

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1305

(SENATE AUTHORS: NEWMAN)

DATE	D-PG	OFFICIAL STATUS
04/26/2011	1410	Introduction and first reading Referred to Health and Human Services
05/04/2011	1723a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety See SF1699, Sec. 8 See SF2093, Art. 4, Sec. 11 See SF1675, Art. 15, Sec. 3; Art. 16

A bill for an act

relating to human services; making changes to human services licensing provisions; changing data practices provisions; amending the Human Services Background Studies Act; amending Minnesota Statutes 2010, sections 13.46, subdivision 4; 245A.02, by adding subdivisions; 245A.04, subdivisions 1, 7, 11; 245A.05; 245A.07, subdivision 3; 245A.08, subdivision 2a; 245A.10, subdivision 5; 245A.22, subdivision 2; 245C.03, subdivision 1; 245C.04, subdivision 1; 245C.05, subdivisions 4, 6, 7, by adding a subdivision; 245C.07; 245C.08, subdivisions 1, 2, 3; 245C.14, subdivision 2; 245C.15; 245C.16, subdivision 1; 245C.17, subdivision 2; 245C.22, subdivision 5; 245C.28, subdivisions 1, 3; 245C.29, subdivision 2; 256.045, subdivision 3b.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

DATA PRACTICES

Section 1. Minnesota Statutes 2010, section 13.46, subdivision 4, is amended to read:

Subd. 4. **Licensing data.** (a) As used in this subdivision:

(1) "licensing data" means all data collected, maintained, used, or disseminated by the welfare system pertaining to persons licensed or registered or who apply for licensure or registration or who formerly were licensed or registered under the authority of the commissioner of human services;

(2) "client" means a person who is receiving services from a licensee or from an applicant for licensure; and

(3) "personal and personal financial data" means Social Security numbers, identity of and letters of reference, insurance information, reports from the Bureau of Criminal Apprehension, health examination reports, and social/home studies.

(b)(1)(i) Except as provided in paragraph (c), the following data on applicants, license holders, and former licensees are public: name, address, telephone number of licensees, date of receipt of a completed application, dates of licensure, licensed capacity, type of client preferred, variances granted, record of training and education in child care and child development, type of dwelling, name and relationship of other family members, previous license history, class of license, the existence and status of complaints, and the number of serious injuries to or deaths of individuals in the licensed program as reported to the commissioner of human services, the local social services agency, or any other county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician.

(ii) When a correction order, an order to forfeit a fine, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license has been issued, or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; whether a fine has been paid; and the status of any appeal of these actions. ~~If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that the license holder or applicant is responsible for maltreatment or is disqualified under chapter 245C, the identity of the license holder or applicant as the individual responsible for maltreatment or as the disqualified individual is public data at the time of the issuance of the licensing sanction or denial.~~

(iii) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that the license holder or applicant is responsible for maltreatment under section 626.556 or 626.557, the identity of the applicant or license holder as the individual responsible for maltreatment is public data at the time of the issuance of the license denial or sanction.

(iv) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that the license holder or applicant is disqualified under chapter 245C, the identity of the license holder or applicant as the disqualified individual and the reason for the disqualification are public data at the time of the issuance of the licensing sanction or denial. If the applicant or license holder requests

reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data.

(2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b, when any person subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home is a substantiated perpetrator of maltreatment, and the substantiated maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator of maltreatment is public data. For purposes of this clause, a person is a substantiated perpetrator if the maltreatment determination has been upheld under section 256.045; 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or facility has not timely exercised appeal rights under these sections, except as provided under clause (1).

(3) For applicants who withdraw their application prior to licensure or denial of a license, the following data are public: the name of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, and the date of withdrawal of the application.

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the record of informal resolution of a denial, orders of hearings, findings of fact, conclusions of law, specifications of the final order of denial, and the status of any appeal of the denial.

(5) The following data on persons subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home, are public: the nature of any disqualification set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the disqualification; the nature of any disqualification for which a variance was granted under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person subject to a background study under section 245C.03, subdivision 1, has successfully passed a background study. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that an individual

subject to disqualification under chapter 245C is disqualified, the disqualification as a basis for the licensing sanction or denial is public data. As specified in clause (1), item (iv), if the disqualified individual is the license holder or applicant, the identity of the license holder or applicant ~~is~~ and the reason for the disqualification are public data; and, if the license holder or applicant requested reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data. If the disqualified individual is an individual other than the license holder or applicant, the identity of the disqualified individual shall remain private data.

(6) When maltreatment is substantiated under section 626.556 or 626.557 and the victim and the substantiated perpetrator are affiliated with a program licensed under chapter 245A, the commissioner of human services, local social services agency, or county welfare agency may inform the license holder where the maltreatment occurred of the identity of the substantiated perpetrator and the victim.

(7) Notwithstanding clause (1), for child foster care, only the name of the license holder and the status of the license are public if the county attorney has requested that data otherwise classified as public data under clause (1) be considered private data based on the best interests of a child in placement in a licensed program.

(c) The following are private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial data on family day care program and family foster care program applicants and licensees and their family members who provide services under the license.

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inactive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters of complaints or alleged violations of licensing standards under chapters 245A, 245B, 245C, and applicable rules and alleged maltreatment under sections 626.556 and 626.557, are confidential data and may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

(e) Data classified as private, confidential, nonpublic, or protected nonpublic under this subdivision become public data if submitted to a court or administrative law judge as part of a disciplinary proceeding in which there is a public hearing concerning a license which has been suspended, immediately suspended, revoked, or denied.

(f) Data generated in the course of licensing investigations that relate to an alleged violation of law are investigative data under subdivision 3.

(g) Data that are not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report as defined in section 626.556, subdivision 2, or 626.5572, subdivision 18, are subject to the destruction provisions of sections 626.556, subdivision 11c, and 626.557, subdivision 12b.

(h) Upon request, not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report of substantiated maltreatment as defined in section 626.556 or 626.557 may be exchanged with the Department of Health for purposes of completing background studies pursuant to section 144.057 and with the Department of Corrections for purposes of completing background studies pursuant to section 241.021.

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, ~~and data on individuals collected by the commissioner of human services according to maltreatment investigations under chapters 245A, 245B, and 245C, and~~ sections 626.556 and 626.557; may be shared with the Department of Human Rights, the Department of Health, the Department of Corrections, the ombudsman for mental health and developmental disabilities, and the individual's professional regulatory board when there is reason to believe that laws or standards under the jurisdiction of those agencies may have been violated or the information may otherwise be relevant to the board's regulatory jurisdiction. Unless otherwise specified in this chapter, the identity of a reporter of alleged maltreatment or licensing violations may not be disclosed.

(j) In addition to the notice of determinations required under section 626.556, subdivision 10f, if the commissioner or the local social services agency has determined that an individual is a substantiated perpetrator of maltreatment of a child based on sexual abuse, as defined in section 626.556, subdivision 2, and the commissioner or local social services agency knows that the individual is a person responsible for a child's care in another facility, the commissioner or local social services agency shall notify the head of that facility of this determination. The notification must include an explanation of the individual's available appeal rights and the status of any appeal. If a notice is given under this paragraph, the government entity making the notification shall provide a copy of the notice to the individual who is the subject of the notice.

(k) All not public data collected, maintained, used, or disseminated under this subdivision and subdivision 3 may be exchanged between the Department of Human Services, Licensing Division, and the Department of Corrections for purposes of regulating services for which the Department of Human Services and the Department of Corrections have regulatory authority.

ARTICLE 2

LICENSING

Section 1. Minnesota Statutes 2010, section 245A.02, is amended by adding a subdivision to read:

Subd. 3b. **Conservator.** "Conservator" has the meaning given in section 524.5-102, subdivision 3.

