the *NETStudy* profile page, the subject will be sent an email from the dhs.netstudy2@state.mn.us address with a link to access the consent process.

Important: The study subject will have 14 days from the date the application is submitted to complete and submit the consent. If the consent is not submitted within 14 days, the background study application will be closed and cannot be reopened. This system also requires the study subject to disclose whether they have been convicted of a crime. Study subjects are required to report crimes regardless of the state in which the crime(s) occurred or when the crime happened.

3. Processing and Notification of Results. Once the program has submitted its request, and the individual has submitted fingerprints and a photograph, DHS will process the background study and report the results to both the study subject and to the program that initiated the study. If DHS determines that the person is disqualified from providing services, its notification will include information about the person's right to request that DHS set-aside the disqualification and about whether he or she may continue to work while DHS considers the set-aside request.

For more information regarding *NETStudy 2.0*, please refer to DHS' website at <https://mn.gov/dhs/general-public/background-studies/>.

What information is included in a background study?

Under *NETStudy 2.0*, a routine DHS background study consists of a review of the following information:

- Public and private records at the BCA, including statewide arrest and conviction information for certain identified crimes;
- DHS records of substantiated cases of maltreatment of vulnerable adults and minors (such as abuse, neglect or financial exploitation);
- Juvenile court records, if applicable;
- FBI information in certain circumstances;
- Other jurisdictions, if applicable;
- Professional licenses;
- The Minnesota Nursing Assistant Registry;
- The List of Excluded Individuals and Entities maintained by the U.S. Department of Health and Human Services Office of Inspector General;

- The Minnesota Court Information System; and
- The Minnesota Predatory Offender Registry.

In the event DHS requires additional time in which to complete a background study, records from other state agencies, from county or municipal law enforcement and from other states may also be reviewed.

Maltreatment Records

Since October 1, 1995, DHS has maintained a database of substantiated perpetrators of maltreatment of vulnerable adults. County-led investigative agencies and MDH's Office of Health Facility Complaints are required to report all names of substantiated perpetrators of maltreatment from their investigations to DHS. Additionally, DHS has records of maltreatment of vulnerable adults and minors in DHS-licensed facilities. DHS also has records of substantiated perpetrators of maltreatment of minors from county investigations that resulted in negative licensing actions against family day care providers, child foster care providers and adult foster care providers, as well as from county disqualifications when the substantiated perpetrator asked for reconsideration of his or her disqualification.

Juvenile Records

DHS may review juvenile court records when there is reasonable cause to do so, as well as under circumstances in which the study subject is a minor. A provider is not required to request another background study after a minor has already been studied turns 18 years old. Any future convictions for disqualifying crimes as an adult will be reported to DHS and then to the provider.

FBI Information

When a national criminal history record check is required, it is necessary for DHS to review records maintained by the FBI. Such a review is performed when DHS has reasonable cause to believe additional information about a study subject is needed. Reasonable cause exists when a study subject is a multi-state offender per the BCA or when the BCA is unable to determine a subject's multi-state offender status. Reasonable cause also exists when DHS receives a report that a study subject has a criminal history in a jurisdiction other than Minnesota. Minors with criminal histories may also give DHS reasonable cause to conduct national criminal history record check, as might circumstances in which the study subject either does not live in Minnesota at the time of the study or has failed to live in Minnesota for five years prior to the study.

Other Jurisdictions

Although DHS may not always have reasonable cause to conduct a national criminal history check of study subjects who live in another state, DHS does have reasonable cause to conduct a state-of-residence background study on individuals who live in a state other than Minnesota and who either provide direct contact services on behalf of a licensed provider or are employed by a Minnesota nursing home or boarding care home. This means DHS must check criminal records in Minnesota and in the state where the study subject resides.

How does a provider request a background study?

Providers must complete and submit a background study request for all individuals required to be checked under either Minn. Stat. §144.057 or Ch. 245C. In the case of a family adult day services provider, the county in which the services are provided is responsible for initiating the background study and for delivering the privacy notice.

All background study requests must be submitted electronically through the *NETStudy 2.0* system **prior to** the individual performing any activity for which a background study is required. If a newly-hired employee has not yet been studied under *NETStudy 2.0*, he or she will need to submit to fingerprinting and photographing as part of the background study process.

See the section above (What is the Process for Initiating a Background Study?) for additional information about the pre-enrollment and consent-and-disclosure processes that study subjects must complete after the provider initiates the study. As noted there, the study subject will have 14 days from the date the application is submitted to complete and submit the consent. If the consent is not submitted within 14 days, the background study application will be closed and cannot be reopened.

Until the provider has received notice clearing the employee to work, new employees may not provide direct contact services or have access to persons receiving services unless they receive continuous, direct supervision from the provider. This means the new staff person must be within eyesight or earshot of another employee who is cleared to provide direct contact services such that the other employee is able to intervene if necessary, in order to keep those served by the program safe. In the case of family adult day services providers, this notice will be sent to the county initiating the background study.

Under *NETStudy 2.0*, results will often be instantaneous for those individuals previously studied under this system. DHS must notify providers of an individual's study results within three working days of DHS' receipt of a background study request.²⁶ Working days are considered Monday through Friday, not including holidays.

For further information and details regarding steps in the background study process, please refer to the *NETStudy 2.0* User Manual and the *NETStudy 2.0* Quick Start Guide, both of which are published by DHS.

What happens if an individual refuses to be fingerprinted or fails to cooperate with the background study process?

Individuals who do not submit to fingerprinting and photographing will not be cleared to work. This may occur when an individual does not complete the pre-enrollment and consent and disclosure processes within the required timeframe. This is different than being disqualified.

²⁶ See Minn. Stat. §245C.17, subd. 1(a).

If an individual refuses to cooperate with the background study process (e.g., fails to provide additional information requested by DHS), the study subject will be disqualified from providing direct contact services to persons served by the provider or from positions with access to assisted living residents and nursing home and boarding care home residents.

As previously mentioned, DHS does not need an individual's consent to conduct a background study on the individual because it is authorized by Minn. Stat. §144.057 and Ch. 245C to do so. However, if an individual fails to cooperate, DHS will not be able to complete the study process and make a determination regarding the individual's qualification to work. According to the DHS Background Studies Act, failure or refusal to cooperate gives DHS reasonable cause to disqualify a background study subject.²⁷

Your organization may want to explain in person, in a letter or on an application that these background studies are required by Minnesota law and that failure to cooperate would restrict the individual's ability to provide direct contact services or have access to residents in your organization and could result in the organization having to terminate the individual's employment.

How much does it cost to conduct a background study?

Licensed Programs

For MDH-licensed providers subject to the background study requirements of Minn. Stat. §144.057, the cost of DHS conducting the background checks is paid for through the providers license fees. As a result, MDH-licensed providers do not need to pay any money when submitting a request for a criminal background study.

This is not the case for most DHS-licensed providers or others required to conduct background studies under Minn. Stat. Ch. 245C. As of July 2023, most providers must pay a fee of \$44.00 per background study. As of July 2023, DHS will no longer be required to request legislative approval and statutory language changes to increase its per study fee. Therefore, providers should review DHS' website at <https://mn.gov/dhs/general-public/background-studies/> for current per study and fingerprinting and photo fees.

The *NETStudy 2.0* system will identify that a fee is due and collect it during the process of a provider submitting a background study. If you have questions about applicable fees, call DHS at 651-431-6625 or email to dhs.netstudy2@state.mn.us.

Study Subjects

Individuals who initiate a background study on themselves are responsible for paying for the background study. In addition, providers are not obligated to pay for the cost of a study subject being fingerprinted and photographed. As of July 2023, the fee is \$10.50. It is up to the provider whether it will pay this amount or whether it will require the individual to bear the cost.

²⁷ See Minn. Stat. §245C.09, subd. 1.

Who is notified of the background study results?

DHS will notify providers of the results of the background study electronically. A county initiating a background study on a family adult day services provider will also be notified by DHS of the study results electronically. DHS will notify the individual study subjects via U.S. Mail. In the event a previously studied and cleared individual becomes disqualified from providing direct contact in the future, DHS will notify all providers who list the disqualified person on their active roster. DHS will also notify the individual who has been disqualified.

Beginning in July 2023, individual study subjects now have the option to access most of their notices and documents electronically. The new feature called Applicant Access to Electronic Documents is available through the *NETStudy 2.0* Applicant Data Entry Portal or Applicant Portal. This paperless option securely stores documents electronically so study subject scan access them any time and eliminates sending most documents through standard mail.

How long will it take to receive a response from DHS on an employee?

DHS is required to respond to a background study request submitted through *NETStudy 2.0* within 3 days of receipt. Providers should remember that time measured in working days (generally Monday through Friday) is longer than time measured in calendar days because weekends and holidays are not included in the definition of “working” days.

If DHS is unable to complete a requested background study within the required time period, DHS will notify the provider and the individual that more time is needed to complete the check. DHS typically needs additional time when a more in-depth background study is necessary or when an individual has a disqualifying event but has been determined by DHS not to pose an immediate risk of harm to the persons served by the program. However, other circumstances exist where DHS needs additional time to complete the background study.

