

Background Studies for HLB-Licensed Providers FAQ

AUGUST 1, 2022

The Minnesota Department of Health (MDH) has received numerous questions from various providers and organizations about the implementation of “background study deduplication.” This relates to a law that was passed to stop newly hired licensed professionals from needing to have two fingerprint-based background studies performed, which had caused unnecessary delays in onboarding much needed staff.

The resulting language states that any individual holding a valid license from a health-related licensing board (HLB) **who has also** undergone a background check under [Minn. Statutes 214.075](https://www.revisor.mn.gov/statutes/cite/214.075) (<https://www.revisor.mn.gov/statutes/cite/214.075>), shall not have a background study completed by the commissioner of human services (a NETStudy 2.0 background study). The effect of this language is to exclude all individuals who meet that exemption from any requirements or actions that occur under the Minnesota Background Study Act, [Minn. Statutes Chapter 245C](https://www.revisor.mn.gov/statutes/cite/245C) (<https://www.revisor.mn.gov/statutes/cite/245C>). Effectively, these individuals are not subjected to disqualification under those statutes.

In order to avoid taking any inappropriate actions, such as acquiring private criminal history information or improperly removing or disqualifying individuals who are exempt from Chapter 245C, the Department of Human Services is requiring facilities to remove exempt individuals from their NETStudy 2.0 rosters. Please review the previously published information provided by the Department of Human Services found here: [Legislative changes minimize duplication of background studies](https://content.govdelivery.com/accounts/MNDHS/bulletins/31ea67f) (<https://content.govdelivery.com/accounts/MNDHS/bulletins/31ea67f>).

This instruction applies only to the following provider types:

- Assisted living facilities
- Assisted living facilities with dementia care
- Board and lodging establishments
- Boarding care homes
- Home care agencies
- Hospitals
- Nursing homes
- Outpatient surgical centers
- Supplemental nursing service agency

The following are questions we have received from various groups about the implementation of this new law. They have been modified for clarity.

Who exactly is supposed to be removed from our NETStudy 2.0 rosters and/or not receive a NETStudy 2.0 background study moving forward?

Individuals who:

- Have a valid license from an HLB,
- Have completed a background check under Minnesota Statutes, section 214.075, and
- Are not license applicants, owners, managerial officials, or controlling individuals of a home care provider, assisted living facility, or assisted living facility with dementia care.

Anyone not meeting those criteria should not be removed from your NETStudy 2.0 roster and you should continue initiating NETStudy 2.0 background studies for individuals who do not meet those criteria.

How do we know if an individual has had a background study under section 214.075?

The HLBs implemented background studies under this section on January 1, 2018. They only have performed these background studies on individuals seeking initial licensure (new licensees), reinstatement after a more-than-one-year lapse, or licensees applying to participate in an interstate compact. If an individual has applied for and received full licensure after January 1, 2018, completion of the 214.075 background check is implied.

Does the exception only apply to individuals licensed by a Minnesota HLB?

Yes. The statute specifies the individual must be licensed by an HLB as defined in another area of statute. That definition specifies the Minnesota HLBs.

Will long-term HLB-licensed employees who were in place and serving patients prior to background study requirements stay on the facility's DHS NETStudy 2.0 roster? How will such HLB-licensed employees be processed going forward?

Yes. Individuals who were licensed by an HLB prior to implementation of 214.075 background checks in 2018 must stay on the entity's NETStudy 2.0 roster. DHS will continue to perform background studies for HLB-licensed individuals who are not exempt under the new law.

If a provider currently employs a service provider who is currently not licensed by an HLB (e.g., a nursing assistant) but is pursuing licensure from an HLB, should the individual remain on the NETStudy 2.0 roster until licensed and then be taken off the roster?

Correct. Once the individual qualifies for the exclusion, they must be removed from your NETStudy 2.0 roster.

Do employees holding certification but not a license from an HLB need to be removed from the NETStudy 2.0 roster by August 1, 2022?

No. Individuals with certifications or who are on registries, such as the Nursing Assistant Registry, are not exempt from NETStudy 2.0 background studies.

Should ALL employees with current HLB licenses that have had a 214.075 background study be removed, even if they are not working in a position requiring licensure?

