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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1488**

03/13/2013 Authored by Abeler, Ward, J.A., and Lesch

The bill was read for the first time and referred to the Committee on Rules and Legislative Administration

1.1 A bill for an act  
1.2 relating to human services; modifying background study provisions; requiring  
1.3 the use of NETStudy for background studies; modifying fair hearing provisions;  
1.4 amending Minnesota Statutes 2012, sections 245C.04; 245C.05, subdivision  
1.5 6; 245C.08, subdivision 1; 245C.16, subdivision 1; 245C.20, subdivision 1;  
1.6 245C.22, subdivision 1; 245C.23, subdivision 2; 245C.24, subdivision 2;  
1.7 245C.28, subdivisions 1, 3; 245C.29, subdivision 2; 256.045, subdivision 3b.

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

1.9 Section 1. Minnesota Statutes 2012, section 245C.04, is amended to read:

1.10 **245C.04 WHEN BACKGROUND STUDY MUST OCCUR.**

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

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

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

1.20 (1) registered under chapter 144D; or

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

1.24 (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~~ requests to the commissioner using the electronic system known as NETStudy before individuals specified in section 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.

(i) A license holder must initiate a new background study through ~~the commissioner's online background study system~~ NETStudy when:

(1) an individual returns to a position requiring a background study following an absence of ~~90~~ 120 or more consecutive days; or

(2) a program that discontinued providing licensed direct contact services for ~~90~~ 120 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, a substitute caregiver must receive repeat background studies at the time of each license renewal.

4.1 Subd. 2. **Other state agencies.** Applicants and license holders under the jurisdiction  
4.2 of other state agencies who are required in other statutory sections to initiate background  
4.3 studies under this chapter must submit completed background study forms to the  
4.4 commissioner before the background study subject begins in a position allowing direct  
4.5 contact in the licensed program or, where applicable, prior to being employed.

4.6 Subd. 3. **Personal care provider organizations.** (a) The commissioner shall  
4.7 conduct a background study of an individual required to be studied under section 245C.03,  
4.8 subdivision 2, at least upon application for initial enrollment under sections 256B.0651 to  
4.9 256B.0656 and 256B.0659.

4.10 (b) Organizations required to initiate background studies under sections 256B.0651  
4.11 to 256B.0656 and 256B.0659 for individuals described in section 245C.03, subdivision 2,  
4.12 must submit a completed background study ~~form~~ request to the commissioner using the  
4.13 electronic system known as NETStudy before those individuals begin a position allowing  
4.14 direct contact with persons served by the organization.

4.15 (c) Organizations required to initiate background studies under sections 256B.0651  
4.16 to 256B.0656 and 256B.0659 for individuals described in section 245C.03, subdivision 2,  
4.17 must initiate a new background study through NETStudy when an individual returns to a  
4.18 position requiring a background study following an absence of 120 or more consecutive  
4.19 days.

4.20 Subd. 4. **Supplemental nursing services agencies.** (a) The commissioner shall  
4.21 conduct a background study of an individual required to be studied under section 245C.03,  
4.22 subdivision 3, at least upon application for registration under section 144A.71, subdivision  
4.23 1.

4.24 (b) Each supplemental nursing services agency must initiate background studies  
4.25 using the electronic system known as NETStudy before an individual begins a position  
4.26 allowing direct contact with persons served by the agency and annually thereafter.

4.27 Subd. 5. **Personnel agencies; educational programs; professional services**  
4.28 **agencies.** Agencies, programs, and individuals who initiate background studies under  
4.29 section 245C.03, subdivision 4, must initiate the studies annually using the electronic  
4.30 system known as NETStudy.

4.31 Subd. 6. **Unlicensed home and community-based waiver providers of service to**  
4.32 **seniors and individuals with disabilities.** (a) Providers required to initiate background  
4.33 studies under section 256B.4912 must initiate a study using the electronic system known  
4.34 as NETStudy before the individual begins in a position allowing direct contact with  
4.35 persons served by the provider.

(b) Except as provided in paragraph (c), the providers must initiate a background study annually of an individual required to be studied under section 245C.03, subdivision 6.

(c) After an initial background study under this subdivision is initiated on an individual by a provider of both services licensed by the commissioner and the unlicensed services under this subdivision, a repeat annual background study is not required if:

(1) the provider maintains compliance with the requirements of section 245C.07, paragraph (a), regarding one individual with one address and telephone number as the person to receive sensitive background study information for the multiple programs that depend on the same background study, and that the individual who is designated to receive the sensitive background information is capable of determining, upon the request of the commissioner, whether a background study subject is providing direct contact services in one or more of the provider's programs or services and, if so, at which location or locations; and

(2) the individual who is the subject of the background study provides direct contact services under the provider's licensed program for at least 40 hours per year so the individual will be recognized by a probation officer or corrections agent to prompt a report to the commissioner regarding criminal convictions as required under section 245C.05, subdivision 7.

