

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1485

(SENATE AUTHORS: HAYDEN)

DATE	D-PG	OFFICIAL STATUS
03/20/2013	1355	Introduction and first reading Referred to Health, Human Services and Housing

A bill for an act  
relating to human services; modifying background study requirements for  
individuals with juvenile court records; modifying the commissioner's authority  
to grant a variance; amending Minnesota Statutes 2012, sections 13.46,  
subdivision 4; 245C.04, by adding a subdivision; 245C.17, subdivisions 2, 3;  
245C.22, subdivision 5; 245C.24, subdivision 2.

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

Section 1. Minnesota Statutes 2012, section 13.46, subdivision 4, is amended to read:

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

(1) "licensing data" are 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" are 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.

(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) Except as provided in paragraph (1), 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 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, data on individuals collected by the commissioner of human services

5.1 according to investigations under chapters 245A, 245B, and 245C, and sections 626.556  
5.2 and 626.557 may be shared with the Department of Human Rights, the Department  
5.3 of Health, the Department of Corrections, the ombudsman for mental health and  
5.4 developmental disabilities, and the individual's professional regulatory board when there  
5.5 is reason to believe that laws or standards under the jurisdiction of those agencies may  
5.6 have been violated or the information may otherwise be relevant to the board's regulatory  
5.7 jurisdiction. Background study data on an individual who is the subject of a background  
5.8 study under chapter 245C for a licensed service for which the commissioner of human  
5.9 services is the license holder may be shared with the commissioner and the commissioner's  
5.10 delegate by the licensing division. Unless otherwise specified in this chapter, the identity  
5.11 of a reporter of alleged maltreatment or licensing violations may not be disclosed.

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

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

5.27 (l) For individuals whose disqualification under chapter 245C was based only on  
5.28 juvenile court records, and for which it was determined there have been no offenses in the  
5.29 previous five or more years, the disqualification, the reason for the disqualification, and any  
5.30 information about a set-aside shall be private data on the individual, and disclosed to the  
5.31 program or entity that initiated the background study only as provided under chapter 245C.

5.32 Sec. 2. Minnesota Statutes 2012, section 245C.04, is amended by adding a subdivision  
5.33 to read:

5.34 Subd. 7. **Initiation of background study by an individual.** The commissioner shall  
5.35 modify the online NETStudy system to allow an individual to initiate a background study

on himself or herself when the individual has only juvenile court records, and no adult criminal history information on file with the courts or Bureau of Criminal Apprehension, so that if disqualified, the individual may request a set-aside of the disqualification under section 245C.22 before applying for employment with a program or agency required to initiate a background study under this chapter. If the individual receives a set-aside of the disqualification under section 245C.22, the provisions of section 245C.22 shall apply to future background studies initiated by a program or entity under this chapter. The commissioner shall collect a fee from the individual initiating the background study under this subdivision according to the fee requirements for human services licensed programs under section 245C.10, subdivision 9.

Sec. 3. Minnesota Statutes 2012, section 245C.17, subdivision 2, is amended to read:

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

(1) the information causing disqualification;

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

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

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

(5) except as provided under paragraph (d), the commissioner's notice to the individual will include a statement indicating that if the individual's disqualification is set aside or the facility is granted a variance under section 245C.30, the individual's identity and the reason for the individual's disqualification will become public data under section 245C.22, subdivision 7, when applicable to the individual;

(6) except as provided under paragraph (d), the commissioner's notice to the individual will include a statement that when a subsequent background study is initiated on the individual following a set-aside of the individual's disqualification, and the commissioner makes a determination under section 245C.22, subdivision 5, paragraph

(b), that the previous set-aside applies to the subsequent background study, the applicant, license holder, or other entity that initiated the background study will be informed in the notice under section 245C.22, subdivision 5, paragraph (c):

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

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

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

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

(b) If the commissioner determines under section 245C.16 that an individual poses 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.

(d) For a disqualification based only on juvenile court records, and for which there have been no offenses in the previous five or more years, and unless the commissioner determines that the individual must be immediately removed or provided continuous supervision under subdivision 3, the notice of disqualification sent to the individual shall explain that:

(1) the notice to the program or agency that initiated the background study stated only that more time is needed to complete the background study;

(2) if the disqualified individual submits a timely request for reconsideration and the result is a rescission of the disqualification or a set-aside of the disqualification, the fact that the individual was disqualified will not be made public or provided to the employer; and

(3) if the disqualification is rescinded or set aside, the commissioner shall send the program or agency the same notification received by the program or agency for a background study in which the individual studied has not been disqualified.

Sec. 4. Minnesota Statutes 2012, section 245C.17, subdivision 3, is amended to read:

8.1 Subd. 3. **Disqualification notification to the applicant, license holder, or other**  
8.2 **entity.** (a) The commissioner shall notify an applicant, license holder, or other entity as  
8.3 provided in this chapter who is not the subject of the study:

8.4 (1) that the commissioner has found information that disqualifies the individual  
8.5 studied from being in a position allowing direct contact with, or access to, people served  
8.6 by the program; and

8.7 (2) the commissioner's determination of the individual's risk of harm under section  
8.8 245C.16.

8.9 (b) If the commissioner determines under section 245C.16 that an individual studied  
8.10 poses an imminent risk of harm to persons served by the program where the individual  
8.11 studied will have direct contact with, or access to, people served by the program, the  
8.12 commissioner shall order the license holder to immediately remove the individual studied  
8.13 from any position allowing direct contact with, or access to, people served by the program.

