

## WHO NEEDS A BACKGROUND STUDY?

Many questions have been raised regarding what persons associated with licensed programs are required to have a completed background study. Minnesota Statutes, section 245C.03, subdivision 1, requires the commissioner to conduct a background study on the following:

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

There is no question that license holders, employees, and persons living in a licensed home require a background study. Questions sometimes arise as to who is considered to be living in the licensed home.

- Q. What about someone who is away for a year or more on a military deployment?
- A. We consider this person to be a household member if they lived in the home before the deployment. It is assumed they will return at the end of their deployment and may be home on leave.
- Q. What about a child who goes away to college or boarding school?
- A. If this person lived in the home before going away to college or boarding school, we consider them a household member. We presume they will be home on school breaks.
- Q. What about someone who does not live in the home but would like to move in?
- A. We recommend submitting a study on this person as soon as it is certain that they will be moving in.
- Q. What about a "significant other" who does not live in the home but often spends evenings and weekends there?
- A. This person is not a household member but may have access. A background study would only be required if there was reasonable cause. (See below.)
- Q. What about someone who is in jail or prison?
- A. If they were a household member before going to jail or prison and they may be released within 3 months, they are presumed to be a household member. Otherwise they would be subject to a background study before moving back into the house or before having access. (See below.)

Questions typically arise regarding individuals who do not live in the home but may have unsupervised access to persons receiving services.

- Q. What is access?
- A. The statute defines access as, "physical access to persons receiving services or the persons' personal property without continuous, direct supervision."
- Q. What is continuous direct supervision?
- A. This means that the subject 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.

- Q. What about a family member who does not live in the home but visits occasionally?
- A. In foster care settings, we consider this person to have access due to the family relationship and the 24-hour nature of foster care. It is unrealistic to believe the license holder could be within sight or hearing and capable of intervening at all times. In other settings, it may depend on the circumstances. For example, does the person have a key to the house? Does the person have a history of spending time at the house? Can the license holder effectively supervise the individual at all times?
- Q. What about someone who is not a family member but may be in the home on a regular basis?
- A. Anyone who may potentially have access to persons receiving services requires a background study when there is reasonable cause. For example, someone who comes to provide house cleaning or lawn care services probably has access because it is unreasonable to assume that the license holder can supervise them at all times. However, a parent who regularly comes to pick up a child from day care probably does not have access because they are in the home a short time and would most likely always be within sight and hearing of the license holder.
- Q. When do we have reasonable cause?
- A. The statute provides that "reasonable cause" means information or circumstances exist which provide the commissioner with articulable suspicion that further pertinent information may exist concerning a subject. The commissioner has reasonable cause when, but not limited to, the commissioner has received a report from the subject, the license holder, or a third party indicating that the subject has a history that would disqualify the individual or that may pose a risk to the health or safety of persons receiving services.