What if the provider knows or has been told that an individual may have a criminal or maltreatment history?

Providers are required by law to report to DHS information they receive about the possible criminal or maltreatment history of an individual who is the subject of a background study.²⁸ This applies anytime such information is received: i.e., both when the study is in process and after it is completed. This has the greatest impact on a provider’s current employee population. A provider must immediately report to the DHS Division of Licensing any information it may have regarding an employee’s or other individual’s possible disqualifying event. A provider is required to tell an individual of its obligation under this requirement to report any information it has regarding the individual’s criminal or maltreatment history. When providers have new information to report, they can do so by emailing the Background Studies Division at dhs.backgroundstudyadmin@state.mn.us or by calling the Help Desk at 651-431-6620.

²⁸ See Minn. Stat. §245C.05, subd. 6.

What are disqualifying events?

Individuals can be disqualified for:

1. A criminal conviction for a disqualifying crime;
2. An admission or Alford Plea to committing a disqualifying crime (an Alford Plea is a guilty plea in which an individual maintains his or her innocence but admits that, if the matter went to trial, the individual would likely be found guilty);
3. Aiding and abetting, attempting or conspiring to commit a disqualifying crime;
4. Having parental rights terminated under certain circumstances;
5. An administrative finding of substantiated serious or recurring maltreatment of a vulnerable adult or minor, or failure to report an instance of maltreatment of a vulnerable adult or minor as required by law and such maltreatment was substantiated as being serious or recurring; or
6. A preponderance of evidence that indicates the person committed a disqualifying crime.

Disqualification for crimes

Certain crimes are identified as so severe that they disqualify an individual no matter how much time has passed since the conviction or completion of his or her sentence. Such crimes are listed below and are considered permanent disqualifying events. However, if the individual studied commits one of the offenses listed below but the sentence or level of offense is reduced to a gross misdemeanor or misdemeanor, the individual is disqualified but the disqualification look-back period for the offense is the period applicable to the gross misdemeanor or misdemeanor offense.

- Aggravated robbery
- Arson (1st degree)
- Assault (1st and 2nd degree at felony level)
- Carjacking (1st and 2nd degree)
- Child abuse or neglect (felony level)
- Crimes against children
- Criminal sexual conduct (1st, 2nd, 3rd, 4th, 5th degrees)
- Criminal sexual predatory conduct
- Domestic assault (felony level)

- Domestic assault by strangulation
- Drive-by shooting
- Great bodily harm caused by the distribution of drugs (felony level)
- Harassment and stalking (felony level)
- Incest
- Indecent exposure involving a minor
- Kidnapping
- Malicious punishment of a child (felony level)
- Manslaughter (1st and 2nd degrees)
- Murder (1st, 2nd, 3rd degrees)
- Murder of an unborn child (1st, 2nd, 3rd degrees)
- Neglect or endangerment of a child (felony level)
- Other prohibited acts: prostitution-related crimes involving a minor
- Possession of pictorial representations of minors
- Shooting in or at a public transit vehicle or facility
- Solicitation, inducement and promotion of prostitution
- Solicitation of children to engage in sexual conduct
- Spousal abuse (felony level)
- Termination of parental rights - involuntary
- Use of minors in sexual performance
- Violation of predatory offender registration law
- Attempt or conspiracy to commit any of the above offenses in this state
- Aiding or abetting in the commitment of any of the above offenses in this state
- An offense in any other state or country that resembles the elements of the above crimes

For the remaining list of disqualifying crimes:

- Felony convictions disqualify an individual for 15 years;
- Gross misdemeanor convictions disqualify an individual for 10 years; and
- Misdemeanor convictions, substantiated serious or recurring maltreatment of a vulnerable adult or minor child and failure to report what is determined to be substantiated serious or recurring maltreatment of a vulnerable adult or minor child all disqualify an individual for 7 years after completion of his or her sentence.
- Petty misdemeanor convictions are not disqualifying events.

For a complete list of disqualifying crimes, see Table D of this manual.

Disqualifications for Events Other than Convictions

Certain disqualifications may be based on something other than a conviction of an individual.

- For example, a disqualification may be ***based on a judicial determination*** other than a conviction. In such a case, the disqualification period begins to run on the date of the court order issued in the criminal matter.
- When a disqualification is ***based on an admission*** by an individual, the disqualification period begins to run on the date the individual makes his or her admission in court. When a disqualification is based on an Alford Plea, the disqualification period begins from the date the Alford Plea is entered in court.
- When a disqualification is ***based on the preponderance of evidence*** that a disqualifying event occurred (as determined by DHS), the disqualification period begins to run on the later of the following: (1) the date of dismissal; (2) the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements; or (3) the date of the incident, whichever occurs last.²⁹

Substantiated Maltreatment Disqualification for Licensed Professionals

When the subject of a background study is an individual who holds a professional license regulated by a health-related licensing board (see definition in Section 2.C. of this manual) and DHS determines that the regulated individual is responsible for substantiated maltreatment of a child or vulnerable adult, DHS will ***not*** make the disqualification decision but will instead refer the matter to the individual's licensing board for determining disciplinary or corrective action. [This does not apply if the individual's background study is related to adult foster care.]

Under 2022 legislation, DHS and each health-related licensing board shall enter into an agreement in order for each board to provide the commissioner with a daily roster list of

²⁹ See Minn. Stat. §245C.15, subs. 1(d), 2(f), 3(e) and 4(e)

individuals who have a license issued by the board in active status. The list must include for each licensed individual the individual's name, aliases, date of birth, and license number; the date the license was issued; status of the license; and the last four digits of the individual's Social Security number.³⁰

Effective Feb. 1, 2023, DHS shall notify a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, if the commissioner determines that an individual who is licensed by the health-related licensing board and who is included on the board's roster list is responsible for substantiated maltreatment under Minn. Stat. §626.557 or Ch. 260E. Upon receiving notification, the health-related licensing board shall decide whether to impose disciplinary or corrective action under Minn. Stat. Ch. 214 or not. Effective as of that date, DHS shall notify a health-related licensing board:

1. of a record showing that the individual licensed by the board was determined to have been responsible for substantiated maltreatment;
2. upon the commissioner's completion of an investigation that determined an individual licensed by the board was responsible for substantiated maltreatment; or
3. upon receipt from another agency of a finding of substantiated maltreatment for which an individual licensed by the board was responsible.³¹

In cases where the health-related licensing board has imposed conditions on a licensed individual's ability to provide direct contact services, the state agency licensing the provider is responsible for monitoring that those conditions are being met. A provider that permits a licensed individual to provide direct contact services without meeting the board-imposed conditions is subject to action by the agency. The licensing agency will notify the appropriate board immediately when an individual or provider is not complying with the board-imposed conditions for the licensed individual.

DHS is permitted to order the immediate removal of a licensed individual when a licensing board has determined that the individual poses an immediate risk of harm and therefore has issued a temporary suspension order.

Health-related licensing boards must determine whether a licensed individual under the board's jurisdiction should be subject to disciplinary or corrective action because of substantiated maltreatment. In making these determinations, the boards must consider the same risk of harm criteria as DHS, as well as whether the information relied upon that is accurate. Additionally, under Minn. Stat. Ch. 245C, the boards must give preeminent weight to the safety of persons served by the program over the interests of the licensed individual. Minn. Stat. §214.104(c) directs the boards to consider several factors including, but not limited to, the extent that the action is needed to protect persons receiving services; the recency of the maltreatment; the number of incidents of maltreatment; the intrusiveness or violence of the maltreatment; and the vulnerability of the victim.

³⁰ Minn. Stat. §245C.31, subd. 3a.

³¹ Minn. Stat. §245C.31, subs. 1-2.

Minn. Stat. §214.104 also governs what types of actions a board can impose, when the action takes effect, how long it is applicable, any conditions the licensed individual must meet if he or she wants to maintain a direct contact position, and notification of MDH and DHS of the action taken. (For details on these issues, see Minn. Stat. §214.104, which is linked in the Appendix to this Manual.)

Permanent Disqualifications for Nurse Aides

Federal regulations permanently bar nurse aides from nursing home employment if the nurse aide has a finding of maltreatment of residents or misappropriation of resident property entered on the state nurse aide registry. A nurse aide who has been notified by MDH that a finding will be placed on the state nurse aide registry may challenge the finding in an evidentiary hearing before the finding is placed on the registry.

What are the different background study results?

As stated previously, DHS has three working days from receipt of a background study request to notify the provider and the individual of the results of the study. There are three possible results of a background study:

1. The individual is not disqualified.

DHS will notify the provider and the study subject that the individual is not disqualified and may provide direct contact services. Notice to the provider will be sent electronically through the *NETStudy 2.0* system. Notice to the study subject will be sent via U.S. Mail. Beginning in July 2023, individual study subjects now have the option to access most of their notices and documents electronically. The new feature called Applicant Access to Electronic Documents is available through the *NETStudy 2.0* Applicant Data Entry Portal or Applicant Portal. This paperless option securely stores documents electronically so study subject scan access them any time and eliminates sending most documents through standard mail.