Yes, with the exception of individuals who are license applicants, owners, managerial officials, or controlling individuals of the provider as defined in 144A.476 or 144G.13. Such individuals will continue to need NETStudy 2.0 background studies.

In a survey, how do providers demonstrate compliance with background study requirements for employees who are not in NETStudy 2.0?

Providers will need to provide proof to the surveyor that the individual is exempted from the NETStudy 2.0 background study. This will be proof of active licensure and the presence of some other proof that a 214.075 background check was completed.

MDH surveyors will assume an individual who received initial licensure after January 1, 2018, has received a 214.075 background check.

If it is unclear whether the individual has had a 214.075 background check, the provider should reach out to the appropriate HLB to verify that a background check was completed and save that verification in the employee's personnel file.

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

Do providers need to continue bringing HLB-licensed individuals with a COVID emergency study into full compliance by January 2023?

Individuals who are exempt from a background study under [Minn. Statutes section 144.057, subd. 1\(b\)](https://www.revisor.mn.gov/statutes/cite/144.057) (<https://www.revisor.mn.gov/statutes/cite/144.057>), should not have a background study under Chapter 245C and must be removed from the NETStudy 2.0 roster. Therefore, they would not be required to be brought into full compliance. As discussed above, this exemption does not apply to all HLB-licensed individuals. Any individual who does not meet the criteria for exemption must be brought into full compliance.

In the absence of any “rapback” function for exempted employees, what are the implications and actions providers need to take to minimize their exposure. How will this be perceived for regulatory compliance, particularly if there is an incident of alleged abuse or neglect?

HLB-licensed individuals removed from NETStudy 2.0 rosters will not have any active “rapback” function that alerts HLBs about new criminal activity. MDH submits its findings of substantiated maltreatment against HLB-licensed individuals to the relevant health-related licensing board at the time the finding is made. DHS will enter into data sharing agreements with the HLBs to share DHS, county, and OHFC maltreatment findings with the HLBs on a regular basis.

An incident of alleged abuse or neglect will not impact most facilities' obligations. HLB-licensed individuals were not previously disqualified based on findings of abuse or neglect. However, federal facilities that are

barred from employing individuals who have findings of maltreatment on the Nurse Aide Registry must continue to periodically monitor the NAR for findings against their employees.

Since nurses would no longer be on our NETStudy roster, would we need to check the MN Board of Nursing website every month or quarter, for example, and then assume if someone still had a valid RN or LPN license they are good to go? Would we need to document the check?

MDH assumes providers historically have had methods for assuring their staff in positions requiring licensure maintained their licenses in good standing. These processes should continue. The HLB updates the status of licenses daily, and that information is accessible on the HLB websites. Interested entities may also purchase automated daily updates of licensing data.

The legislation says DHS will continue to conduct background studies and collect updated criminal history and maltreatment information on license applicants, owners, managerial officials and controlling individuals who are required under section 144A.476, subdivision 1, or 144G.13, subdivision 1, to undergo a background study under chapter 245C, regardless of their licensure status. Those sections affect licensed home care agencies and assisted living facilities, respectively. Since only those specific statutes are referenced, is it correct to conclude that DHS will not continue to conduct BGS for owners, managerial officials and controlling individuals (who hold a license through an HLB) of other provider types such as a nursing home? This would mean for example that a licensed Nursing Home Administrator (NHA) would be separated from an employer's roster, but a Licensed Assisted Living Director (LALD) (acting as such and thus a managerial official) would not be separated from an employer's roster.

That is correct. The carve-out for those individuals in home care and assisted living facilities was implemented to allow MDH to continue its standard operations related to licensing those facilities. Similar activities did not take place with respect to nursing homes or other provider types.

How do providers identify who qualifies as an owner, managerial official, or controlling individual in their settings?

Definitions of these positions are contained in Minn. Statutes sections [144A.43](#)

(<https://www.revisor.mn.gov/statutes/cite/144A.43>) and [144G.08](#)

(<https://www.revisor.mn.gov/statutes/cite/144G.08>). The Health Regulation Division's Licensing Unit is available to respond to queries regarding who falls under the definition of each category.

To determine who is an owner, managerial official and/or controlling individual, should providers look exclusively to the definitions of those terms in the applicable MDH licensing statutes, and not to the definitions in DHS chapter 245A or 245C?

That is correct. This statute is unrelated to the definitions in the DHS statutes.