8.14 (c) If the commissioner determines under section 245C.16 that an individual studied  
8.15 poses a risk of harm that requires continuous, direct supervision, the commissioner shall  
8.16 order the applicant, license holder, or other entities as provided in this chapter to:

8.17 (1) immediately remove the individual studied from any position allowing direct  
8.18 contact with, or access to, people receiving services; ~~or~~

8.19 (2) before allowing the disqualified individual to be in a position allowing direct  
8.20 contact with, or access to, people receiving services, the applicant, license holder, or other  
8.21 entity, as provided in this chapter, must:

8.22 (i) obtain from the disqualified individual a copy of the individual's notice of  
8.23 disqualification from the commissioner that explains the reason for disqualification;

8.24 (ii) ensure that the individual studied is under continuous, direct supervision when  
8.25 in a position allowing direct contact with, or access to, people receiving services during  
8.26 the period in which the individual may request a reconsideration of the disqualification  
8.27 under section 245C.21; and

8.28 (iii) ensure that the disqualified individual requests reconsideration within 30 days of  
8.29 receipt of the notice of disqualification; or

8.30 (3) for a disqualification based only on juvenile court records, and there have been  
8.31 no offenses in the previous five or more years, the notice under this paragraph shall not  
8.32 require the program or entity to obtain from the individual a copy of the individual's notice  
8.33 of disqualification under clause (2), item (i).

8.34 (d) Except as provided under paragraph (f), if the commissioner determines under  
8.35 section 245C.16 that an individual studied does not pose a risk of harm that requires



continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from any position allowing direct contact with, or access to, people receiving services; or

(2) before allowing the disqualified individual to be in any position allowing direct contact with, or access to, people receiving services, the applicant, license holder, or other entity as provided in this chapter must:

(i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for disqualification; and

(ii) ensure that the disqualified individual requests reconsideration within 15 days of receipt of the notice of disqualification.

(e) The commissioner shall not notify the applicant, license holder, or other entity as provided in this chapter of the information contained in the subject's background study unless:

(1) the basis for the disqualification is failure to cooperate with the background study or substantiated maltreatment under section 626.556 or 626.557;

(2) the Data Practices Act under chapter 13 provides for release of the information; or

(3) the individual studied authorizes the release of the information.

(f) When an individual's disqualification is based only on juvenile court records, and there have been no offenses in the previous five or more years, and the commissioner does not determine that the individual must be immediately removed according to paragraph (b) or continuously supervised according to paragraph (c), the notice to the program or entity shall not identify that the individual is disqualified, but state only that the commissioner needs more time to complete the background study.

Sec. 5. Minnesota Statutes 2012, 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) or (c), 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. 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

10.1 risk of harm to persons receiving services from the license holder, the previous set-aside  
10.2 shall remain in effect.

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

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

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

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

10.16 ~~(4)~~ (3) the previous set-aside was not limited to a specific person receiving services.

10.17 (c) Except as provided in paragraph (d), when a disqualification is set aside under  
10.18 paragraph (b), the notice of background study results issued under section 245C.17, in  
10.19 addition to the requirements under section 245C.17, shall state that the disqualification is  
10.20 set aside for the program or agency that initiated the subsequent background study. The  
10.21 notice must inform the individual that the individual may request reconsideration of the  
10.22 disqualification under section 245C.21 on the basis that the information used to disqualify  
10.23 the individual is incorrect.

10.24 (d) When a disqualification is set aside under paragraph (b) for a disqualification  
10.25 based only on juvenile court records, the notice of background study results issued to  
10.26 the program or agency by the commissioner under section 245C.17 shall be the same  
10.27 notification received by the program or agency for a background study in which the  
10.28 individual studied has no disqualifying characteristic.

10.29 Sec. 6. Minnesota Statutes 2012, section 245C.24, subdivision 2, is amended to read:

10.30 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in  
10.31 paragraph (b), the commissioner may not set aside the disqualification of any individual  
10.32 disqualified pursuant to this chapter, regardless of how much time has passed, if the  
10.33 individual was disqualified for a ~~crime or conduct listed in section 245C.15, subdivision~~  
10.34 ~~1~~ conviction under section 609.185 (murder in the first degree); 609.19 (murder in the  
10.35 second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first

11.1 degree); 609.205 (manslaughter in the second degree); 609.342 (criminal sexual conduct  
11.2 in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344  
11.3 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the  
11.4 fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453 (criminal  
11.5 sexual predatory conduct); 609.352 (solicitation of children to engage in sexual conduct);  
11.6 or 609.365 (incest).

11.7 (b) For an individual in the chemical dependency or corrections field who was  
11.8 disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose  
11.9 disqualification was set aside prior to July 1, 2005, the commissioner must consider  
11.10 granting a variance pursuant to section 245C.30 for the license holder for a program  
11.11 dealing primarily with adults. A request for reconsideration evaluated under this paragraph  
11.12 must include a letter of recommendation from the license holder that was subject to the  
11.13 prior set-aside decision addressing the individual's quality of care to children or vulnerable  
11.14 adults and the circumstances of the individual's departure from that service.

11.15 (c) When a licensed foster care provider adopts an individual who had received  
11.16 foster care services from the provider for over six months, and the adopted individual is  
11.17 required to receive a background study under section 245C.03, subdivision 1, paragraph  
11.18 (a), clause (2) or (6), the commissioner may grant a variance to the license holder under  
11.19 section 245C.30 to permit the adopted individual with a permanent disqualification  
11.20 to remain affiliated with the license holder under the conditions of the variance when  
11.21 the variance is recommended by the county of responsibility for each of the remaining  
11.22 individuals in placement in the home and the licensing agency for the home.