2. DHS needs additional time to complete the study.

Both the individual and the provider will be notified if more time is needed to complete the study. The individual's notice will include the identity of the provider who initiated the background study. DHS may also ask the individual for additional information to finish processing the background study request.

A notice will be sent to the provider stating that more time is needed to complete the study but that the study subject is not required to be removed from direct contact or access to people receiving services prior to completion of the study. The notice that more time is needed to complete the study must also indicate whether the individual is required to be under continuous direct supervision prior to completion of the background study.³²

³² See Minn. Stat. §245C.13, subd. 2(a)(1)(ii).

If a prior background study on the individual resulted in an order for immediate removal from direct contact services and from access to persons served by the program, and if DHS requires additional time to complete the current background study, the notice to both the individual and to the provider shall include an order for the immediate removal of the individual while the background study is pending.³³

The need for additional time to complete a background study can indicate several possible scenarios. For example, DHS might need to conduct a more in-depth study of the individual. It's also possible that the information obtained by DHS does not match up with the information submitted on the individual.³⁴

In very limited circumstances, after DHS has issued a notice that more time is needed to complete the background study, DHS may then issue a notice that the study subject is not disqualified, even if the study is not yet complete.

If DHS must review criminal, sex offender or maltreatment information from another state but has not received the same within ten days of DHS requesting the information, DHS may issue a notice that the individual is not disqualified only if the outstanding information from the other state is the sole reason that a notice of the need for more time was originally issued.³⁵ If DHS clears an individual to work prior to receiving needed information from another state, DHS may subsequently take action on the information received. This includes disqualifying the study subject from providing direct contact services or having access to those persons served by the program.

3. The individual is disqualified.

When an individual is disqualified, DHS completes an analysis to determine the disqualified person's risk of harm to those served by the program. The risk of harm analysis involves a review of the following factors:

- The recency of the disqualifying event;
- The recency of the individual's discharge from probation for the crime(s);
- The number of disqualifying events;
- The intrusiveness or violence of the disqualifying event;
- The vulnerability of the victim involved in the disqualifying event;
- The similarity of the victim to the persons served by the program where the individual will have direct contact; and

³³ See Minn. Stat. §245C.17, subd. 1(c).

³⁴ This should not be a common occurrence under *NETStudy 2.0*.

³⁵ See Minn. Stat. §245C.13, subd. 3.

- Whether the individual studied has a disqualification from a prior background study that has not been set aside.³⁶

If the individual studied has a disqualification that may not be set aside because it is a permanent bar under Minn. Stat. §245C.24, subd. 1, DHS may order the immediate removal of the individual from any position allowing direct contact with, or access to, persons receiving services from the program.³⁷

What happens when someone is disqualified from providing direct contact services?

Once the risk of harm analysis discussed above is complete, DHS will make one of the following three determinations regarding the disqualified individual:

- The individual poses an imminent risk of harm to those served by the program;
- The individual poses a risk of harm that requires continuous direct supervision while providing direct contact services during the time when the individual may request reconsideration of the disqualification; or
- The individual does not pose an imminent risk of harm and does not pose a risk of harm requiring continuous, direct supervision while providing direct contact services during the time when the individual may request reconsideration of the disqualification.

Imminent Risk of Harm

DHS will notify both the provider and the individual of the disqualification and of the results of the risk of harm analysis. If there is a determination of an imminent risk of harm, the individual must be immediately removed from providing direct contact services and from having access to those persons served by the program.

Risk of Harm Requiring Continuous, Direct Supervision

If the individual is determined to pose a risk of harm such that continuous, direct supervision is required, the provider must either: (a) immediately remove the disqualified individual from a position allowing direct contact services, or (b) immediately take steps to ensure that the individual is always within eyesight or earshot of someone who can intervene while the individual is providing direct contact services. This level of supervision is required during the time in which the disqualified individual is seeking reconsideration of the disqualification determination.

It is important to note that some providers may choose to remove a disqualified person rather than have him or her work under continuous, direct supervision. If a provider elects not to (or cannot) provide such supervision, then the provider must either take the person off the schedule

³⁶ See Minn. Stat. §245C.24, subd. 1(b)(1) through (7).

³⁷ See Minn. Stat. §245C.24, subd. 1(b)(8).

while the individual's reconsideration request is pending, or the provider must take steps to ensure that the disqualified individual is not providing direct contact services and does not have access to persons served by the program.

If a provider is able and willing to have a disqualified individual work under continuous, direct supervision, the provider must take the following steps *in advance of* allowing the individual direct contact:

1. Obtain from the disqualified individual a copy of the notice of disqualification issued by DHS;
2. Ensure that the disqualified individual is under continuous, direct supervision when having direct contact with, or access to, those persons receiving services during the time period in which the individual is seeking reconsideration of the disqualification; and
3. Verify that the disqualified individual requests reconsideration within 30 days of receipt of the notice of disqualification.³⁸

It is important to note that a disqualified individual's ability to work under continuous, direct supervision is conditioned on the individual seeking reconsideration of the disqualification. If an individual is disqualified and chooses not to seek reconsideration of the determination, the individual must be immediately removed from direct contact with and access to those served by the program.

Risk of Harm Not Requiring Continuous, Direct Supervision

If the individual is disqualified but still able to provide unsupervised direct contact services, the provider must either: (a) immediately remove the disqualified individual from a position allowing direct contact services, or (b) allow the disqualified individual to continue providing direct contact services and having access to those served by the program *only after* taking the following steps:

1. Obtain from the disqualified individual a copy of the notice of disqualification issued by DHS; and
2. Verify that the disqualified individual requests reconsideration within 15 days of receipt of the notice of disqualification.³⁹

As with someone who requires continuous direct supervision, it is important to note that a disqualified individual's ability to work, even in the absence of such a supervision requirement, is conditioned on the individual seeking reconsideration of the disqualification. An individual who is disqualified, regardless of whether or not they require continuous, direct supervision, and who elects not to request reconsideration of the disqualification, must be immediately removed from direct contact with and access to those served by the program.

³⁸ See Minn. Stat. §245C.17, subd. 3(c)(2).

³⁹ See Minn. Stat. §245C.17, subd. 3(d).

What information will DHS send to the provider initiating the study when an individual is disqualified?

Upon determining that an individual is disqualified, DHS will send notice of the disqualification to the provider who initiated the background study (or to the county initiating the background study, in the case of a family adult day services provider) and explain that the individual has either 30 or 15 calendar days in which to request reconsideration. As discussed below, this will depend on whether the risk of harm analysis determines that the individual must be immediately removed (30 days), requires continuous, direct supervision (30 days) or does not pose an imminent risk of harm and does not require continuous, direct supervision (15 days). DHS will also notify the provider of the results of the risk of harm analysis and of the individual's employment status during the reconsideration process.

DHS **will not** disclose the reason for the disqualification to the provider unless certain conditions apply. For example, if the basis for the disqualification is either the individual's failure to cooperate with the background study process or a substantiated maltreatment finding, DHS will disclose these reasons for disqualification to the provider initiating the study. Also, if Minnesota law allows for the release of information regarding the disqualification,⁴⁰ or if individual who is the subject of the study consents to the release of the information, DHS is permitted to notify the provider of the reason for the disqualification.⁴¹

If a disqualified individual requests reconsideration of the finding, either MDH or DHS – this will depend on which of the two agencies licenses the program for whom the individual is providing direct contact services – will notify the provider of the results of the reconsideration process. If the disqualification is set aside, the individual will be permitted to work without continuous, direct supervision. If the disqualification is not set aside, or if the individual fails to request reconsideration within the required time period, the provider will be required to immediately remove the individual from providing direct contact services and from having access to those served by the program.

What information will DHS send to the study subject regarding the disqualification?

DHS will notify the individual of the disqualification by U.S. Mail. [**Note:** Beginning in July 2023, individual study subjects now have the option to access most of their notices and documents electronically, including disqualification notices. The new feature called Applicant Access to Electronic Documents is available through the *NETStudy 2.0* Applicant Data Entry Portal or Applicant Portal. This paperless option securely stores documents electronically so study subject can access them any time and eliminates sending most documents through standard mail.] The notice will indicate that the provider has **not** been told why the individual was disqualified, except when the reason is failure to cooperate with the background study process, or substantiated serious or recurring maltreatment. If the individual would like the disqualifying information to be released to the provider, DHS must receive written consent from

⁴⁰ Specifically, the Minnesota Data Government Practices Act under Minn. Stat. Ch. 13.

⁴¹ See Minn. Stat. §245C.17, subd. 3(e).

the individual to release that information. As indicated in this section, there are some exceptions that allow the provider who initiated the background study to obtain the reason for the disqualification without the individual's consent.