If someone is an owner, managerial official and/or a controlling individual, would they need to be listed in the NETStudy 2.0 roster even if they are a nurse licensed by the Board of Nursing?

Yes. MDH requires background studies of these individuals in order to effectively meet its duties as the licensing entity of home care and assisted living facilities.

What about LALDs or NHAs who hold a license but aren't currently in a management capacity (say working as a consultant)?

Whether a consulting licensed LALD or NHA requires a NETStudy 2.0 background study will depend on the types of activities they will be performing in their consulting role and how those activities compare to the definitions.

Can DHS release an official list of all positions that no longer need NETStudy 2.0 background studies per the new statute?

The exemption is not position-dependent, so there is no defined list of positions that do or do not require a NETStudy 2.0 background study. The best resource to determine whether your staff is HLB-licensed and completed the 214.075 background check is the HLBs. Please refer to <https://mn.gov/boards/> to find a list of Minnesota's HLBs and the professions they license.

Are the employees who do not require a NETStudy 2.0 background study still subject to the disqualifications in the Background Study Act, Minnesota Statutes Chapter 245C?

No. Individuals who are not required to undergo a NETStudy 2.0 background study will not be disqualified for any criminal or maltreatment activity. Instead, the HLBs will be exclusively responsible for determining whether those events warrant discipline on the individual's license.

If a background check on a new hire licensee shows a disqualifying offense, does a provider have an obligation to report to DHS? Will DHS act and allow the reconsideration process?

No. DHS will no longer take any actions on individuals who are exempt from NETStudy 2.0 background studies. Providers will make their own hiring decisions based on their own background studies. A provider may refer criminal activity discovered through a private background check to the appropriate HLB.

Will HLBs notify employers when licensing action occurs against an individual not on the NETStudy 2.0 roster?

HLBs do not collect employment information on their licensees, and do not participate in NETStudy 2.0. The HLBs do not provide notice to providers about an individual's status in NETStudy 2.0.

What are the consequences for failing to update study subjects' positions and remove exempted study subjects from our NETStudy 2.0 rosters by August 1, 2022?

DHS must not perform a background study on individuals who meet the criteria in section [144.057, subdivisions 1\(b\)](https://www.revisor.mn.gov/statutes/cite/144.057) (<https://www.revisor.mn.gov/statutes/cite/144.057>), and relies on entities submitting studies and maintaining rosters as required by law. Potential consequences of wrongly submitted studies, or not separating individuals when required, include individuals being ordered to be supervised or disqualified because the entity either submitted the study in error or did not separate them when required.

At this time, MDH will not issue citations against a facility that erroneously includes these individuals on its NETStudy 2.0 roster, as it is understood it will take time for employers to learn and master this new process. We encourage providers with questions to reach out to MDH for consultation.

Can a provider choose to run studies for HLB-licensed individuals as a standard of practice going forward?

No. Due to strict rules regarding the acquisition and use of Bureau of Criminal Apprehension (BCA) and Federal Bureau of Investigation (FBI) criminal history data, providers do not have the option to choose to have individuals studied in NETStudy 2.0 who are not required to be studied.

Where did the August 1 deadline come from? Many LAMN members are very nervous about separating individuals from their rosters, and have technical questions the owners/managerial-officials/controlling-individuals carve out (who exactly is carved out? And when DHS asks us to go in and put them in a new category, which category is the right one to use), and are feeling very challenged and stressed about meeting the deadline. Can DHS extend it?

The effective date for entities to separate individuals from their NETStudy 2.0 rosters was the day following final enactment of the legislation. DHS sought to provide entities a reasonable transition period to update their rosters and offered a deadline of August 1, 2022.

DHS's background studies division is required to comply with state and federal regulations related to collection and use of criminal history data. DHS can only conduct studies as authorized in Chapter 245C. DHS must not perform a background study on individuals who meet the criteria in section [144.057, subd. 1\(b\)](https://www.revisor.mn.gov/statutes/cite/144.057) (<https://www.revisor.mn.gov/statutes/cite/144.057>), and relies on entities submitting studies and maintaining rosters as required by law.

If you have questions, contact the Minnesota Department of Health at health.fpc-web@state.mn.us.

BACKGROUND STUDIES FOR HLB-LICENSED PROVIDERS FAQ

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08/01/2022

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