Sec. 2. Minnesota Statutes 2010, section 245A.02, is amended by adding a subdivision to read:

Subd. 7c. **Guardian.** "Guardian" has the meaning given in section 524.5-102, subdivision 5.

Sec. 3. Minnesota Statutes 2010, section 245A.02, is amended by adding a subdivision to read:

Subd. 11a. **Primary residence.** "Primary residence" means the location where the license holder physically resides on an ongoing basis and is the address listed on the license holder's Minnesota drivers' license or Minnesota identification card, and voter registration. The license holder must have only one primary residence. The commissioner may require the license holder to submit one or more of the following as evidence:

- (1) recent utility bills in the license holder's name;
- (2) verification of property insurance in the license holder's name; or
- (3) the license holder's current Minnesota drivers' license, Minnesota identification card, or voter's registration.

Sec. 4. Minnesota Statutes 2010, section 245A.04, subdivision 1, is amended to read:

Subdivision 1. **Application for licensure.** (a) An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under section 245A.03 must apply for a license. The application must be made on the forms and in the manner prescribed by the commissioner. The commissioner shall provide the applicant with instruction in completing the application and provide information about the rules and requirements of other state agencies that affect the applicant. An applicant seeking licensure in Minnesota with headquarters outside of Minnesota must have a program office located within the state.

The commissioner shall act on the application within 90 working days after a complete application and any required reports have been received from other state

agencies or departments, counties, municipalities, or other political subdivisions. The commissioner shall not consider an application to be complete until the commissioner receives all of the information required under section 245C.05.

When the commissioner receives an application that is incomplete because the applicant failed to submit required documents or that is substantially deficient because the documents submitted do not meet licensing requirements, the commissioner shall provide the applicant written notice that the application is incomplete or substantially deficient. In the written notice to the applicant the commissioner shall identify documents that are missing or deficient and give the applicant 90 days to resubmit a second application that is substantially complete. An applicant's failure to submit a substantially complete application after receiving notice from the commissioner is a basis for license denial under section 245A.05.

(b) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the commissioner of human services on all matters provided for in this chapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this chapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.

(c) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.

(d) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

(e) When an applicant is an individual, the individual must provide the applicant's Social Security number and a photocopy of a Minnesota driver's license, Minnesota identification card, or valid United States passport.

(f) When an applicant is a nonindividual, the applicant must provide the applicant's Minnesota tax identification number and the name and address of all individuals who will be controlling individuals, including all officers, owners, and managerial officials as

defined in section 245A.02, subdivision 5a, and the date that the background study was initiated by the applicant for each controlling individual, and:

(1) if the agent authorized to accept service on behalf of all the controlling individuals resides in Minnesota, the agent must provide a photocopy of the agent's Minnesota driver's license, Minnesota identification card, or United States passport;

(2) if the agent authorized to accept service on behalf of all the controlling individuals resides outside Minnesota, the agent must provide a photocopy of the agent's driver's license or identification card from the state where the agent resides or a photocopy of the agent's United States passport.

Sec. 5. Minnesota Statutes 2010, section 245A.04, subdivision 7, is amended to read:

Subd. 7. **Grant of license; license extension.** (a) If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license. At minimum, the license shall state:

(1) the name of the license holder;

(2) the address of the program;

(3) the effective date and expiration date of the license;

(4) the type of license;

(5) the maximum number and ages of persons that may receive services from the program; and

(6) any special conditions of licensure.

(b) The commissioner may issue an initial license for a period not to exceed two years if:

(1) the commissioner is unable to conduct the evaluation or observation required by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet operational;

(2) certain records and documents are not available because persons are not yet receiving services from the program; and

(3) the applicant complies with applicable laws and rules in all other respects.

(c) A decision by the commissioner to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program. A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling individual or to another location.

(d) A license holder must notify the commissioner and obtain the commissioner's approval before making any changes that would alter the license information listed under paragraph (a).

(e) Except as provided in paragraphs (g) and (h), the commissioner shall not issue or reissue a license if the applicant, license holder, or controlling individual has:

(1) been disqualified and the disqualification was not set aside and no variance has been granted;

(2) ~~has~~ been denied a license within the past two years;

(3) had a license revoked within the past five years; ~~or~~

(4) ~~has~~ an outstanding debt related to a license fee, licensing fine, or settlement agreement for which payment is delinquent; or

(5) failed to submit the information required of an applicant under section 245A.04, subdivision 1, paragraph (f) or (g), after being requested by the commissioner.

When a license is revoked under clause (1) or (3), the license holder and controlling individual may not hold any license under chapter 245A or 245B for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.

(f) The commissioner shall not issue or reissue a license if an individual living in the household where the licensed services will be provided as specified under section 245C.03, subdivision 1, has been disqualified and the disqualification has not been set aside and no variance has been granted.

(g) Pursuant to section 245A.07, subdivision 1, paragraph (b), when a license has been suspended or revoked and the suspension or revocation is under appeal, the program may continue to operate pending a final order from the commissioner. If the license under suspension or revocation will expire before a final order is issued, a temporary provisional license may be issued provided any applicable license fee is paid before the temporary provisional license is issued.

(h) Notwithstanding paragraph (g), when a revocation is based on the disqualification of a controlling individual or license holder, and the controlling individual or license holder is ordered under section 245C.17 to be immediately removed from direct contact with persons receiving services or is ordered to be under continuous, direct supervision when providing direct contact services, the program may continue to operate only if the program complies with the order and submits documentation demonstrating compliance with the order. If the disqualified individual fails to submit a timely request for reconsideration, or if the disqualification is not set aside and no variance is granted, the order to immediately remove the individual from direct contact or to be under continuous, direct supervision remains in effect pending the outcome of a hearing and final order from the commissioner.

(i) For purposes of reimbursement for meals only, under the Child and Adult Care Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A,

part 226, relocation within the same county by a licensed family day care provider, shall be considered an extension of the license for a period of no more than 30 calendar days or until the new license is issued, whichever occurs first, provided the county agency has determined the family day care provider meets licensure requirements at the new location.

(j) Unless otherwise specified by statute, all licenses expire at 12:01 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

(k) The commissioner shall not issue or reissue a license if it has been determined that a tribal licensing authority has established jurisdiction to license the program or service.

Sec. 6. Minnesota Statutes 2010, section 245A.04, subdivision 11, is amended to read:

Subd. 11. **Education program; permitted ages, additional requirement.** (a) ~~The education program offered in a residential or nonresidential program, except for child care, foster care, or services for adults, must be approved by the commissioner of education before the commissioner of human services may grant a license to the program. Except for foster care, the commissioner of human services may not grant a license to a residential facility for the placement of children before the commissioner has received documentation of approval of the educational program from the commissioner of education according to section 125A.515.~~

~~(b) A residential program licensed by the commissioner of human services under Minnesota Rules, parts 2960.0010 to 2960.0710, may serve persons through the age of 19 when:~~

~~(1) the admission or continued stay is necessary for a person to complete a secondary school program or its equivalent, or it is necessary to facilitate a transition period after completing the secondary school program or its equivalent for up to four months in order for the resident to obtain other living arrangements;~~

~~(2) the facility develops policies, procedures, and plans required under section 245A.65;~~

~~(3) the facility documents an assessment of the 18- or 19-year-old person's risk of victimizing children residing in the facility, and develops necessary risk reduction measures, including sleeping arrangements, to minimize any risk of harm to children; and~~

~~(4) notwithstanding the license holder's target population age range, whenever persons age 18 or 19 years old are receiving residential services, the age difference among residents may not exceed five years.~~

11.1 ~~(c) A child foster care~~ (b) A program licensed by the commissioner under Minnesota
11.2 Rules, chapter 2960, may serve persons who are over the age of 18 but under the age
11.3 of 21 when the person is:

- 11.4 (1) completing secondary education or a program leading to an equivalent credential;
11.5 (2) enrolled in an institution which provides postsecondary or vocational education;
11.6 (3) participating in a program or activity designed to promote, or remove barriers to,
11.7 employment;
11.8 (4) employed for at least 80 hours per month; or
11.9 (5) incapable of doing any of the activities described in clauses (1) to (4) due to a
11.10 medical condition, which incapability is supported by regularly updated information in the
11.11 case plan of the person.

