



MACCP position is to work with lawmakers and DHS to remove our children from the definition of “child care staff person” to ensure they will not be subject to a FBI background study and file. We are requesting that the minor’s background studies continue as they have been thru the counties with just name, birthdate and address. As long as the statute defines our children as “child care staff persons” DHS will have the ability to implement it.

There has been a lot of information floating around about the fingerprinting of our minor children ages 13 to 17 yrs old. This e-mail is to let you know the position of MACCP and how we will be working to change statute.

I know that during DHS's listening sessions that DHS has been stating that our children will not be subjected to the FBI background study (also called Netstudy2.0). However, DHS pushed thru legislation that clearly states our children will be subjected to a FBI background study. This was done behind closed doors and in the last minutes of the session, without provider or public input. I have attached the full Senate hearing video with the times you can forward to and will hear comments by Senator Abeler in regards to the last minute push by DHS to add the fingerprinting to the HHS Omnibus bill.

- Statute 245C.02 Subd. 6a. **Child care staff person.** **“Child care staff person” means an individual other than an individual who is related to all children for whom child care services are provided:**
(1) Who is employed by a child care provider for compensation:

- (2) Whose activities involve the care or supervision of a child for a child care provider or unsupervised access to a child who is cared for or supervised by a child care provider; or
- (3) An individual 13 years of age or older residing in a licensed family child care home or legal unlicensed child care program.

245C.02 Definitions: <https://www.revisor.mn.gov/statutes/?id=245C.02>

- 245C.03 Subd. 1 **Licensed programs.** (a) The commissioner shall conduct a background study on:
(8) child care staff persons as defined in section 245C.02 Subd. 6a (see above)

245C.03 Subd 1 (8) “child care staff person”

<https://www.revisor.mn.gov/statutes/?id=245C.03>

- 245C.05 Subd 5 **Fingerprints and photograph.** (d) For background studies initiated on or after the implementation of NETStudy 2.0, **every subject of a background study must provide the commissioner with a set of the background study subject's classifiable fingerprints and photograph.** The photograph and fingerprints must be recorded at the same time by the commissioner's authorized fingerprint collection vendor and sent to the commissioner through the commissioner's secure data system described in section [245C.32, subdivision 1a](#), paragraph (b). The fingerprints shall not be retained by the Department of Public Safety, Bureau of Criminal Apprehension, or the commissioner, **but will be retained by the Federal Bureau of Investigation.** The commissioner's authorized fingerprint collection vendor shall, for purposes of verifying the identity of the background study subject, be able to view the identifying information entered into NETStudy 2.0 by the entity that initiated the background study, but shall not retain the subject's fingerprints, photograph, or information from NETStudy 2.0. The authorized fingerprint collection vendor shall retain no more than the name and date and time the subject's

fingerprints were recorded and sent, only as necessary for auditing and billing activities.

(e) When specifically required by law, fingerprints collected under this section must be submitted for a national criminal history record check.

245C.05 Subd 5 (d) Fingerprints and photograph

<https://www.revisor.mn.gov/statutes/?id=245C.05#stat.245C.05.5> (FBI file)

● **245C.04 WHEN BACKGROUND STUDY MUST OCCUR.**

Subdivision 1. Licensed programs; other child care programs.

(a) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, at least upon application for initial license for all license types.

(b) The commissioner shall conduct a background study of an individual required to be studied under section 245C.03, subdivision 1, including a child care staff person as defined in section 245C.02, subdivision 6a, in a family child care program, licensed child care center, certified license-exempt child care center, or legal nonlicensed child care provider, on a schedule determined by the commissioner. The background study must include submission of fingerprints for a national criminal history record check and a review of the information under section 245C.08. A background study for a child care program must be repeated within five years from the most recent study conducted under this paragraph.

245C.04 When background study must occur;

<https://www.revisor.mn.gov/statutes/?id=245C.04>

This is what the CCDBG says in regards to who needs a background study;

Who is required to undergo a comprehensive background check?