Subd. 7. **New study required with legal name change.** For a background study completed on an individual required to be studied under section 245C.03, the license holder or other entity that initiated the background study must initiate a new background study using the electronic system known as NETStudy when an individual who is affiliated with the license holder or other entity undergoes a legal name change.

Sec. 2. Minnesota Statutes 2012, section 245C.05, subdivision 6, is amended to read:

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

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

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

Sec. 3. Minnesota Statutes 2012, section 245C.08, subdivision 1, is amended to read:

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

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

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

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

(4) information from the Bureau of Criminal Apprehension;

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

(6) for a background study related to a child foster care application for licensure or 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 the commissioner.

(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 for purposes of completing a fingerprint-based record check with the Bureau of Criminal Apprehension.

Sec. 4. Minnesota Statutes 2012, section 245C.16, subdivision 1, is amended to read:

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

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

- (1) the recency of the disqualifying characteristic;
- (2) the recency of discharge from probation for the crimes;
- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic;
- (6) the similarity of the victim to the persons served by the program where the individual studied will have direct contact;
- (7) whether the individual has a disqualification from a previous background study that has not been set aside; and
- (8) if the individual has a disqualification which may not be set aside because it is a permanent bar under section 245C.24, subdivision 1, the commissioner may order the immediate removal of the individual from any position allowing direct contact with, or access to, persons receiving services from the program.

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

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

(e) Except for paragraph (f), this section does not apply to a background study that is also subject to the requirements under section 256B.0659, subdivisions 11 and 13, for a personal care assistant or a qualified professional as defined in section 256B.0659, subdivision 1.

(f) If the commissioner has reason to believe, based on arrest information or an active maltreatment investigation, that an individual poses an imminent risk of harm to persons receiving services, the commissioner may order that the person be continuously supervised or immediately removed pending the conclusion of the maltreatment investigation or criminal proceedings.

Sec. 5. Minnesota Statutes 2012, section 245C.20, subdivision 1, is amended to read:

Subdivision 1. **Background studies initiated by program.** A licensed program shall document the date the program initiates a background study under this chapter and the date the subject of the study first has direct contact with persons served by the program in the program's personnel files. When a background study is completed under this chapter, a licensed program shall maintain a notice that the study was undertaken and completed in the program's personnel files. Except when background studies are initiated through the commissioner's online system, if a licensed program has not received a response from the commissioner under section 245C.17 within 45 days of initiation of the background study request, the licensed program must contact the human services licensing division to inquire about the status of the study. If a license holder initiates a background study under the commissioner's online system, but the background study subject's name does not appear in the list of active or recent studies initiated by that license holder, the license holder must either contact the human services licensing division or resubmit the background study information online for that individual.

Sec. 6. Minnesota Statutes 2012, section 245C.22, subdivision 1, is amended to read:

Subdivision 1. **Time frame; response to disqualification reconsideration requests.** (a) The commissioner shall respond in writing or by electronic transmission to all reconsideration requests for which the basis for the request is that the information the commissioner relied upon to disqualify is incorrect or inaccurate within 30 working days of receipt of a complete request and all required relevant information.

(b) If the basis for a disqualified individual's reconsideration request is that the individual does not pose a risk of harm, the commissioner shall respond to the request within 15 working days after receiving ~~the~~ a complete request for reconsideration and all required relevant information.

(c) If the disqualified individual's reconsideration request is based on both the correctness or accuracy of the information the commissioner relied upon to disqualify the individual and the individual's risk of harm, the commissioner shall respond to the request within 45 working days after receiving ~~the~~ a complete request for reconsideration and all required relevant information.

Sec. 7. Minnesota Statutes 2012, section 245C.23, subdivision 2, is amended to read:

Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder if:



(1) the individual studied does not submit a timely request for reconsideration under section 245C.21;

(2) the individual submits a timely request for reconsideration, but the commissioner does not set aside the disqualification for that license holder under section 245C.22, unless the individual has a right to request a hearing under section 245C.27, 245C.28, or 256.045;

(3) an individual who has a right to request a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14 for a disqualification that has not been set aside, does not request a hearing within the specified time; or

(4) an individual submitted a timely request for a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the disqualification under section 245A.08, subdivision 5, or 256.045.

(b) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was previously ordered under section 245C.17 to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous, direct supervision when providing direct contact services, the order remains in effect pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

(c) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was not previously ordered under section 245C.17 to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous direct supervision when providing direct contact services, the commissioner shall order the individual to remain under continuous direct supervision pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

~~(e)~~ (d) For background studies related to child foster care, the commissioner shall also notify the county or private agency that initiated the study of the results of the reconsideration.

~~(d)~~ (e) For background studies related to adult foster care and family adult day services, the commissioner shall also notify the county that initiated the study of the results of the reconsideration.