11.12 (c) In addition to the requirements in paragraph (b), a residential program licensed
11.13 by the commissioner of human services under Minnesota Rules, parts 2960.0010 to
11.14 2960.0710, may serve persons under the age of 21 provided the facility complies with the
11.15 following requirements:

11.16 (1) for each person age 18 and older served at the program, the program must assess
11.17 and document the person's risk of victimizing other residents residing in the facility, and
11.18 based on the assessment, the facility must develop and implement necessary measures
11.19 to minimize any risk of harm to other residents, including making arrangements for
11.20 appropriate sleeping arrangements; and

11.21 (2) the program must assure that the services and living arrangements provided to all
11.22 residents are suitable to the age and functioning of the residents, including separation of
11.23 services, staff supervision, and other program operations as appropriate.

11.24 (d) Nothing in this ~~paragraph~~ subdivision precludes the license holder from seeking
11.25 other variances under subdivision 9.

11.26 Sec. 7. Minnesota Statutes 2010, section 245A.05, is amended to read:

11.27 **245A.05 DENIAL OF APPLICATION.**

11.28 (a) The commissioner may deny a license if an applicant or controlling individual:

11.29 (1) fails to submit a substantially complete application after receiving notice from
11.30 the commissioner under section 245A.04, subdivision 1;

11.31 ~~(1)~~ (2) fails to comply with applicable laws or rules;

11.32 ~~(2)~~ (3) knowingly withholds relevant information from or gives false or misleading
11.33 information to the commissioner in connection with an application for a license or during
11.34 an investigation;

12.1 ~~(3)~~ (4) has a disqualification that has not been set aside under section 245C.22
12.2 and no variance has been granted;

12.3 ~~(4)~~ (5) has an individual living in the household who received a background study
12.4 under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification
12.5 that has not been set aside under section 245C.22, and no variance has been granted; ~~or~~

12.6 ~~(5)~~ (6) is associated with an individual who received a background study under
12.7 section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised
12.8 access to children or vulnerable adults, and who has a disqualification that has not been set
12.9 aside under section 245C.22, and no variance has been granted; or

12.10 (7) fails to comply with section 245A.04, subdivision 1, paragraph (f) or (g).

12.11 (b) An applicant whose application has been denied by the commissioner must be
12.12 given notice of the denial. Notice must be given by certified mail or personal service.
12.13 The notice must state the reasons the application was denied and must inform the
12.14 applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules,
12.15 parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the
12.16 commissioner in writing by certified mail or personal service. If mailed, the appeal must
12.17 be postmarked and sent to the commissioner within 20 calendar days after the applicant
12.18 received the notice of denial. If an appeal request is made by personal service, it must
12.19 be received by the commissioner within 20 calendar days after the applicant received the
12.20 notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's
12.21 denial of an application.

12.22 Sec. 8. Minnesota Statutes 2010, section 245A.07, subdivision 3, is amended to read:

12.23 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may
12.24 suspend or revoke a license, or impose a fine if:

12.25 (1) a license holder fails to comply fully with applicable laws or rules; ~~if~~

12.26 (2) a license holder, a controlling individual, or an individual living in the household
12.27 where the licensed services are provided or is otherwise subject to a background study has
12.28 a disqualification which has not been set aside under section 245C.22; ~~or if~~

12.29 (3) a license holder knowingly withholds relevant information from or gives false
12.30 or misleading information to the commissioner in connection with an application for
12.31 a license, in connection with the background study status of an individual, during an
12.32 investigation, or regarding compliance with applicable laws or rules; or

12.33 (4) after July 1, 2012, and upon request by the commissioner, a license holder fails
12.34 to submit the information required of an applicant under section 245A.04, subdivision 1,
12.35 paragraph (f) or (g).

13.1 A license holder who has had a license suspended, revoked, or has been ordered
13.2 to pay a fine must be given notice of the action by certified mail or personal service. If
13.3 mailed, the notice must be mailed to the address shown on the application or the last
13.4 known address of the license holder. The notice must state the reasons the license was
13.5 suspended, revoked, or a fine was ordered.

13.6 (b) If the license was suspended or revoked, the notice must inform the license
13.7 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
13.8 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
13.9 a license. The appeal of an order suspending or revoking a license must be made in writing
13.10 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
13.11 the commissioner within ten calendar days after the license holder receives notice that the
13.12 license has been suspended or revoked. If a request is made by personal service, it must be
13.13 received by the commissioner within ten calendar days after the license holder received
13.14 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
13.15 a timely appeal of an order suspending or revoking a license, the license holder may
13.16 continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs
13.17 (g) and (h), until the commissioner issues a final order on the suspension or revocation.

13.18 (c)(1) If the license holder was ordered to pay a fine, the notice must inform the
13.19 license holder of the responsibility for payment of fines and the right to a contested case
13.20 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal
13.21 of an order to pay a fine must be made in writing by certified mail or personal service. If
13.22 mailed, the appeal must be postmarked and sent to the commissioner within ten calendar
13.23 days after the license holder receives notice that the fine has been ordered. If a request is
13.24 made by personal service, it must be received by the commissioner within ten calendar
13.25 days after the license holder received the order.

13.26 (2) The license holder shall pay the fines assessed on or before the payment date
13.27 specified. If the license holder fails to fully comply with the order, the commissioner
13.28 may issue a second fine or suspend the license until the license holder complies. If the
13.29 license holder receives state funds, the state, county, or municipal agencies or departments
13.30 responsible for administering the funds shall withhold payments and recover any payments
13.31 made while the license is suspended for failure to pay a fine. A timely appeal shall stay
13.32 payment of the fine until the commissioner issues a final order.

13.33 (3) A license holder shall promptly notify the commissioner of human services,
13.34 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon
13.35 reinspection the commissioner determines that a violation has not been corrected as
13.36 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The

commissioner shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557 for which the license holder is determined responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i), or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to comply with background study requirements under chapter 245C; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order. Fines assessed against a license holder that holds a license to provide the residential-based habilitation services, as defined under section 245B.02, subdivision 20, and a license to provide foster care, may be assessed against both licenses for the same occurrence, but the combined amount of the fines shall not exceed the amount specified in this clause for that occurrence.

(5) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

(d) Except for background study violations involving the failure to comply with an order to immediately remove an individual or an order to provide continuous, direct supervision, the commissioner shall not issue a fine under paragraph (c) relating to a background study violation to a license holder who self-corrects a background study violation before the commissioner discovers the violation. A license holder who has previously exercised the provisions of this paragraph to avoid a fine for a background study violation may not avoid a fine for a subsequent background study violation unless at least 365 days have passed since the license holder self-corrected the earlier background study violation.

Sec. 9. Minnesota Statutes 2010, section 245A.08, subdivision 2a, is amended to read:

Subd. 2a. **Consolidated contested case hearings.** (a) When a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3, is based on a disqualification for which reconsideration was requested and which was not

set aside under section 245C.22, the scope of the contested case hearing shall include the disqualification and the licensing sanction or denial of a license, unless otherwise specified in this subdivision. When the licensing sanction or denial of a license is based on a determination of maltreatment under section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which was not set aside, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and the licensing sanction or denial of a license, unless otherwise specified in this subdivision. In such cases, a fair hearing under section 256.045 shall not be conducted as provided for in sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

(b) Except for family child care and child foster care, reconsideration of a maltreatment determination under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of a disqualification under section 245C.22, shall not be conducted when:

(1) a denial of a license under section 245A.05, or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder is based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction. In these cases, a fair hearing shall not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. The scope of the contested case hearing must include the maltreatment determination, disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

(c) In consolidated contested case hearings regarding sanctions issued in family child care, child foster care, family adult day services, and adult foster care, the county attorney shall defend the commissioner's orders in accordance with section 245A.16, subdivision 4.