In addition, the individual's notice of disqualification will include the following information and statements:

- The reason for the individual's disqualification;
- Instructions on how to request reconsideration of the disqualification;
- Any restrictions on DHS' discretion to set aside the disqualification, if applicable to the situation (*e.g.*, the disqualification is because of a permanent disqualifying event);
- A statement indicating that, if the individual's disqualification is set aside, the provider initiating the background study will be given the reason for the individual's disqualification;
- A statement indicating that, if the individual's disqualification is set aside, the provider initiating the background study may request from either MDH or DHS (depending on which agency conducted the reconsideration process), without the individual's consent, an explanation of the factors that were the basis for the decision to set aside the disqualification;
- A statement indicating that, if the individual's disqualification is set aside or if the provider is granted a variance, the individual's identity and the reason for the individual's disqualification will become public data under certain circumstances;
- A statement that, if a ***subsequent background study*** is initiated on the individual after a set aside has been granted previously, and if there is a determination that the previous set aside applies to the subsequent background study, the provider initiating the subsequent background study will be told: (a) of the reason for the disqualification, (b) that the disqualification is set aside, and (c) that information regarding the reasons the disqualification is set aside are available upon request without the consent of the individual; and
- DHS' determination of the individual's immediate risk of harm.⁴²

For individuals who are determined to pose an imminent risk of harm, the notice must explain the basis for this determination.⁴³

For individuals determined not to pose a risk of harm requiring immediate removal, the notice must identify conditions under which the provider that initiated the background study may allow the individual to provide direct contact services or have access to those receiving services.⁴⁴

⁴² See Minn. Stat. §245C.17, subd. 2(a).

⁴³ See Minn. Stat. §245C.17, subd. 2(b).

How can a provider get information regarding why an individual was disqualified?

There are three ways a provider can find out why an individual is disqualified.

1. DHS is permitted under the law to tell a provider when an individual is disqualified for substantiated serious or recurring maltreatment or an individual's failure or refusal to cooperate with the background study process. The latter may include failure to submit fingerprints or failure to submit additional information needed to complete the background study. Otherwise, only the subject of a check can be told initially of any other reason he or she was disqualified, such as a criminal conviction.
2. If an individual is disqualified but is allowed to provide direct contact services during the reconsideration period, a provider must obtain a copy of the individual's notice of disqualification before allowing him or her to have direct contact with those served by the provider. This notice is different than the one received by the provider in that it provides more information and specifically identifies the reason for the individual's disqualification.
3. If the disqualified individual successfully requests reconsideration and obtains a set aside, the licensing agency granting the set aside will issue a notice to the provider of this determination. In this notice, the licensing agency will tell the provider of the specific reason for the individual's disqualification. The licensing agency will also notify the provider that information about which factors that were the basis of the decision to set aside the disqualification is available to the provider upon request without the background study subject's consent.

What happens when an individual affiliated with a supplemental nursing services agency, personnel agency, educational program or professional services agency is disqualified?

Individual Responsibilities

Certain individuals who are disqualified by DHS from providing direct contact services on behalf of providers have the right to seek reconsideration from the agency that is responsible for licensing the provider where the individual provides services.

When an individual's disqualification is set aside for a specific agency, a letter will be sent to the individual and to the agency which states that the disqualification has been set aside. The agency is then obligated to provide a copy of this letter to each provider where the individual provides direct contact services.

⁴⁴ See Minn. Stat. §245C.17, subd. 2(c).

When a disqualification is not set aside, both the agency and the individual will be notified. The agency will be required to immediately remove the individual from any direct contact positions in MDH- and DHS-licensed programs.

Agency Responsibilities

The agency is responsible for conducting background checks on its employees and must follow the procedures for these checks as described in Minn. Stat. Ch. 245C. For those individuals who are not disqualified, the agency will receive a notice of this status for each individual for whom a check was requested. The agency should give a copy of this notice to each provider where the individual provides direct contact services. The notice shows the individual's name, the agency's name and the date the DHS background study was completed.

Who is responsible for initiating the reconsideration process?

The burden is on the individual who has been disqualified to submit a written request for reconsideration to the appropriate licensing agency (this is discussed in detail below).

How does an individual submit a request for reconsideration of a disqualification?

Certain individuals who have been disqualified through the DHS background study process have the right to request reconsideration. This does not apply to those individuals who have been disqualified for a crime or conduct identified as a permanent disqualifying event. The burden is on the individual to prove that either: (a) the information used to disqualify the individual is incorrect, or (b) the individual does not pose a risk of harm to any person served by the licensed program. The appropriate licensing agency will then determine whether or not to set aside the individual's disqualification.

Although DHS conducts the background studies on individuals, individuals who work for MDH-licensed providers must submit their requests for reconsideration directly to MDH. MDH contacts DHS for information when an individual in an MDH-licensed program requests reconsideration of his or her disqualification.

DHS reviews all reconsideration requests for individuals who provide services in DHS-licensed or county-licensed providers, such as adult foster care providers and childcare providers. However, for family adult day services when the applicant or license holder resides in the home where services are provided, the disqualified individual shall submit the request for reconsideration to the county agency that initiated the background study.⁴⁵

A request for reconsideration form is sent with the disqualification notice to the individual. Although the individual may use this form, the individual may also submit his or her own written materials in support of the reconsideration request. The reconsideration process is based solely on written documentation.

⁴⁵ See Minn. Stat. §245C.21, subd. 1a(a).

How much time does the individual have to request reconsideration?

Individuals who have been sent a disqualification notice because they have been determined to pose a risk of harm requiring immediate removal or continuous, direct supervision, have 30 calendar days after receiving the disqualification notification from DHS to ask for reconsideration from the appropriate licensing agency. [**Note:** If the individual can demonstrate that he or she cannot obtain the necessary information within the initial 30-day timeframe, he or she may request up to an additional 30 days to submit the necessary information.⁴⁶] If the request is made by U.S. mail, it must be post-marked within 30 calendar days of the receipt. If the request is made by personal service, the Commissioner of the appropriate licensing agency must receive it within 30 calendar days of the receipt.

Individuals who have been disqualified and determined to not pose an imminent risk of harm must submit their requests for reconsideration within 15 calendar days of receiving notice of the disqualification. If the request is made by U.S. mail, it must be post-marked within 15 calendar days of the receipt. If the request is made by personal service, the Commissioner of the appropriate licensing agency must receive it within 15 calendar days of the receipt.

Upon receipt of notice from either DHS or MDH, providers are required to immediately remove an individual from direct contact or, where applicable, access to residents if the individual: (1) fails to request reconsideration within the prescribed timeframe; (2) makes a timely request for reconsideration, the disqualification is not set aside and the individual fails to make a timely request for a hearing under Minn. Stat. §245C.27 or §245C.28; or (3) makes a timely hearing request and the disqualification is not rescinded or set aside.

What must an individual prove in order to have the disqualification removed or set aside?

When requesting reconsideration, an individual must prove one of the following: (1) the information used to disqualify him or her was inaccurate; (2) he or she does not pose a risk of harm to the residents served by the provider; or (3) for maltreatment, that the information used to determine that the maltreatment was serious or recurring was incorrect.

Accuracy Challenges

If the individual makes the argument to the licensing agency that he or she was disqualified based on inaccurate information, he or she must take certain steps depending on the type of information for which he or she was disqualified.

1. **For inaccurate criminal history information:** The individual must provide accurate information from the Criminal Justice Information System. Once the licensing agency receives documentation verifying that the criminal history was inaccurate and did not belong to the individual, the disqualification is rescinded.

⁴⁶ See Minn. Stat. §245C.17, subd. 2(a).

2. **For inaccurate findings of substantiated maltreatment of vulnerable adult or a minor:** The appeal process as described in Minn. Stat. §626.557, subd. 9d, and §256.045, subd. 3, allows for an administrative reconsideration of the finding by the lead investigative agency. If the disqualified individual is not satisfied with the administrative reconsideration decision, he or she can request a fair hearing. Information will be provided to the individual by the licensing agency regarding how to do this.

Risk of Harm Challenges

If the individual makes the argument to the applicable licensing agency that he or she does not present a risk of harm to the residents or patients at the provider where he or she works or volunteers, then the individual must provide evidence to the appropriate agency that the safety of those persons served by the provider will not be compromised.

The disqualified individual will be asked to submit information to the licensing agency to assist it in determining whether the individual has sufficiently demonstrated that he or she does not present a risk of harm to any person served by the provider. In making this determination, the licensing agency will consider the following:

- The nature, severity and consequences of the disqualifying event;
- Whether there is more than one disqualifying event;
- The age and vulnerability of the victim(s) at the time of the event;
- The harm suffered by the victim(s);
- The vulnerability of persons served by the program;
- The similarity between the victim(s) and persons served by the provider;
- The time elapsed without a repeat of a same or similar event;
- Documentation of successful completion by the disqualified individual of training or rehabilitation pertinent to the event; and
- Any other information relevant to the reconsideration decision.⁴⁷

If the disqualified individual requested reconsideration based on the assertion that information relied upon by DHS in making the disqualification determination was incorrect, and if the licensing agency determines such information was correct, the agency must then conduct an analysis based on the above factors to determine whether the disqualified individual poses a risk of harm to those being served by the program.⁴⁸

⁴⁷ See Minn. Stat. §245C.22, subd. 4(b).

