

LEGALLY UNLICENSED CHILD CARE

The Minnesota licensing rule states that in order to be excluded from being a licensed child care provider, you must meet the following requirements:

1. Provide care to only related children; and/or
2. Provide care to children for a single, unrelated family for any length of time; or
3. Provide care for a cumulative total of less than 30 days in any 12 month period.

Not following these guidelines and operating without a license is a misdemeanor under Minnesota Statutes, Section 245A.03, subdivision 3.

The following information applies to legally non-licensed providers who work with families that qualify for the child care assistance program.

BACKGROUND CHECKS AND DISQUALIFICATIONS FROM AUTHORIZATION

What is a background check?

Every legally non-licensed Family Child Care Provider must undergo a background check as part of the registration process. This includes anyone in the home ages 13 or older, who may have unsupervised contact with the children in care. The following background checks are completed to provide the information necessary to authorize a legally non-licensed provider:

1. **Bureau of Criminal Apprehension.** This check will tell us if the person has a history of criminal activity within the state of Minnesota, or if they have criminal activity in more than one state.
2. **Local Criminal History.** This check is done within the county the person resides in or any other county/state where the individual has resided in within the past five years. A county sheriff's check is done as well as a police department check for every county and city that an individual has lived in within the past five years.
3. **Social Service Check.** A check of Child Protection, Child Welfare and Adult Protection records is done to see if there may have been a substantiated finding of abuse or neglect of a child or vulnerable adult. This is done for any state that an individual has resided in the past five years.
4. **District Court Records.** This may be done to determine if information we have received through another check is a disqualification from authorization.
5. **Juvenile Court Records.** A check of Juvenile Court records is done for anyone between the ages of 13 and 23.

How long does a background check take?

A background check can take **up to 60 days or more**, depending on what information is found in an individual's background and the number of requests for information that must be mailed to other agencies. It is important that an applicant of a background study understand that our agency does not have control over how quickly another agency responds to our request. If within 30 days of our original request we do not receive the information that we have requested, we will send out another request for the information. We send out background checks to the following agencies: Social Service Agencies, Sheriff's Office, Police Departments, District and Juvenile Courts and the Bureau of Citizenship and Immigration Services, when necessary.

What is a disqualification from authorization?

A disqualification from authorization is an event in a person's background that makes a person ineligible to be around children in legally non-licensed care. These are often actions that caused a person to be arrested and charged with a crime. They also might be actions that led to a child protection or adult protection investigation. Minnesota law determines how far we may "look back" at specific kinds of actions. Less serious activities or crimes might only be a disqualification if they happened in the last seven or ten years. More serious crimes could be an issue even if they are fifteen years old or older. The attached list of crimes and actions describe some of the "look back" periods for specific kinds of events.

If I am disqualified in one county can I be authorized in another?

No. The statute has standardized the requirements, so the fact that a provider cannot be authorized in one county would apply to the provider's authorization in another county.

Does a provider ever need to be "reauthorized?" What is the timeframe for reauthorization?

The provider would need to complete the registration process, including background checks, and be reauthorized every two years, or if another person had been added to the family, a current family member had turned 13, or there was a reason to believe that a family member has a factor that prevents authorization.

What is the fee charged a Legally Non-Licensed Family Child Care Provider for the background study?

All legally non-licensed providers who are caring for families who participate in the Child Care Assistance Program will be assessed a fee, not to exceed \$100.00 annually, for the processing of background studies. Notification of fees and instructions regarding collection of payment will be made available to providers in the application packets and in writing when additional background studies need to be run.

Persons Who Cannot Be Authorized

A person who meets any of the conditions below will not be authorized as a legal non-licensed family child care provider, no matter how much time has passed since the date of discharge. The person has been convicted of one of the following offenses or has admitted to committing or a preponderance of the evidence indicates that the person has committed an act that meets the definition of one of the following offenses:

- Murder in the first, second or third degree
- Murder of an unborn child in the first, second, or third degree
- Solicitation, inducement or promotion of prostitution
- Receiving profit from prostitution
- Criminal sexual conduct in the first, second, third or fourth degree
- Solicitation of children to engage in sexual conduct
- Incest
- Felony malicious punishment of a child
- Use of minors in sexual performance
- Possession of pictorial representation of a minor
- Felony domestic assault
- Felony offense of spousal abuse
- Felony offense of child abuse or neglect

- Felony offense of a crime against children
- Or an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

If less than 15 years have passed since the *discharge of the sentence* imposed for the offense and the person has received a felony conviction for one of the following offenses, or the person has *admitted to committing* or a *preponderance of the evidence* indicates that the person has committed an act that meets the definition of a felony conviction for one of the following offenses:

- Manslaughter in the first or second degree
- Criminal vehicular homicide
- Aiding suicide or aiding attempted suicide
- Assault in the first, second, third or fourth degree
- Repeat offenses of fifth degree assault
- Great bodily harm caused by distribution of drugs
- Criminal abuse of a vulnerable adult
- Financial exploitation of a vulnerable adult
- Use of drugs to injure or facilitate a crime
- Simple robbery
- Repeat offenses of obscene materials and performances
- Aggravated robbery
- Kidnapping
- False imprisonment
- Manslaughter of an unborn child in the first or second degree
- Assault of an unborn child in the first or second degree
- Injury or death of an unborn child in the commission of a crime
- Coercion
- Attempt to coerce
- Other prohibited acts, minor engaged in prostitution
- Repeat offenses of criminal sexual conduct in the fifth degree
- Neglect or endangerment of a child
- Theft
- Possession of shoplifting gear
- Arson in the first, second or third degree
- Burglary in the first, second, third or fourth degree
- Aggravated forgery
- Forgery
- Check forgery, offering a forged check
- Obtaining signature by false pretenses
- Dangerous weapon
- Setting a spring gun
- Unlawfully owning, possessing or operating a machine gun
- Adulteration
- Riot
- Terrorist threats
- Harassment, stalking
- Grounds for termination of parental rights
- Controlled substance crime in the first or second degree
- Controlled substance in the third degree
- Controlled substance crime in the fourth degree
- Repeat offense of indecent exposure

Or an attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

Less than 10 years have passed since the *discharge of the sentence imposed* for the offense and the person has received a gross misdemeanor conviction for one of the following offenses or the person has *admitted to committing* or a *preponderance of the evidence* indicates that the person has committed an act that meets the definition of a gross misdemeanor conviction for one of the following offenses:

- Fifth degree assault
- Domestic assault
- Violation of an order for protection
- Fifth degree criminal sexual conduct
- Repeat offenses of interference with privacy
- Repeat offenses of indecent exposure
- Obscene materials and performances
- Indecent literature, distribution
- Disseminating or displaying harmful materials to minors
- Riot
- Dangerous weapons
- Harassment stalking
- Fifth degree assault against a vulnerable adult by a caregiver
- Mistreatment of person confined
- Mistreatment of residents or patients
- Criminal abuse of a vulnerable adult
- Financial exploitation of a vulnerable adult
- Criminal neglect of a vulnerable adult
- Failure to report maltreatment of a vulnerable adult
- Disorderly conduct against a vulnerable adult; abduction
- Neglect or endangerment of a child
- Malicious punishment of a child
- Other prohibited acts, minor engaged in prostitution
- Disorderly house
- Theft
- Burglary in the first, second, third or fourth degree
- Check forgery, offering a forged check
- Attempt to coerce

An attempt or conspiracy to commit any of these offenses as defined in Minnesota statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

Less than 7 years have passed since the *discharge of the sentence* imposed for the offense and the person has received a misdemeanor conviction for one of the following offenses or the person has *admitted to committing* or a *preponderance of the evidence* indicates that the person has committed an act that meets the definition of a misdemeanor conviction for one of the following offenses:

- Fifth degree assault
- Domestic assault
- Violation of an order for protection
- Interference with privacy
- Obscene or harassing telephone calls
- Letter, telegram or package, opening, harassment
- Indecent exposure
- Assault of an unborn child, third degree
- Dissemination and display of harmful materials to minors

- Dangerous weapons
- Spring guns

An attempt or conspiracy to commit any of these offenses as defined in Minnesota Statutes; or an offense in any other state or country where the elements are substantially similar to any of the offenses listed in this paragraph.

Authorization will be denied to persons who meet any of the following conditions:

- The person has been identified by the county's child protection agency or by the statewide adult protection database as the person responsible for **physical or sexual abuse of a child** within the last seven years.
- The person has been identified by the county's adult protection agency or by the statewide adult protection database as the person responsible for **abuse or neglect of a vulnerable adult** within the last seven years.
- The person has refused to give written consent for disclosure of criminal history records.
- The person has been **denied a family child care license** or has **received a fine or a sanction** as a licensed child care provider that has not been reversed on appeal.
- The person has a **family child care licensing disqualification** that has not been set aside.
- The person has admitted or a county has found that there is a preponderance of evidence that **fraudulent information** was given to the county for application purposes or was used in submitting bills for payment.
- The person has been convicted or there is a preponderance of evidence of the crime of theft by **wrongfully obtaining assistance**.
- The person has a **household member** age 13 or older who has access to children during the hours that care is provided and who meets one of the previous conditions.
- The person has a **household member** ages 10 to 12 who has access to children during the hours that care is provided; information or circumstances exist which provide the county with articulable suspicion that further pertinent information may exist showing the household member meets one of the previous conditions.

A county may deny authorization as a child care provider to any applicant or rescind authorization of any provider when the county knows or has reason to believe that the provider is unsafe or that the circumstances of the chosen child care arrangement are unsafe.