(d) The commissioner's final order under subdivision 5 is the final agency action on the issue of maltreatment and disqualification, including for purposes of subsequent background studies under chapter 245C and is the only administrative appeal of the final

agency determination, specifically, including a challenge to the accuracy and completeness of data under section 13.04.

(e) When consolidated hearings under this subdivision involve a licensing sanction based on a previous maltreatment determination for which the commissioner has issued a final order in an appeal of that determination under section 256.045, or the individual failed to exercise the right to appeal the previous maltreatment determination under section 626.556, subdivision 10i, or 626.557, subdivision 9d, the commissioner's order is conclusive on the issue of maltreatment. In such cases, the scope of the administrative law judge's review shall be limited to the disqualification and the licensing sanction or denial of a license. In the case of a denial of a license or a licensing sanction issued to a facility based on a maltreatment determination regarding an individual who is not the license holder or a household member, the scope of the administrative law judge's review includes the maltreatment determination.

(f) The hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge, if:

(1) a maltreatment determination or disqualification, which was not set aside under section 245C.22, is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07;

(2) the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245C.03; and

(3) the individual has a hearing right under section 245C.27.

(g) When a denial of a license under section 245A.05 or a licensing sanction under section 245A.07 is based on a disqualification for which reconsideration was requested and was not set aside under section 245C.22, and the individual otherwise has no hearing right under section 245C.27, the scope of the administrative law judge's review shall include the denial or sanction and a determination whether the disqualification should be set aside, unless section 245C.24 prohibits the set-aside of the disqualification. In determining whether the disqualification should be set aside, the administrative law judge shall consider the factors under section 245C.22, subdivision 4, to determine whether the individual poses a risk of harm to any person receiving services from the license holder.

(h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction under section 245A.07 is based on the termination of a variance under section 245C.30, subdivision 4, the scope of the administrative law judge's review shall include the sanction and a determination whether the disqualification should be set aside, unless section 245C.24 prohibits the set-aside of the disqualification. In determining whether the disqualification should be set aside, the administrative law judge shall consider the factors

under section 245C.22, subdivision 4, to determine whether the individual poses a risk of harm to any person receiving services from the license holder.

(i) The scope of the consolidated contested case hearing under this section relating to a disqualification does not include the issue of whether the commissioner was required to seal agency records according to a district court order or other applicable law.

(j) When a license holder that is operating following the appeal of a sanction under section 245A.07 has subsequent substantiated violations of applicable statute or rule before the contested case hearing date, the additional violations will automatically be included in the scope of that hearing.

Sec. 10. Minnesota Statutes 2010, section 245A.10, subdivision 5, is amended to read:

Subd. 5. **License or certification fee for other programs.** (a) Except as provided in paragraphs (b) and (c), a program without a stated licensed capacity shall pay a license or certification fee of \$400.

(b) A mental health center or mental health clinic requesting certification for purposes of insurance and subscriber contract reimbursement under Minnesota Rules, parts 9520.0750 to 9520.0870, shall pay a certification fee of \$1,000 per year. If the mental health center or mental health clinic provides services at a primary location with satellite facilities, the satellite facilities shall be certified with the primary location without an additional charge.

(c) A program licensed to provide residential-based habilitation services under the home and community-based waiver for persons with developmental disabilities shall pay an annual license fee that includes a base rate of \$250 plus \$38 times the number of clients served on the first day of ~~August~~ July of the current license year. State-operated programs are exempt from the license fee under this paragraph.

Sec. 11. Minnesota Statutes 2010, section 245A.22, subdivision 2, is amended to read:

Subd. 2. **Admission.** (a) The license holder shall accept as clients in the independent living assistance program only youth ages 16 to 21 who are in out-of-home placement, leaving out-of-home placement, at risk of becoming homeless, or homeless.

(b) Youth who have current drug or alcohol problems, a recent history of violent behaviors, or a mental health disorder or issue that is not being resolved through counseling or treatment are not eligible to receive the services described in subdivision 1.

(c) Youth who are not employed, participating in employment training, or enrolled in an academic program are not eligible to receive transitional housing or independent living assistance.

18.1 (d) The commissioner may grant variances under section 245A.04, subdivision 9,
18.2 to requirements in this section.

18.3 Sec. 12. Minnesota Statutes 2010, section 245C.03, subdivision 1, is amended to read:

18.4 Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a
18.5 background study on:

18.6 (1) the person or persons applying for a license;

18.7 (2) an individual age 13 and over living in the household where the licensed program
18.8 will be provided who is not receiving licensed services from the program;

18.9 (3) current or prospective employees or contractors of the applicant who will have
18.10 direct contact with persons served by the facility, agency, or program;

18.11 (4) volunteers or student volunteers who will have direct contact with persons served
18.12 by the program to provide program services if the contact is not under the continuous,
18.13 direct supervision by an individual listed in clause (1) or (3);

18.14 (5) an individual age ten to 12 living in the household where the licensed services
18.15 will be provided when the commissioner has reasonable cause;

18.16 (6) an individual who, without providing direct contact services at a licensed
18.17 program, may have unsupervised access to children or vulnerable adults receiving services
18.18 from a program, when the commissioner has reasonable cause; and

18.19 (7) all managerial officials as defined under section 245A.02, subdivision 5a.

18.20 (b) For family child foster care settings, a short-term substitute caregiver providing
18.21 direct contact services for a child for less than 72 hours of continuous care is not required
18.22 to receive a background study under this chapter.

18.23 Sec. 13. Minnesota Statutes 2010, section 245C.04, subdivision 1, is amended to read:

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

18.27 (b) The commissioner shall conduct a background study of an individual required
18.28 to be studied under section 245C.03, subdivision 1, at reapplication for a license for
18.29 family child care.

18.30 (c) The commissioner is not required to conduct a study of an individual at the time
18.31 of reapplication for a license if the individual's background study was completed by the
18.32 commissioner of human services for an adult foster care license holder that is also:

18.33 (1) registered under chapter 144D; or

(2) licensed to provide home and community-based services to people with disabilities at the foster care location and the license holder does not reside in the foster care residence; and

(3) the following conditions are met:

(i) a study of the individual was conducted either at the time of initial licensure or when the individual became affiliated with the license holder;

(ii) the individual has been continuously affiliated with the license holder since the last study was conducted; and

(iii) the last study of the individual was conducted on or after October 1, 1995.

(d) From July 1, 2007, to June 30, 2009, the commissioner of human services shall conduct a study of an individual required to be studied under section 245C.03, at the time of reapplication for a child foster care license. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b), and 5, paragraphs (a) and (b). The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, paragraph (a), clauses (1) to (5), 3, and 4.

(e) The commissioner of human services shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with a child foster care license holder. The county or private agency shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(f) From January 1, 2010, to December 31, 2012, unless otherwise specified in paragraph (c), the commissioner shall conduct a study of an individual required to be studied under section 245C.03 at the time of reapplication for an adult foster care or family adult day services license: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care or family adult day services residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence;

and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), clauses (1) to (5), and subdivisions 3 and 4.

(g) The commissioner shall conduct a background study of an individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated with an adult foster care or family adult day services license holder: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), and subdivisions 3 and 4.

(h) Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

(i) A license holder must ~~provide the commissioner notice~~ initiate a new background study through the commissioner's online background study system ~~or through a letter mailed to the commissioner~~ when:

(1) an individual returns to a position requiring a background study following an absence of ~~45~~ 90 or more consecutive days; or

(2) a program that discontinued providing licensed direct contact services for ~~45~~ 90 or more consecutive days begins to provide direct contact licensed services again.