⁴⁸ See Minn. Stat. §245C.22, subd. 4(c).

In reviewing a request for reconsideration of a disqualification, the commissioner shall give preeminent weight to the safety of each person served by the license holder, applicant, or other entities as provided in the chapter over the interests of the disqualified individual, license holder, applicant, or other entity, and any single factor of the risk of harm analysis may be determinative of the commissioner's decision whether to set aside the individual's disqualification.⁴⁹

How long will the reconsideration process take?

The Commissioner is required to respond in writing or by electronic transmission to all requests for reconsideration within 30 working days if the person is challenging the accuracy or correctness of the information and within 15 working days if the individual is challenging the determination that he or she poses a risk of harm. If the request for reconsideration is based on both accuracy of the information and risk of harm, the Commissioner has 45 working days to make a determination. The licensing agency begins counting the number of days after it receives all relevant information.

How will the licensing agency notify the individual and the provider of its reconsideration decision?

The agency responsible for licensing the provider will send notice to both the individual requesting reconsideration and to the provider who initiated the background study (or to the county initiating the background study, in the case of family adult day services) informing them whether or not the disqualification has been set aside. The individual's notice will be sent via U.S. Mail. The provider's notices will be sent either in writing or electronically.

Disqualification Set Aside

If the disqualification is either rescinded due to the agency's reliance on incorrect information or set aside due to no risk of harm, the individual may continue to work or volunteer for the provider and previous restrictions will be removed. It should be noted that an individual who receives a set aside of his or her disqualification remains disqualified. However, the set aside enables the disqualified individual to work without restrictions (i.e., continuous, direct supervision).

If the disqualification is rescinded, the licensing agency will notify the provider in writing or electronically of the rescission and that the information relied upon to disqualify the individual was incorrect. If the disqualification has been set aside, the licensing agency must notify the provider in writing or electronically of the reason for the disqualification and that information regarding those factors of the risk of harm analysis that were the basis of the decision to set aside the disqualification is available to the provider upon request *without the consent* of the background study subject.

Immediate Removal Notice

⁴⁹ See Minn. Stat. §245C.22, subd. 3.

If an individual was disqualified and the individual: (a) failed to submit a timely request for reconsideration, (b) applied for reconsideration in a timely manner but did not have the disqualification rescinded or set aside, (c) failed to request a hearing within the specified time, or (d) made a timely hearing request but did not receive a set aside of the disqualification, then the provider will be notified that the individual must be immediately removed from direct contact services or, where applicable, access to individuals served by the program.

What other methods exist to contest a disqualification or have it set aside?

If an individual's disqualification is not set aside, the individual has additional appeal rights available to him or her. These include fair hearings and contested case hearings. These appeal rights will be explained to an individual in detail if the disqualification is not set aside. Also, the provider may request a time limited variance from the appropriate licensing agency. If granted, this would allow a disqualified individual to provide direct contact services or have access to persons served by the provider. Such variances are not available if the reason for the disqualification is a permanent event as identified under Minn. Stat. §245C.15, subd. 1.

What are the employment implications?

Exemption from Criminal Offenders, Rehabilitation Law

The Criminal Offenders, Rehabilitation law is found at Minn. Stat. Ch. 364 and states that it is the policy of Minnesota to encourage and contribute to the rehabilitation of criminal offenders by assisting them with resuming the responsibilities of citizenship, including securing employment. This section of law was amended to exempt those individuals required to have a criminal background study under the DHS Background Studies Act from the right to secure employment in health or human services careers if they have a crime that disqualifies them from doing so.

Termination

When an individual has been disqualified and DHS notifies a provider that the individual either must be removed from direct contact services or may continue to provide such services during the reconsideration process if the individual receives continuous, direct supervision, the provider may elect to terminate the individual's employment regardless of the individual's intent to request reconsideration.

Civil Liability Protection

Under Minn. Stat. §245C.19, "An applicant or license holder that terminates affiliation with persons studied under Minn. Stat. §245C.03, when the termination is made in good faith reliance on a notice of disqualification provided by the commissioner, shall not be subject to civil liability." This means an individual cannot bring a wrongful termination lawsuit against a provider if the termination is based in good faith on a report from DHS disqualifying the individual under Minn. Stat. Ch. 245C.

Unemployment Compensation Claims

The 1996 Legislature passed legislation protecting all employers from paying unemployment compensation claims when they are required to terminate an employee based on the results of a criminal background study that is required either by law or administrative rule. This protection applies to both for-profit and not-for-profit companies. It also applies regardless of whether the employer makes payments in lieu of contributions or whether the employer has an experience rating account. This protection is retroactive to the date when the law or administrative rule requiring criminal background studies became effective.

Liability When a Study Was Conducted

A provider's potential liability for the actions of an individual working in the provider has not changed. The fact that a provider conducts a criminal background study in accordance with Minn. Stat. §144.057 and Ch. 245C and receives a report from DHS stating the individual is not disqualified, does not relieve a provider from potential liability for the actions of that individual while working for the provider. However, compliance with Minn. Stat. §144.057 and Ch. 245C may lessen the risk of tort liability for negligent hiring.

What documentation must a provider maintain in its records?

A provider must document in its personnel records the date on which a DHS background study is initiated on an individual and the date on which that individual first has direct contact with persons served by the program.⁵⁰ Upon completion of a background study, a provider must maintain documentation that the background study was undertaken and completed in the study subject's personnel record.⁵¹ If the provider has implemented its active roster, and if all individuals affiliated with the provider are recorded on the active roster, these recordkeeping requirements will be considered satisfied.⁵² However, providers may still wish to record the results of the background study in the study subject's personnel record as a best practice.

If a provider initiates a background study through *NETStudy 2.0* and the background study subject's name does not appear in the list of active or recent studies initiated by that provider, the provider must either contact DHS or resubmit the background study information online for that individual.⁵³

If the response from DHS indicated that the individual has been disqualified but may continue to provide direct contact services to persons served by the provider during the reconsideration process, the provider must document how it is complying with any conditions identified by DHS regarding the individual's ability to provide direct contact services. Before allowing the individual to provide such services, the provider must also obtain a copy of the study subject's notice of disqualification and ensure that the disqualified individual requests reconsideration in a timely manner.

⁵⁰ See Minn. Stat. §245C.20, subd. 1.

⁵¹ See Minn. Stat. §245C.20, subd. 1.

⁵² See Minn. Stat. §245C.20, subd. 3.

⁵³ See Minn. Stat. §245C.20, subd. 1.

If DHS ordered the removal of an individual from direct contact services, the provider must document its compliance with that order.

Effective June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075.

Providers will not receive any criminal activity alerts or notifications about an individual who holds a valid license issued by a health-related licensing board and who has completed the criminal background check required in Minn. Stat. §214.075 from either DHS or the health-related licensing board.

If the individual is licensed by one of the health-related licensing boards (HLBs) that is excepted from the DHS background study, then a provider should obtain and retain a copy of their current license. A person who is serving as the managerial agent or controlling individual for a licensed assisted living, assisted living with dementia care, or home care agency is required to have a DHS background study.

Studies by Other Entities

If a background study is conducted by a personnel pool agency, a temporary personnel agency, supplemental nursing services agency or professional services agency, the provider must maintain a copy of the background study results in its files.⁵⁴ As with studies conducted on a provider's employees, this recordkeeping obligation will be considered if the provider has implemented its active roster, and if those individuals affiliated with the provider are recorded on the active roster.⁵⁵

If a provider relies on a background study requested by an educational program and the study subject is on the educational program's active roster, the provider is responsible for ensuring that the background study has in fact been completed. The provider's obligation to maintain documentation of the background study results can be addressed through its written agreement with the educational program. To do this, there must be a provision in the agreement in which the educational program verifies that documentation of the background study will be provided to the provider upon request. The agreement must also indicate that the educational program will inform the provider if there is any change in the person's background study status.⁵⁶

⁵⁴ See Minn. Stat. §245C.20, subd. 2.

⁵⁵ See Minn. Stat. §245C.20, subd. 3.

⁵⁶ See Minn. Stat. §245C.20, subd. 2a.

SECTION 3: THE KARI KOSKINEN MANAGER BACKGROUND CHECK ACT

A. Background

In 1995 the death of a young woman, allegedly killed by the manager of her apartment building, resulted in legislation that requires criminal background checks be conducted on employees of apartment buildings who have access to tenants' units. This law covers any current or prospective employee, "who has or would have the means, within the scope of the individual's duties, to enter tenants' dwelling units." The purpose of this law is to disqualify individuals who have a criminal history from this type of employment in order to protect tenants from harm.

All employees of assisted living facilities who are checked under the Department of Human Services (DHS) Background Studies Act do not require a second study under the Kari Koskinen Manager Background Check Act. As noted below, however, some licensed employees of assisted living facilities are no longer checked through the DHS system.