Section 658H(i)(2) of the Act (42 USC 9858f(i)(2)) defines a child care staff member as someone (other than an individual who is related to all children for

whom child care services are provided) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. This definition, like the definition of child care provider, is broad. It encompasses not only caregivers, teachers, or directors, but also janitors, cooks, and other employees of a child care provider who may not regularly engage with children, but whose placement at the facility gives them the opportunity for unsupervised access. Given that these individuals are employed by a child care provider, they are included in the statute's definition. Therefore, it is important that they also complete a comprehensive background check in order to ensure and protect children's safety.

Section 98.43(a)(2)(ii) of the final rule includes contract and self-employed individuals in the definition of child care staff members, as they may have direct contact with children. In addition, the final rule includes individuals, age 18 or older, residing in a family child care home in the definition of child care staff members and, therefore, subject to background checks, as well as the disqualifying crimes and appeals processes. These individuals may also have unsupervised access to children, so completing a background check is a necessary safeguard to protect the children in care. The definition of child care staff member generally covers any individual who is employed by the child care provider and any individual who may have unsupervised access to children in care.

This is a link to the FAQ for the CCDBG. Click on Background Checks
<https://www.acf.hhs.gov/occ/resource/ccdf-final-rule-faq>

Pioneer Press article

[http://www.wday.com/news/4350028-day-care-providers-say-new-minnesota-fin
gerprinting-law-goes-too-far](http://www.wday.com/news/4350028-day-care-providers-say-new-minnesota-fin gerprinting-law-goes-too-far)

There are a few statements in the article I'd like to point out.

1) DHS has been asked on several occasions when and where we can get our fingerprints done and they have continued to state they are working on it. However when an article is being written to the public they now say we can go to UPS or FedEx, nursing home or child care center that provides those services. So they just pulled that out of the hat for the article? I contacted the 6 closets UPS and FedEx stores near me. Only one store (UPS in Champlin) handles fingerprinting, the hours are Mon-Fri 10am-3pm!

2) Reggie Wagner's statement that the new system will allow government officials to "better track future criminal activity" is concerning. What does this mean? If you or your child are arrested, let's say in error (wrong place, wrong time) and your fingerprints are taken this will alert the FBI which will then contact DHS? So will a provider be shut down because of a mere accusation? What happens when the charges are dropped, how does the information get to your FBI file and DHS? How long would that process take? Would we be immediately exonerated? Would we get our license back?

3) It also states in the article that our children's fingerprints wouldn't be sent to the FBI or state BCA. Yet in the Senate hearing on 9/21/17 Reggie Wagner clearly states that the children's prints and photos would go to the state BCA and then be destroyed. Yet the law states clearly that they will be sent to the FBI. So what is the true answer?

4) Is the statement by DHS that said "the human services agency collects them primarily so nursing homes, child care centers and other licensed care providers can check the identity and records of job applicants and employees". "It's an added security measure for providers who want to make sure that the person who they've hired is the person who has the background study", said Kristin Johnson, director of background studies for DHS. Again, our kids are NOT employees!!!

5) The cost of the background studies is \$40.00 + \$9.10 fingerprinting fee per person. What I find concerning here is in the final Omnibus bill it clearly states that background studies can be no more than \$30.00. However when the statute was update by the revisers office it now states \$40.00. I will be contacting the revisers office on Monday morning for clarification as to why there is a discrepancy from the Omnibus bill to the revision of the statute.

Omnibus bill

<http://www.house.leg.state.mn.us/comm/docs/30a9cfe4-d69a-4ad5-a413-5179dc6fa121.pdf> You will need to go to Article 16, Section 24

Senate hearing video

http://mnsenate.granicus.com/MediaPlayer.php?view_id=1&clip_id=2093

1.52:50 - DHS presentation starts

2.09:29-2.26:20 - fingerprint discussion @2.:24.10 Senator Abeler admits it was a last minute deal

2.43:06-3.05:45 - MACCP testimony and Senator Kiffmeyer & Senator Abelers comments @2.52:02 Senator Abeler states this is what he was worried about the entire time, he wasn't part of the discussion that brought this together, didn't like the "product", doesn't like the process and wasn't involved in it.