The license holder shall maintain a copy of the notification provided to the commissioner under this paragraph in the program's files. If the individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(j) For purposes of this section, a physician licensed under chapter 147 is considered to be continuously affiliated upon the license holder's receipt from the commissioner of health or human services of the physician's background study results.

(k) For purposes of family child care, substitute caregivers must receive repeat background studies at the time of each license renewal.

Sec. 14. Minnesota Statutes 2010, section 245C.05, is amended by adding a subdivision to read:

Subd. 2c. **Privacy notice to background study subject.** (a) For every background study, the commissioner's notice to the background study subject, required under section 13.04, subdivision 2, that is provided through the commissioner's electronic NETStudy system or through the commissioner's background study forms shall include the information in paragraph (b).

(b) The background study subject shall be informed that any previous background studies that received a set aside will be reviewed, and without further contact with the background study subject, the commissioner may notify the agency that initiated the subsequent background study that:

(1) the individual has a disqualification that has been set aside for the program or agency that initiated the study;

(2) the reason for the disqualification; and

(3) information about the decision to set aside the disqualification will be available to the license holder upon request without the consent of the background study subject.

Sec. 15. Minnesota Statutes 2010, section 245C.05, subdivision 4, is amended to read:

Subd. 4. Electronic transmission. (a) For background studies conducted by the Department of Human Services, the commissioner shall implement a system for the electronic transmission of:

(1) background study information to the commissioner;

(2) background study results to the license holder;

(3) background study results to county and private agencies for background studies conducted by the commissioner for child foster care; and

(4) background study results to county agencies for background studies conducted by the commissioner for adult foster care and family adult day services.

(b) Unless the commissioner has granted a hardship variance under paragraph (c), license holders and applicants must use the electronic transmission system known as

22.1 NETStudy to submit all requests for background studies to the commissioner as required
22.2 by this chapter.

22.3 (c) A license holder or applicant whose program is located in an area in which
22.4 high-speed Internet is inaccessible may request the commissioner to grant a variance to
22.5 the electronic transmission requirement.

22.6 Sec. 16. Minnesota Statutes 2010, section 245C.05, subdivision 6, is amended to read:

22.7 Subd. 6. **Applicant, license holder, other entities, and agencies.** (a) The applicant,
22.8 license holder, other entities as provided in this chapter, Bureau of Criminal Apprehension,
22.9 law enforcement agencies, commissioner of health, and county agencies shall help with
22.10 the study by giving the commissioner criminal conviction data and reports about the
22.11 maltreatment of adults substantiated under section 626.557 and the maltreatment of
22.12 minors substantiated under section 626.556.

22.13 (b) If a background study is initiated by an applicant, license holder, or other entities
22.14 as provided in this chapter, and the applicant, license holder, or other entity receives
22.15 information about the possible criminal or maltreatment history of an individual who is
22.16 the subject of the background study, the applicant, license holder, or other entity must
22.17 immediately provide the information to the commissioner.

22.18 (c) The program or county or other agency must provide written notice to the
22.19 individual who is the subject of the background study of the requirements under this
22.20 subdivision.

22.21 Sec. 17. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

22.22 Subd. 7. **Probation officer and corrections agent.** (a) A probation officer or
22.23 corrections agent shall notify the commissioner of an individual's conviction if the
22.24 individual ~~is~~:

22.25 (1) has been affiliated with a program or facility regulated by the Department of
22.26 Human Services or Department of Health, a facility serving children or youth licensed by
22.27 the Department of Corrections, or any type of home care agency or provider of personal
22.28 care assistance services within the preceding year; and

22.29 (2) has been convicted of a crime constituting a disqualification under section
22.30 245C.14.

22.31 (b) For the purpose of this subdivision, "conviction" has the meaning given it
22.32 in section 609.02, subdivision 5.

22.33 (c) The commissioner, in consultation with the commissioner of corrections, shall
22.34 develop forms and information necessary to implement this subdivision and shall provide

the forms and information to the commissioner of corrections for distribution to local probation officers and corrections agents.

(d) The commissioner shall inform individuals subject to a background study that criminal convictions for disqualifying crimes will be reported to the commissioner by the corrections system.

(e) A probation officer, corrections agent, or corrections agency is not civilly or criminally liable for disclosing or failing to disclose the information required by this subdivision.

(f) Upon receipt of disqualifying information, the commissioner shall provide the notice required under section 245C.17, as appropriate, to agencies on record as having initiated a background study or making a request for documentation of the background study status of the individual.

(g) This subdivision does not apply to family child care programs.

Sec. 18. Minnesota Statutes 2010, section 245C.07, is amended to read:

245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.

~~(a) Except for child foster care and adoption agencies,~~ Subject to the conditions in paragraph (d), when a license holder, applicant, or other entity owns multiple programs or services that are licensed by the Department of Human Services, Department of Health, or Department of Corrections, only one background study is required for an individual who provides direct contact services in one or more of the licensed programs or services if:

(1) the license holder designates one individual with one address and telephone number as the person to receive sensitive background study information for the multiple licensed programs or services that depend on the same background study; and

(2) the individual designated to receive the sensitive background study information is capable of determining, upon request of the department, whether a background study subject is providing direct contact services in one or more of the license holder's programs or services and, if so, at which location or locations.

(b) When a license holder maintains background study compliance for multiple licensed programs according to paragraph (a), and one or more of the licensed programs closes, the license holder shall immediately notify the commissioner which staff must be transferred to an active license so that the background studies can be electronically paired with the license holder's active program.

(c) When a background study is being initiated by a licensed program or service or a foster care provider that is also registered under chapter 144D, a study subject affiliated with multiple licensed programs or services may attach to the background study form a

24.1 cover letter indicating the additional names of the programs or services, addresses, and
24.2 background study identification numbers.

24.3 When the commissioner receives a notice, the commissioner shall notify each
24.4 program or service identified by the background study subject of the study results.

24.5 The background study notice the commissioner sends to the subsequent agencies
24.6 shall satisfy those programs' or services' responsibilities for initiating a background study
24.7 on that individual.

24.8 (d) If a background study was conducted on an individual related to child foster care
24.9 and the requirements under paragraph (a) are met, the background study is transferable
24.10 across all licensed programs. If a background study was conducted on an individual under
24.11 a license other than child foster care and the requirements under paragraph (a) are met, the
24.12 background study is transferable to all licensed programs except child foster care.

24.13 (e) The provisions of this section that allow a single background study in one
24.14 or more licensed programs or services do not apply to background studies submitted
24.15 by adoption agencies, supplemental nursing services agencies, personnel agencies,
24.16 educational programs, professional services agencies, and unlicensed personal care
24.17 provider organizations.

24.18 Sec. 19. Minnesota Statutes 2010, section 245C.08, subdivision 1, is amended to read:

24.19 Subdivision 1. **Background studies conducted by Department of Human**
24.20 **Services.** (a) For a background study conducted by the Department of Human Services,
24.21 the commissioner shall review:

24.22 (1) information related to names of substantiated perpetrators of maltreatment of
24.23 vulnerable adults that has been received by the commissioner as required under section
24.24 626.557, subdivision 9c, paragraph (j);

24.25 (2) the commissioner's records relating to the maltreatment of minors in licensed
24.26 programs, and from findings of maltreatment of minors as indicated through the social
24.27 service information system;

24.28 (3) information from juvenile courts as required in subdivision 4 for individuals
24.29 listed in section 245C.03, subdivision 1, paragraph (a), when there is reasonable cause;

24.30 (4) information from the Bureau of Criminal Apprehension;

24.31 (5) except as provided in clause (6), information from the national crime information
24.32 system when the commissioner has reasonable cause as defined under section 245C.05,
24.33 subdivision 5; and

24.34 (6) for a background study related to a child foster care application for licensure or
24.35 adoptions, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years; and

(ii) information from national crime information databases, when the background study subject is 18 years of age or older.