The Legislature has made several changes to the Kari Koskinen Act since 1995 including, but not limited to:

1. Making a background check conducted by DHS an equivalent check under the Kari Koskinen Act. This negates the need for an individual to be studied twice when that person is required to have a criminal background check under both Minn. Stat. Ch. 245C and the Kari Koskinen Act.
2. Exempting board and lodging establishments registered to provide special services from the requirements of the Kari Koskinen Act. They only need to meet the requirements of Minn. Stat. Ch. 245C.
3. Permitting a single check to be conducted on an individual who works in multiple housing projects all operated by the same owner as long as the criminal background check records are centrally located.
4. Requiring the Bureau of Criminal Apprehension (BCA) to notify owners in writing of the results of the background check.
5. Requiring a national record check on an individual if he or she has not lived in the state for the past 10 years.
6. Permitting the BCA, when a national check is required, to conduct either an FBI check or check the criminal records in the state or states where the individual has lived in the past 10 years.

B. Key Definitions

“BCA” is the Minnesota Bureau of Criminal Apprehension.

“*Equivalent background check*” is a background check conducted by: (1) a private business or local law enforcement agency where the scope of the background check provided by the private business or local law enforcement agency is at least as broad as the background check conducted by the BCA, or (2) the DHS when a criminal background check is required under Minn. Stat. §144.057 or Ch. 245C. An equivalent background check also includes placement of background check results in a central location when multiple residential settings are operated by one owner.

“*Manager*” is an individual who is hired or applying to be hired by an owner, and who has or would have the means, within the scope of the individual's duties, to enter tenants' dwelling units. The term “manager” does not include a person who is hired on a casual basis and not in the ongoing course of the business of the owner. (Minn. Stat. §299C.67, subd. 4)

“*MN Statutes §144.057*” is the section of the law that identifies entities licensed or otherwise regulated by MDH that are required to conduct background studies through the *NETStudy 2.0* system for certain identified individuals.

“*Minn. Stat. Ch. 245C*” or the “*Department of Human Services (DHS) Background Studies Act*” governs the policies, procedures and processes for conducting background studies on individuals providing services in programs licensed by either the Minnesota Department of Health or the Department of Human Services.

“*Owner*” means an owner of real property, a contract for deed vendee, receiver, executor, trustee, lessee, agent, or other person directly or indirectly in control of rental property. (Minn. Stat. §299C.67, subd. 5, referring to Minn. Stat. §504B.001, subd. 7)

The term “owner” does NOT include a person who owns, operates, or is in control of a health care facility or a home health agency licensed by the Commissioner of Health or Human Services under chapter 144 [MDH-licensed programs], 144A [nursing homes and home care agencies], 245A [DHS-licensed programs], or a board and lodging establishment registered to provide special services. (Minn. Stat. §299C.67, subd. 5)

“*Tenant*” means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park. (Minn. Stat. §299C.67, subd. 7, referring to Minn. Stat. §504B.001, subd. 12)

C. Commonly Asked Questions

What buildings are covered by the Kari Koskinen Act?

Residential settings that are covered by this law include:

- Apartment buildings, including subsidized and market buildings;
- Board and lodging establishments; and
- Assisted living facilities licensed under Minn. Stat. Ch. 144G.

Condominiums and Cooperatives

These concepts rarely, if ever, will be impacted by this law. A possible scenario that would trigger the requirements of the Kari Koskinen Act would be a case where an individual owner sublets his or her unit to another person(s). If the unit is sublet, then the owner of the unit could be required to have a background check conducted on employees hired by the condominium or cooperative association who have access to the owner's unit. This would be a rare circumstance. However, as a matter of practice, many management companies working for senior condominiums and cooperatives are requesting background checks on all their employees with access to owners' units.

It should be noted that nursing homes, boarding care homes, board and lodging establishments registered to provide special services, hospitals and ICFs/DD are specifically exempt from the Kari Koskinen Act. In addition, adult foster care and adult day care staff will continue to be checked under the DHS Background Studies Act (Minn. Stat. Ch. 245C).

No Exemption for Housing Owned by Nursing Home

Because of the wording of the law, some have wondered whether housing owned by a nursing home is exempt from the Kari Koskinen Act. The exemption for owners of a nursing home is designed to exclude nursing homes from the Kari Koskinen Act because their employees are already covered under the criminal background study provisions contained within Minn. Stat. §144.057 and Ch. 245C. However, there is not an exemption for housing or assisted living facilities. Thus, senior housing that is owned by a nursing home is still required to request background checks on all employees of residential buildings who have access to tenants' units.

Who must be checked under the Kari Koskinen Act?

The law requires that all current and prospective managers must be checked for a criminal history. The term "manager" is defined as anyone hired or applying to be hired *"by an owner and who has or would have the means, within the scope of the individual's duties, to enter tenants' dwelling units."*⁵⁷

⁵⁷ Minn. Stat. §299C.67, subd. 4

Keep in mind that this definition is broader than just the housing manager. It could include a variety of employees such as the housing manager, administrative staff, receptionist, food service personnel, housekeeping and maintenance. The definition does not appear to require the owner to have a background check and does not require volunteers to be checked because they are not employed.

A good rule of thumb for determining who is required to be the subject of a background check is to ask the following question: Who has a key to access tenants' units? The owner must also consider whether an employee's job duties will result in tenants letting these employees into their units. For example, a food service worker who delivers a tray to a tenant when the tenant is unable to eat in the dining room may meet the statutory definition of manager, thus requiring a background check.

Exceptions

The term "manager" also specifically excludes someone hired on a casual basis and who is not involved in the ongoing business of the owner. This includes contractors like electricians, plumbers, lawn crews, etc., who may work on-site on an irregular basis.

Home Care Staff / Other Staff

Most home care agency staff are required to be studied under the criminal background study provisions of Minn. Stat. Ch. 245C, as are all assisted living employees, other than those subject to the exception noted below. When someone is hired by a building owner to provide home care services, for example, and will have access to tenants' units, a criminal background check under both Minn. Stat. Ch. 245C and the Kari Koskinen Act is required. However, a criminal background study completed by DHS satisfies the Kari Koskinen Act requirement as long as the owner maintains a copy of the results of the DHS background check. As stated previously, a DHS background study meets the definition of an equivalent check.

Providers should note, however, that effective June 2, 2022, DHS shall not conduct a background study on an individual identified in Minn. Stat. §144.057, subd. 1, para. (1)-(5), who has a valid license issued by a health-related licensing board as defined in Minn. Stat. §214.01, subd. 2, and has completed the criminal background check as required in Minn. Stat. §214.075. DHS will continue to conduct studies on license applicants, owners, managerial officials, and controlling individuals who are required under Minn. Stat. §144A.476, subd. 1, or §144G.13, subd. 1, to undergo a background study under Minn. Stat. Ch. 245C, regardless of the licensure status of the license applicant, owner, managerial official, or controlling individual. ***For individuals who are subject to this exception and thus do not complete a DHS background check, a Kari Koskinen Act check will be required.***

If a tenant hires his or her own home care worker to come into a building and provide services independent of the owner, the owner is not required to check this individual even if he or she has a key to the tenant's unit. The biggest difference in this situation is that the individual is not employed by the owner of the building.

The owner does not need to request a criminal background check on an ambulance driver or other emergency personnel with access to a master key for the building because these individuals are not hired or employed by the owner.

Senior Home Companion Volunteers

These persons who have access to tenant units and are already studied through the program with which they are affiliated would not need to have a duplicate check conducted if the original study is statewide and obtains information on convictions for targeted crimes, or if it is conducted by the BCA. Consult the Senior Home Companion program to see who it uses to conduct criminal background checks and then determine if the background check can be considered equivalent under the Kari Koskinen Act. If equivalent, then the owner should obtain and maintain a copy of the background check report in its files.

Some housing providers have rewritten job descriptions or reconsidered how many employees should have master keys in order to limit how many background checks need to be conducted. Other housing providers have established their own internal policy requiring all employees to have a criminal background check and have established their own, more stringent list of disqualifying crimes. It is recommended that providers review any such policies with their attorneys.

When must “managers” be checked?

Owners must submit a request for a criminal background check on an individual before hiring him or her. Based on the definition contained in statute, a building could have more than one owner. If this is the case, it is a good idea for each building to identify one or two owners to be responsible for supervising/initiating the criminal background checks for all employees required to be checked. This could be the housing manager or a human resources director.

When a building changes ownership, the new owners are responsible for ensuring criminal background checks are adequately completed for any managers they decide to retain.

Who is authorized by law to conduct these checks?

The criminal background checks may be conducted by:

- The Minnesota Bureau of Criminal Apprehension (BCA)
- A local law enforcement agency;
- A private business, such as an employment screening agency;
- The Minnesota Department of Human Services (DHS) for individuals required to have a DHS background study under Minn. Stat. §144.057 or Ch. 245C; or
- The Federal Bureau of Investigation if the individual being checked has lived in Minnesota for less than 10 years or if a national search is otherwise needed.