(b) Notwithstanding expungement by a court, the commissioner may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement ~~is directed specifically to~~ orders the commissioner to seal the commissioner's records.

(c) When the commissioner has reasonable cause to believe that the identity of a background study subject is uncertain, the commissioner may require the subject to provide a set of classifiable fingerprints and complete a record check with the national crime information databases.

Sec. 20. Minnesota Statutes 2010, section 245C.08, subdivision 2, is amended to read:

Subd. 2. **Background studies conducted by a county agency.** (a) For a background study conducted by a county agency for family child care services, the commissioner shall review:

(1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for:

(i) individuals listed in section 245C.03, subdivision 1, paragraph (a), who are ages 13 through 23 living in the household where the licensed services will be provided; and

(ii) any other individual listed under section 245C.03, subdivision 1, when there is reasonable cause; and

(3) information from the Bureau of Criminal Apprehension.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county agency may consider information obtained under paragraph (a), clause (3), unless the commissioner received notice of the petition for expungement and the court order for expungement ~~is directed specifically to~~ orders the commissioner to seal the commissioner's records.

Sec. 21. Minnesota Statutes 2010, section 245C.08, subdivision 3, is amended to read:

Subd. 3. **Arrest and investigative information.** (a) For any background study completed under this section, if the commissioner has reasonable cause to believe the

26.1 information is pertinent to the disqualification of an individual, the commissioner shall
26.2 also ~~may~~ review arrest and investigative information from any of the following pertinent
26.3 sources:

- 26.4 (1) the Bureau of Criminal Apprehension;
- 26.5 (2) the commissioner of health;
- 26.6 (3) a county attorney;
- 26.7 (4) a county sheriff;
- 26.8 (5) a county agency;
- 26.9 (6) a local chief of police;
- 26.10 (7) other states;
- 26.11 (8) the courts;
- 26.12 (9) the Federal Bureau of Investigation;
- 26.13 (10) the National Criminal Records Repository; ~~and~~ or
- 26.14 (11) criminal records from other states.

26.15 (b) The commissioner is not required to conduct more than one review of a subject's
26.16 records from the Federal Bureau of Investigation if a review of the subject's criminal
26.17 history with the Federal Bureau of Investigation has already been completed by the
26.18 commissioner and there has been no break in the subject's affiliation with the license
26.19 holder who initiated the background study.

26.20 Sec. 22. Minnesota Statutes 2010, section 245C.14, subdivision 2, is amended to read:

26.21 Subd. 2. **Disqualification from access.** (a) If an individual who is studied under
26.22 section 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, is disqualified from
26.23 direct contact under subdivision 1, the commissioner shall also disqualify the individual
26.24 from access to a person receiving services from the license holder.

26.25 (b) No individual who is disqualified following a background study under section
26.26 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, or as provided elsewhere
26.27 in statute who is disqualified as a result of this section, may be allowed access to persons
26.28 served by the program unless the commissioner has provided written notice under section
26.29 245C.17 stating that:

- 26.30 (1) the individual may remain in direct contact during the period in which the
26.31 individual may request reconsideration as provided in section 245C.21, subdivision 2;
- 26.32 (2) the commissioner has set aside the individual's disqualification for that
26.33 licensed program or entity identified in section 245C.03 as provided in section 245C.22,
26.34 subdivision 4; or

27.1 (3) the license holder has been granted a variance for the disqualified individual
27.2 under section 245C.30.

27.3 Sec. 23. Minnesota Statutes 2010, section 245C.15, is amended to read:

27.4 **245C.15 DISQUALIFYING CRIMES OR CONDUCT.**

27.5 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under
27.6 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the
27.7 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless
27.8 of the level of the offense, the individual has committed any of the following offenses:
27.9 sections 243.166 (violation of predatory offender registration law); 609.185 (murder in
27.10 the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third
27.11 degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second
27.12 degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree);
27.13 a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal
27.14 abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by
27.15 strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245
27.16 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the
27.17 first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663
27.18 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and
27.19 promotion of prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342
27.20 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the
27.21 second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal
27.22 sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth
27.23 degree); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children
27.24 to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious
27.25 punishment of a child); a felony offense under 609.378 (neglect or endangerment of
27.26 a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting);
27.27 609.746 (interference with privacy against a minor); 609.749, subdivision 3, 4, or 5
27.28 (felony-level stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or
27.29 facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure
27.30 involving a minor); 617.246 (use of minors in sexual performance prohibited); or 617.247
27.31 (possession of pictorial representations of minors).

27.32 (b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the
27.33 offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes,
27.34 permanently disqualifies the individual under section 245C.14.

(c) An individual's offense in any other state or country, where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies the individual under section 245C.14.

(d) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an 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 a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, ~~the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the date of the incident, whichever occurs last.

(e) If the individual studied commits one of the offenses listed in paragraph (a) that is specified as a felony-level only offense, but the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to gross misdemeanor or misdemeanor offenses.

Subd. 2. 15-year disqualification. (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender); 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);

29.1 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree); 609.563
29.2 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary tools);
29.3 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery); 609.631
29.4 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense);
29.5 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns);
29.6 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.746 (interference
29.7 with privacy); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card
29.8 fraud); 617.23 (indecent exposure), not involving a minor; repeat offenses under 617.241
29.9 (obscene materials and performances; distribution and exhibition prohibited; penalty);
29.10 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled
29.11 substance); or a felony-level conviction involving alcohol or drug use.

29.12 (b) An individual is disqualified under section 245C.14 if less than 15 years has
29.13 passed since the individual's aiding and abetting, attempt, or conspiracy to commit any
29.14 of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota
29.15 Statutes.

29.16 (c) An individual is disqualified under section 245C.14 if less than 15 years has
29.17 passed since the termination of the individual's parental rights under section 260C.301,
29.18 subdivision 1, paragraph (b), or subdivision 3.

29.19 (d) An individual is disqualified under section 245C.14 if less than 15 years has
29.20 passed since the discharge of the sentence imposed for an offense in any other state or
29.21 country, the elements of which are substantially similar to the elements of the offenses
29.22 listed in paragraph (a).

29.23 (e) If the individual studied commits one of the offenses listed in paragraph (a), but
29.24 the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual
29.25 is disqualified but the disqualification look-back period for the offense is the period
29.26 applicable to the gross misdemeanor or misdemeanor disposition.

29.27 (f) When a disqualification is based on a judicial determination other than a
29.28 conviction, the disqualification period begins from the date of the court order. When a
29.29 disqualification is based on an admission, the disqualification period begins from the
29.30 date of an admission in court. When a disqualification is based on an Alford Plea, the
29.31 disqualification period begins from the date the Alford Plea is entered in court. When
29.32 a disqualification is based on a preponderance of evidence of a disqualifying act, the
29.33 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~
29.34 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the
29.35 date of the incident, whichever occurs last.

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

(b) An individual is disqualified under section 245C.14 if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

31.1 (d) If the individual studied commits one of the offenses listed in paragraph
31.2 (a), but the sentence or level of offense is a misdemeanor disposition, the individual
31.3 is disqualified but the disqualification lookback period for the offense is the period
31.4 applicable to misdemeanors. If the individual studied commits one of the offenses listed in
31.5 paragraph (a), but the sentence or level of offense is a felony disposition, the individual
31.6 is disqualified, but the disqualification look-back period for the offense is the period
31.7 applicable to that felony offense under this section.

31.8 (e) When a disqualification is based on a judicial determination other than a
31.9 conviction, the disqualification period begins from the date of the court order. When a
31.10 disqualification is based on an admission, the disqualification period begins from the
31.11 date of an admission in court. When a disqualification is based on an Alford Plea, the
31.12 disqualification period begins from the date the Alford Plea is entered in court. When
31.13 a disqualification is based on a preponderance of evidence of a disqualifying act, the
31.14 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~
31.15 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the
31.16 date of the incident, whichever occurs last.

31.17 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under
31.18 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence
31.19 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level
31.20 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
31.21 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
31.22 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide
31.23 and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree);
31.24 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224
31.25 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation
31.26 of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult);
31.27 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation
31.28 of an order for protection under 609.3232 (protective order authorized; procedures;
31.29 penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen
31.30 goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
31.31 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous
31.32 weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or
31.33 harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment);
31.34 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23
31.35 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination

and display to minors prohibited); or violation of an order for protection under section 518B.01 (Domestic Abuse Act).

(b) An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's:

(1) failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or

(2) substantiated serious or recurring maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state, the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

(c) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraphs (a) and (b), as each of these offenses is defined in Minnesota Statutes.

(d) An individual is disqualified under section 245C.14 if less than seven years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraphs (a) and (b).

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an 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 a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, ~~the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the date of the incident, whichever occurs last.

(f) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual was disqualified under section 256.98, subdivision 8.

(g) If the individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a gross misdemeanor or felony disposition, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to that gross misdemeanor or felony offense under this section.

33.1 Subd. 5. **Mental illness.** The commissioner may not disqualify an individual subject
33.2 to a background study under this chapter because that individual has, or has had, a mental
33.3 illness as defined in section 245.462, subdivision 20.

33.4 Sec. 24. Minnesota Statutes 2010, section 245C.16, subdivision 1, is amended to read:

33.5 Subdivision 1. **Determining immediate risk of harm.** (a) If the commissioner
33.6 determines that the individual studied has a disqualifying characteristic, the commissioner
33.7 shall review the information immediately available and make a determination as to the
33.8 subject's immediate risk of harm to persons served by the program where the individual
33.9 studied will have direct contact with, or access to, people receiving services.

33.10 (b) The commissioner shall consider all relevant information available, including the
33.11 following factors in determining the immediate risk of harm:

- 33.12 (1) the recency of the disqualifying characteristic;
33.13 (2) the recency of discharge from probation for the crimes;
33.14 (3) the number of disqualifying characteristics;
33.15 (4) the intrusiveness or violence of the disqualifying characteristic;
33.16 (5) the vulnerability of the victim involved in the disqualifying characteristic;
33.17 (6) the similarity of the victim to the persons served by the program where the
33.18 individual studied will have direct contact;

33.19 (7) whether the individual has a disqualification from a previous background study
33.20 that has not been set aside; and

33.21 (8) if the individual has a disqualification which may not be set aside because it is
33.22 a permanent bar under section 245C.24, subdivision 1, the commissioner may order the
33.23 immediate removal of the individual from any position allowing direct contact with, or
33.24 access to, persons receiving services from the program.

33.25 (c) This section does not apply when the subject of a background study is regulated
33.26 by a health-related licensing board as defined in chapter 214, and the subject is determined
33.27 to be responsible for substantiated maltreatment under section 626.556 or 626.557.

33.28 (d) This section does not apply to a background study related to an initial application
33.29 for a child foster care license.

33.30 (e) This section does not apply to background studies that are also subject to the
33.31 requirements under section 256B.0659, subdivisions 11 and 13, for personal care assistants
33.32 and qualified professionals as defined in section 256B.0659, subdivision 1.

33.33 ~~(e)~~ (f) If the commissioner has reason to believe, based on arrest information or an
33.34 active maltreatment investigation, that an individual poses an imminent risk of harm to
33.35 persons receiving services, the commissioner may order that the person be continuously

34.1 supervised or immediately removed pending the conclusion of the maltreatment
34.2 investigation or criminal proceedings.

34.3 Sec. 25. Minnesota Statutes 2010, section 245C.17, subdivision 2, is amended to read:

34.4 Subd. 2. **Disqualification notice sent to subject.** (a) If the information in the study
34.5 indicates the individual is disqualified from direct contact with, or from access to, persons
34.6 served by the program, the commissioner shall disclose to the individual studied:

34.7 (1) the information causing disqualification;

34.8 (2) instructions on how to request a reconsideration of the disqualification;

34.9 (3) an explanation of any restrictions on the commissioner's discretion to set aside
34.10 the disqualification under section 245C.24, when applicable to the individual;

34.11 (4) a statement that, if the individual's disqualification is set aside under section
34.12 245C.22, the applicant, license holder, or other entity that initiated the background study
34.13 will be provided with the reason for the individual's disqualification and an explanation
34.14 that the factors under section 245C.22, subdivision 4, which were the basis of the decision
34.15 to set aside the disqualification shall be made available to the license holder upon request
34.16 without the consent of the subject of the background study;

34.17 (5) a statement indicating that if the individual's disqualification is set aside or the
34.18 facility is granted a variance under section 245C.30, the individual's identity and the
34.19 reason for the individual's disqualification will become public data under section 245C.22,
34.20 subdivision 7, when applicable to the individual; and

34.21 (6) a statement that when a subsequent background study is initiated on the
34.22 individual following a set aside of the individual's disqualification, and the commissioner
34.23 makes a determination under section 245C.22, subdivision 5, paragraph (b), that the
34.24 previous set-aside applies to the subsequent background study, the applicant, license
34.25 holder, or other entity that initiated the background study will be informed in the notice
34.26 under section 245C.22, subdivision 5, paragraph (c):

34.27 (i) of the reason for the individual's disqualification;

34.28 (ii) that the individual's disqualification is set aside for that program or agency; and

34.29 (iii) that information about the factors under section 245C.22, subdivision 4, that
34.30 were the basis of the decision to set aside the disqualification are available to the license
34.31 holder upon request without the consent of the background study subject; and

34.32 ~~(5)~~ (7) the commissioner's determination of the individual's immediate risk of harm
34.33 under section 245C.16.

34.34 (b) If the commissioner determines under section 245C.16 that an individual poses
34.35 an imminent risk of harm to persons served by the program where the individual will have

direct contact with, or access to, people receiving services, the commissioner's notice must include an explanation of the basis of this determination.

(c) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to have direct contact with, or access to, people receiving services, as provided under subdivision 3.

Sec. 26. Minnesota Statutes 2010, section 245C.22, subdivision 5, is amended to read:

Subd. 5. **Scope of set-aside.** (a) If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. Except as provided in paragraph (b), the commissioner's set-aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23, unless otherwise specified in the notice. For personal care provider organizations, the commissioner's set-aside may further be limited to a specific individual who is receiving services. For new background studies required under section 245C.04, subdivision 1, paragraph (i), if an individual's disqualification was previously set aside for the license holder's program and the new background study results in no new information that indicates the individual may pose a risk of harm to persons receiving services from the license holder, the previous set-aside shall remain in effect.

(b) If the commissioner previously set aside an individual's disqualification for one or more programs or agencies, and the individual is the subject of a subsequent background study for a different program or agency, the commissioner shall determine whether the disqualification is set aside for the program or agency that initiated the subsequent background study. A notice of set-aside under paragraph (c) shall be issued within 15 working days if all of the following criteria are met:

(1) the subsequent background study was initiated in connection with a program licensed or regulated under the same provisions of law and rule for at least one program for which the individual's disqualification was previously set aside by the commissioner;

(2) the individual is not disqualified for an offense specified in section 245C.15, subdivision 1 or 2;

(3) the commissioner has received no new information to indicate that the individual may pose a risk of harm to any person served by the program; and

(4) the previous set-aside was not limited to a specific person receiving services.

(c) When a disqualification is set aside under paragraph (b), the notice of background study results issued under section 245C.17, in addition to the requirements under section 245C.17, shall state that the disqualification is set aside for the program or agency that initiated the subsequent background study. The notice must inform the individual that the individual may request reconsideration of the disqualification under section 245C.21 on the basis that the information used to disqualify the individual is incorrect.