Equivalent Background Checks

Owners have the option of using either the services of a private business or a local law enforcement agency to conduct a background check in lieu of the BCA.

If a private agency or local law enforcement agency conducts the check, the scope of the check must be equivalent to or more extensive than the scope of the BCA check. At a minimum, the information must include statewide arrests and convictions for targeted crimes. The private agency or local law enforcement agency is also required to respond to a background check request within 10 working days.

A DHS background study is only considered equivalent when the individual is required by law to have a DHS criminal background study. As noted above, some licensed employees of assisted living facilities will no longer be required to have a DHS background study. The owner is required to keep a copy of the results of the DHS background study on file.

When an individual works at multiple senior housing projects which are operated by a single owner, only one check is required as long as the background check records are centrally located.

Finally, board and lodging establishments registered to provide special services are specifically exempted from the Kari Koskinen Act and therefore, only need to check their “direct contact” staff according to Minn. Stat. §144.057 and Ch. 245C.

The following are examples of private agencies that conduct background checks. LeadingAge Minnesota does not recommend or endorse any of these particular agencies. It is up to each facility or housing project to investigate its options before selecting a private business to conduct background checks for purposes of the Kari Koskinen Act. This is not an exhaustive list of private businesses that conduct criminal background checks.

- Multihousing Credit Control (www.mccgrp.com)
- Orange Tree Employment Screening (www.orangetreescreening.com)
- Trusted Employees (www.trustedemployees.com)
- Verified Credentials (www.verifiedcredentials.com)

How does an owner request a criminal background check?

Because the specific procedures that must be followed are subject to change, this manual does not attempt to provide this information in detail.

For detailed information about the Bureau of Criminal Apprehension’s (BCA) procedures, including what information must be submitted to the BCA when requesting a background check (whether state-only or state-and-federal, notes on information that must be provided to the study subject, applicable fees, and other information, contact the BCA at 651-793-2400 or visit the agency’s website (<https://dps.mn.gov/divisions/bca/Pages/background-checks.aspx>).

1. An owner cannot request a criminal background check on an applicant or employee unless the owner has the individual's signed consent. Each vendor may use its own individualized, standard consent form.

The BCA has developed a sample consent form which meets the requirements for requesting a criminal background check under the Kari Koskinen Act. The form is available on the BCA website at <https://dps.mn.gov/divisions/bca/Pages/background-checks.aspx>; you will find a link by scrolling down to the section titled Rental Properties.

This sample consent form requires information about the housing project. The owner should fill in the space on the form asking for "owner or company" information. Once this information is completed, the owner can make copies of this form as needed to request checks from the BCA.

Private agencies or local law enforcement agencies who conduct these checks are required to have a similar form, with the exception that it will explain that a private agency or local law enforcement agency will be conducting the check.

2. Owners must notify an applicant or employee of certain rights and procedures set out in the Kari Koskinen Act. These rights can be explained on the consent form. The sample BCA background check request form contains the required notice of rights. If not part of the consent form, an owner must attach a signed copy of the notice of rights to its request form for the criminal background check. The owner should save a signed copy of the consent form for itself and give a signed copy to the applicant or employee. The notice must specify the vendor the owner is using to perform the background check (i.e., BCA, private agency).
3. If the applicant or employee has lived in Minnesota for 10 or more years, only a statewide criminal background check for targeted crimes is required. Upon completion of the consent form, this form must be submitted to the owner's chosen vendor (i.e., BCA, private agency, etc.). [**Note:** The Kari Koskinen Act is silent as to how the 10 years of residency in Minnesota should be calculated. If the applicant or employee has not lived in Minnesota for the 10 years immediately preceding the date of the background check, a national records check is required (see below).]

For details on how to submit a request for *state records*, contact the BCA at 651-793-2400 or visit the agency's website (<https://dps.mn.gov/divisions/bca/Pages/background-checks.aspx>).

4. If the applicant or employee has lived in Minnesota for less than 10 years, an owner must request a national criminal records check be conducted in addition to the required statewide check. This means the BCA can either conduct an FBI check (only the BCA may request an FBI check) or can check the criminal justice data communications network in the state or states where the manager has resided for the preceding 10 years. Fingerprints must be submitted when requesting an FBI check (see below).

For details on how to submit a request for a *state and federal records*, contact the BCA at 651-793-2400 or visit the agency's website (<https://dps.mn.gov/divisions/bca/Pages/background-checks.aspx>).

5. The Kari Koskinen Act allows owners to request an FBI check even if the applicant or employee has lived in Minnesota for more than 10 years.
6. Owners may conditionally hire an individual pending the outcome of a criminal background check. However, the check itself must be initiated before the person is hired. Once the background check request is made, but before the results are received, an owner may employ a manager as long as the owner complies with the provisions of the Kari Koskinen Act governing background check results showing convictions.

Fingerprints

An owner will need to arrange for an applicant or employee to have his or her fingerprints rolled by a local law enforcement agency or at the BCA for an FBI check. The local law enforcement agency may or may not charge an individual for this service. Some city law enforcement agencies will only roll fingerprints for their residents, while others only provide this service during very limited hours. Owners should contact their local law enforcement agency for more information regarding agency policies.

Information regarding BCA fingerprinting services and policies, including location and hours of operation, is available at <https://dps.mn.gov/divisions/bca/Pages/Fingerprinting.aspx> or call (651) 793-2400. The owner should explain that it is seeking an FBI check in connection with the Kari Koskinen law.

What rights does a manager have under the Kari Koskinen Act?

Employees or applicants who are being checked have the following rights:

1. To be informed that a criminal background check will be requested to determine whether the manager has been convicted of certain crimes (a manager must also sign a consent form permitting the check to be conducted);
2. To know what the background check report says;
3. To obtain a copy of the report and any corresponding records upon which the report is based;
4. To challenge the accuracy and completeness of the information in the report; and
5. To know if the reason for not being hired or for being fired is a result of the background check.

What information will the “owner” receive from the BCA?

The BCA must respond in writing and the report must indicate whether the applicant or employee is eligible for employment with the housing provider. It must also indicate if the individual has ever been convicted of a criminal background check crime. If the disqualifying crime is contained in the state criminal history records, the BCA will also provide the owner with a description of the crime, the date and location of the conviction, and the date the sentence was discharged. The BCA **cannot** release this information if contained in the FBI record.

Except for any level of conviction for stalking and harassment, individuals are only disqualified for felony convictions under the Kari Koskinen Act.

The BCA background check **will not** tell you if an individual was arrested for a background check crime. Also, the BCA background check **will not** tell you if an individual was convicted of a crime that is not a “background check crime” as that term is defined in Minn. Stat. §299C.67, subd. 2.

How do I decide which vendor to use to conduct background checks?

The most cost-effective method for meeting the requirements of the Kari Koskinen Act is to complete a BCA check. However, many LeadingAge Minnesota members have found that a private employment screening agency provides a more thorough composite of an individual's criminal history.

The BCA database contains statewide arrest and conviction information for adult targeted crimes, enhanced gross misdemeanors and felonies, and juvenile gross misdemeanor and felonies. Local law enforcement is required to report all arrests fitting these criteria but may also report other misdemeanor arrests. The courts and corrections system provide the conviction, court disposition, probation and custody actions. Anecdotally, this information is not always current and is not always reported in a timely fashion.

On the other hand, private agencies typically conduct a search of individual county records where the applicant or employee has lived and worked. Private agencies can obtain information on pending cases, arrest warrants, misdemeanor offenses such as theft, and more. Private agency fees vary greatly depending on the type of information the organization wants to obtain. Some private agencies charge a package rate, others provide volume discounts, while still others charge for each county in which they check for information regarding an individual. Some private agencies also will conduct the statewide check of BCA records in addition to a more thorough check of selected counties.

Additionally, many private agencies will fax information back and forth with clients or allow background check requests to be submitted via the internet, further reducing the turnaround time. One caution: owners who receive criminal background check reports via fax should consider where their fax machine is located in the building and who has access to that information in order to maintain appropriate confidentiality.

Can an employer pass on the cost of a background check to the subject of the check?

The short answer is no. Although the Kari Koskinen Act itself does not preclude an employer from passing the cost of a background check onto an employee or prospective employee, the 2002 Legislature passed a law specifically prohibiting employers from charging employees or prospective employees for the cost of criminal background checks. This law may be found at Minn. Stat. §181.645 (see the Appendix for a link to the specific language of this law).

How often do current employees need to be checked?

The act does not require follow-up background checks after the initial check. However, an owner is permitted by the Kari Koskinen Act to repeat a background check on an employee at any time.

What are the disqualifying crimes under the Kari Koskinen Act?

Under the Kari Koskinen Act, individuals are disqualified for certain felony and for any level of conviction for stalking. It should be noted that the Kari Koskinen Act does not disqualify an individual if they have a history of substantiated maltreatment. Additionally, the BCA does not check for this information.