Sec. 27. Minnesota Statutes 2010, section 245C.28, subdivision 1, is amended to read:

Subdivision 1. **License holder.** (a) If a maltreatment determination or a disqualification for which reconsideration was requested and which was not set aside is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder must submit the appeal under section 245A.05 or 245A.07, subdivision 3.

(b) As provided under section 245A.08, subdivision 2a, if the denial of a license or licensing sanction is based on a disqualification for which reconsideration was requested and was not set aside, the scope of the consolidated contested case hearing must include:

(1) the disqualification, to the extent the license holder otherwise has a hearing right on the disqualification under this chapter; and

(2) the licensing sanction or denial of a license.

(c) As provided for under section 245A.08, subdivision 2a, if the denial of a license or licensing sanction is based on a determination of maltreatment under section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which was not set aside, the scope of the contested case hearing must include:

(1) the maltreatment determination, if the maltreatment is not conclusive under section 245C.29;

(2) the disqualification, if the disqualification is not conclusive under section 245C.29; and

(3) the licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section 256.045. If the disqualification was based on a determination of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the appeal must be submitted under sections 245A.07, subdivision 3, and 626.556, subdivision 10i, or 626.557, subdivision 9d.

(d) Except for family child care and child foster care, reconsideration of a maltreatment determination under sections 626.556, subdivision 10i, and 626.557,

subdivision 9d, and reconsideration of a disqualification under section 245C.22, must not be conducted when:

(1) a denial of a license under section 245A.05, or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;

(2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination, disqualification, and denial of a license or licensing sanction. In such cases a fair hearing under section 256.045 must not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. Under section 245A.08, subdivision 2a, the scope of the consolidated contested case hearing must include the maltreatment determination, disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

(e) The scope of the consolidated contested case hearing under this section relating to a disqualification does not include the issue of whether the commissioner was required to seal agency records pursuant to a district court order or other applicable law.

Sec. 28. Minnesota Statutes 2010, section 245C.28, subdivision 3, is amended to read:

Subd. 3. Employees of public employer. (a) A disqualified individual who is an employee of an employer, as defined in section 179A.03, subdivision 15, may request a contested case hearing under chapter 14 following a reconsideration decision under section 245C.23, unless the disqualification is deemed conclusive under section 245C.29. The request for a contested case hearing must be made in writing and must be postmarked and sent within 30 calendar days after the employee receives notice of the reconsideration decision. If the individual was disqualified based on a conviction or admission to any crimes listed in section 245C.15, the scope of the contested case hearing shall be limited solely to whether the individual poses a risk of harm pursuant to section 245C.22.

(b) When an individual is disqualified based on a maltreatment determination, the scope of the contested case hearing under paragraph (a), must include the maltreatment

determination and the disqualification. In such cases, a fair hearing must not be conducted under section 256.045.

(c) Rules adopted under this chapter may not preclude an employee in a contested case hearing for a disqualification from submitting evidence concerning information gathered under this chapter.

(d) When an individual has been disqualified from multiple licensed programs, if at least one of the disqualifications entitles the person to a contested case hearing under this subdivision, the scope of the contested case hearing shall include all disqualifications from licensed programs.

(e) In determining whether the disqualification should be set aside, the administrative law judge shall consider all of the characteristics that cause the individual to be disqualified in order to determine whether the individual poses a risk of harm. The administrative law judge's recommendation and the commissioner's order to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside.

(f) The scope of the consolidated contested case hearing under this section relating to a disqualification does not include the issue of whether the commissioner was required to seal agency records pursuant to a district court order or other applicable law.

Sec. 29. Minnesota Statutes 2010, section 245C.29, subdivision 2, is amended to read:

Subd. 2. **Conclusive disqualification determination.** (a) Unless otherwise specified in statute, a ~~determination that~~ disqualification is conclusive for current and future background studies if the disqualification is based on

~~(1) the information the commissioner relied upon to disqualify an individual under section 245C.14 was correct based on serious or recurring maltreatment; as defined in section 245C.02,~~

~~(2) a preponderance of the evidence shows~~ showing that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15₂, or

~~(3) the individual failed~~ individual's failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, ~~is conclusive if and:~~

~~(1) the commissioner has issued a final order in an appeal of that determination~~ the disqualification under section 245A.08, subdivision 5, or 256.045, or a court has issued a final decision;

~~(ii)~~ (2) the individual did not request reconsideration of the disqualification under section 245C.21 on the basis that the information relied upon to disqualify the subject was incorrect; or

~~(iii)~~ (3) the individual did not timely request a hearing on the disqualification under section 256.045 or chapter 14.

(b) When a licensing action under section 245A.05, 245A.06, or 245A.07 is based on the disqualification of an individual in connection with a license to provide family child care, foster care for children in the provider's own home, or foster care services for adults in the provider's own home, that disqualification shall be conclusive for purposes of the licensing action if a request for reconsideration was not submitted within 30 calendar days of the individual's receipt of the notice of disqualification.

~~(c) If a determination that the information relied upon to disqualify an individual was correct and disqualification is conclusive under this section, and the individual is subsequently disqualified under section 245C.15, the individual has a right to request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding the risk of harm. The commissioner's decision on reconsideration shall be made according to section 245C.22 and are not subject to another the final agency decision and not subject to a hearing under section 256.045 or chapter 14.~~

Sec. 30. Minnesota Statutes 2010, section 256.045, subdivision 3b, is amended to read:

Subd. 3b. **Standard of evidence for maltreatment and disqualification hearings.**

(a) The state human services referee shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under sections 626.556 and 626.557. For purposes of hearings regarding disqualification, the state human services referee shall affirm the proposed disqualification in an appeal under subdivision 3, paragraph (a), clause (9), if a preponderance of the evidence shows the individual has:

(1) committed maltreatment under section 626.556 or 626.557, which is serious or recurring;

(2) committed an act or acts meeting the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or

(3) failed to make required reports under section 626.556 or 626.557, for incidents in which the final disposition under section 626.556 or 626.557 was substantiated maltreatment that was serious or recurring.

(b) If the disqualification is affirmed, the state human services referee shall determine whether the individual poses a risk of harm in accordance with the requirements of section 245C.22, and whether the disqualification should be set aside or not set aside.

In determining whether the disqualification should be set aside, the human services referee shall consider all of the characteristics that cause the individual to be disqualified, including those characteristics that were not subject to review under paragraph (a), in order to determine whether the individual poses a risk of harm. A decision to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide direct contact services in the individual program specified in the set aside. ~~If a determination that the information relied upon to disqualify an individual was correct and is conclusive under section 245C.29, and the individual is subsequently disqualified under section 245C.14, the individual has a right to again request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding risk of harm are not subject to another hearing under this section.~~

(c) If a disqualification is based solely on a conviction or is conclusive for any reason under section 245C.29, the disqualified individual does not have a hearing right under this section.

(d) The scope of review for disqualification hearings under this section does not include the issue of whether the commissioner was required to seal agency records pursuant to a district court order or other applicable law.

~~(e)~~ (e) The state human services referee shall recommend an order to the commissioner of health, education, or human services, as applicable, who shall issue a final order. The commissioner shall affirm, reverse, or modify the final disposition. Any order of the commissioner issued in accordance with this subdivision is conclusive upon the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided under section 245C.29.

Sec. 31. **REVISOR'S INSTRUCTION.**

The revisor shall renumber Minnesota Statutes, section 245B.05, subdivision 4, as Minnesota Statutes, section 245A.04, subdivision 2a. The revisor shall make necessary cross-reference changes to effectuate this renumbering.

APPENDIX
Article locations in S1305-1

ARTICLE 1 DATA PRACTICES Page.Ln 1.13

ARTICLE 2 LICENSING Page.Ln 6.1