Crimes that would *disqualify a person for life* from employment in a position covered by the Koskinen Act are:

- Murder (first or second degree)
- Manslaughter (first degree)
- Assault (first, second, or third degree)
- Kidnapping
- Criminal sexual conduct (first, second, third or fourth degree)
- Arson (first degree)
- Stalking
- An attempt to commit one of the above crimes
- A conviction in another jurisdiction for a crime equivalent to one of the above-listed crimes or for an attempt to commit one of the above-listed crimes

Owners should review Minn. Stat. §299C.67, subd. 2 (see the Appendix for a link to this law), for complete details regarding this list of crimes, including references to the individual sections of the state criminal code that define these crimes.

If an applicant has a *felony conviction* for one of the above disqualifying crimes, an owner cannot hire him or her as a manager. If an owner has hired the manager on a conditional basis as described earlier in this Section, the owner is required to terminate the manager's employment upon learning of a conviction for one of the above-listed crimes.

Crimes that would *disqualify a person for 10 years* following the completion of his or her sentence are:

- Murder (third degree)
- Manslaughter (second degree)
- Criminal vehicular homicide or injury
- Assault (fourth or fifth degree)
- Simple or aggravated robbery
- False imprisonment
- Theft
- Burglary
- Terroristic threats
- Non-felony stalking
- An attempt to commit one of the above crimes
- A conviction in another jurisdiction for a crime equivalent to one of the above-listed crimes or for an attempt to commit one of the above-listed crimes

Owners should review Minn. Stat. §299C.67, subd. 2 (link included in the Appendix to this Manual), for complete details regarding this list of crimes, including references to the individual sections of the state criminal code that define these crimes.

If an applicant to be a manager has a felony conviction for one of the above background check crimes, or a non-felony conviction for stalking, an owner cannot hire the applicant as a manager unless more than 10 years have passed since the date the sentence was discharged. Further, if an owner has already hired the manager on a conditional basis as described earlier in this Section, the owner is required to terminate the manager's employment upon learning of a conviction for one of the above-listed crimes.

The law is silent on what action should be taken if an individual has a conviction for a crime not on the list of disqualifying crimes. Some housing owners have chosen to establish their own policies which include a more comprehensive list of crimes or the same list of disqualifying crimes as the list contained in the DHS Background Studies Act (see the Disqualifying Crimes

grid in Section 2 of this Manual for more information). Owners should consult their attorneys before establishing such a policy at their housing sites.

What are the exceptions to disqualification?

If an employee hired before July 1, 1995, was convicted of a disqualifying crime for an offense committed before July 1, 1995, the owner may continue to employ the individual under certain conditions. Specifically, the owner must notify all current and prospective tenants whose units would be accessible to the employee regarding the crime for which the employee was convicted. The owner must also notify current tenants of their right to terminate their tenancy within 60 days of receiving notice of an employee's conviction information. A tenant does not have the right to terminate her or her tenancy if the offense for which the employee was convicted carries a 10-year disqualification period and more than 10 years have passed since the employee's sentence was discharged. Under this provision of the law, the tenant is required to provide the owner with at least 14 days prior notice that he or she is terminating the lease. The owner must also notify the employee of the action taken by the owner.

What appeal rights does a disqualified individual have?

An individual studied under the Kari Koskinen Act has no right to appeal a determination of disqualification except in cases where the disqualified individual is claiming the information contained in the record or report indicating a disqualification is inaccurate or not complete. In that case, the disqualified individual needs to appeal to the BCA, private agency or local law enforcement agency that conducted the study. If the agency involved is the BCA, this will typically require the individual to submit fingerprints. If the individual remains disqualified after going through this process, the only recourse available to that person is to request a contested case hearing pursuant to the Administrative Procedure Act.

What recourse can be taken when a manager is also a tenant?

If the manager is also a tenant, and notwithstanding an agreement governing termination of the tenancy, an owner may give the manager notice of immediate termination of the tenancy. If an eviction action is necessary, the court will give it priority.

Manager's Rights as a Tenant

Notwithstanding a lease provision to the contrary, a manager-tenant who is disqualified from working for the owner may terminate his or her tenancy within 60 days of receiving notice of the disqualification by giving the owner at least 14 days advance notice of the lease termination.

What are the employment implications?

Notice to Manager Regarding Employment Decisions Based on Criminal Background Check Results

1. If an owner cannot hire a manager because of his or her conviction for a background check crime, the owner must notify the applicant that he or she is not being hired because

of a criminal conviction that precludes the owner from hiring him or her under the Koskinen Act.

2. If an owner must terminate a current manager because of his or her conviction for a background check crime, the owner must notify the employee that he or she is being terminated because of a criminal conviction that precludes the owner from continuing the manager's employment under the Kari Koskinen Act.
3. If an owner knows, even without a criminal background check, that an employee has a conviction for a crime that would permanently disqualify him or her, the owner must terminate the manager's employment.
4. If an owner knows, even without a criminal background check, that an employee has a conviction for a crime that would disqualify him or her for 10 years, and less than 10 years have passed since the date the sentence was discharged, the owner must terminate the manager's employment.

It is suggested that if an owner knows, or if a manager tells an owner, about a criminal history, the owner should immediately request a criminal background check on the manager. It is important to obtain independent verification of the dates of the crime, conviction and discharge of sentence.

Immunity

The Kari Koskinen Act specifically gives owners immunity if they are required to terminate a manager by this Act: “. . . *the owner is not liable under any law, contract, or agreement, including liability for unemployment insurance claims, for terminating the manager's employment in accordance with this section.*”⁵⁸

1. To be protected by the immunity provisions in the Kari Koskinen Act, and to try to mitigate potential tort liability, an owner should periodically re-check current employees even if these individuals were previously checked when they were hired.
2. If a manager is terminated under the Kari Koskinen Act and the manager applies for unemployment, the owner should reference the Kari Koskinen Act in its information provided to the Department of Employment and Economic Development. It may also be helpful to include a copy of the Kari Koskinen Act with the information.

Owners are only protected from these unemployment claims if they abide by the Kari Koskinen Act. The Kari Koskinen Act does not protect owners from their own conduct if the conduct falls outside the scope of the Kari Koskinen Act. Therefore, when an owner must terminate a manager's employment because of his or her criminal background check, it is suggested that the owner consult an attorney to ensure the appropriate steps are taken to protect the organization from any unnecessary liability issues.

⁵⁸ Minn. Stat. §299C.69(e).

Owners should also think about what they are going to tell everyone who asks why a manager is leaving and be prepared to address these questions. Again, it is a good practice to consult an attorney when dealing with such issues.

What is the penalty for non-compliance?

It is a petty misdemeanor to knowingly fail to conduct a check on an employee or applicant covered by the Kari Koskinen Act. The maximum fine for a petty misdemeanor is \$300.

If an owner fails to comply with the Act and a tenant is injured, killed or otherwise harmed by a manager who was convicted of a background check crime, the owner's failure to comply with the Kari Koskinen Act could be evidence against the owner in a lawsuit by a harmed tenant or the harmed tenant's family.

Additional Issues to Consider Beyond the Scope of the Kari Koskinen Act:

- Determining and deciding who actually has the means or should have the means to enter tenants' dwelling units:
 - Who gets keys?
 - Where are they kept?
 - What is the policy for copying the keys?
 - What is the policy for lending the keys?
 - Who meets the Kari Koskinen Act's definition of "manager?"
- Developing a policy that spells out who should and should not have the means to enter tenants' dwelling units.
- Developing a policy for persons who are hired on a casual basis and not in the ongoing course of the business of the owner:
 - How do they get access to a dwelling unit?
 - Informing tenants of who does and does not have the means to enter their dwelling units.

Appendix: Links to Criminal Background Study Laws

For easy reference, this Appendix lists key Minnesota statutes governing and relating to background studies. Because statutes are subject to change during each Legislative session, we have elected to link to electronic versions of these laws, rather than reproducing the language in the Manual, to ensure users will consistently have access to the most current information. Links are embedded into each reference below. Where the reference is to a series of sections, the link is to the first identified section.

- [§144.057](#) BACKGROUND STUDIES ON LICENSEES AND OTHER PERSONNEL
- [§144A.476](#) BACKGROUND STUDIES (Home Care Agencies)
- [§§144A.70-144A.74](#) SUPPLEMENTAL NURSING SERVICES AGENCIES
- [§144G.13](#) and [§144G.42, subd. 8](#) ASSISTED LIVING FACILITIES
- [§181.645](#) EXPENSES FOR BACKGROUND CHECKS, TESTING, AND ORIENTATION
- [§214.01](#), [§214.075](#), and [§214.104](#) HEALTH-RELATED LICENSING BOARDS: DEFINED; BACKGROUND CHECKS; SUBSTANTIATED MALTREATMENT
- [Minn. Stat. Ch. 245C](#) HUMAN SERVICES BACKGROUND STUDIES (LINK)
- [§268.047](#) EFFECT ON EMPLOYER OF UNEMPLOYMENT BENEFITS PAID
- [§§299C.66-299C.71](#) KARI KOSKINEN MANAGER BACKGROUND CHECK ACT
- [§364.021](#) and [§364.09](#) (concerning consideration of criminal records in connection with employment)