Sec. 8. Minnesota Statutes 2012, section 245C.24, subdivision 2, is amended to read:

Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as otherwise provided in ~~paragraph (b)~~ this subdivision, the commissioner may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how

10.1 much time has passed, if the individual was disqualified for a crime or conduct listed in  
10.2 section 245C.15, subdivision 1.

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

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

10.19 (d) The commissioner shall consider granting a set aside under section 245C.22 or a  
10.20 variance under section 245C.30 to an individual who is now 21 years of age or older and  
10.21 who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1,  
10.22 occurring while the individual was under the age of 18. This paragraph does not apply to  
10.23 individuals who were convicted of the disqualifying crime following certification under  
10.24 section 260B.125.

10.25 Sec. 9. Minnesota Statutes 2012, section 245C.28, subdivision 1, is amended to read:

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

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

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

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

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

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

11.10 (2) the disqualification, if the disqualification is not conclusive under section  
11.11 245C.29; and

11.12 (3) the licensing sanction or denial of a license. In such cases, a fair hearing must not  
11.13 be conducted under section 256.045. If the disqualification was based on a determination  
11.14 of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the  
11.15 appeal must be submitted under sections 245A.07, subdivision 3, and 626.556, subdivision  
11.16 10i, or 626.557, subdivision 9d.

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

11.21 (1) a denial of a license under section 245A.05, or a licensing sanction under section  
11.22 245A.07, is based on a determination that the license holder is responsible for maltreatment  
11.23 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

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

12.1 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
12.2 626.557, subdivision 9d.

12.3 Sec. 10. Minnesota Statutes 2012, section 245C.28, subdivision 3, is amended to read:

12.4 Subd. 3. **Employees of public employer.** (a) A disqualified individual who is an  
12.5 employee of an employer, as defined in section 179A.03, subdivision 15, may request  
12.6 a contested case hearing under chapter 14, and specifically Minnesota Rules, parts  
12.7 1400.8505 to 1400.8612, following a reconsideration decision under section 245C.23,  
12.8 unless the disqualification is deemed conclusive under section 245C.29. The request for a  
12.9 contested case hearing must be made in writing and must be postmarked and sent within  
12.10 30 calendar days after the employee receives notice of the reconsideration decision. If  
12.11 the individual was disqualified based on a conviction or admission to any crimes listed in  
12.12 section 245C.15, the scope of the contested case hearing shall be limited solely to whether  
12.13 the individual poses a risk of harm pursuant to section 245C.22.

12.14 (b) When an individual is disqualified based on a maltreatment determination, the  
12.15 scope of the contested case hearing under paragraph (a), must include the maltreatment  
12.16 determination and the disqualification. In such cases, a fair hearing must not be conducted  
12.17 under section 256.045.

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

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

12.25 (e) In determining whether the disqualification should be set aside, the administrative  
12.26 law judge shall consider all of the characteristics that cause the individual to be disqualified,  
12.27 as well as all the factors set forth in section 245C.22, in order to determine whether the  
12.28 individual ~~poses~~ has met the burden of demonstrating that the individual does not pose  
12.29 a risk of harm. The administrative law judge's recommendation and the commissioner's  
12.30 order to set aside a disqualification that is the subject of the hearing constitutes a  
12.31 determination that the individual does not pose a risk of harm and that the individual may  
12.32 provide direct contact services in the individual program specified in the set aside.

12.33 (f) An individual may not request a contested case hearing under this section if a  
12.34 contested case hearing has previously been held regarding the individual's disqualification  
12.35 on the same basis.

13.1 Sec. 11. Minnesota Statutes 2012, section 245C.29, subdivision 2, is amended to read:

13.2 Subd. 2. **Conclusive disqualification determination.** (a) ~~Unless otherwise~~  
13.3 ~~specified in statute, a determination that:~~

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

13.6 ~~(2) a preponderance of the evidence shows that the individual committed an act or~~  
13.7 ~~acts that meet the definition of any of the crimes listed in section 245C.15; or~~

13.8 ~~(3) the individual failed to make required reports under section 626.556, subdivision~~  
13.9 ~~3, or 626.557, subdivision 3, is conclusive if: A disqualification is conclusive for purposes~~  
13.10 ~~of current and future background studies if:~~

13.11 ~~(i) (1) the commissioner has issued a final order in an appeal of that determination~~  
13.12 ~~the disqualification under section 245A.08, subdivision 5, 245C.28, subdivision 3, or~~  
13.13 ~~256.045, or a court has issued a final decision;~~

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

13.17 ~~(iii) (3) the individual did not timely request a hearing on the disqualification under~~  
13.18 ~~section 256.045 or this chapter, chapter 14, or section 256.045 after previously being~~  
13.19 ~~given the right to do so.~~

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

13.26 (c) If a ~~determination that the information relied upon to disqualify an individual~~  
13.27 ~~was correct and~~ disqualification is conclusive under this section, and the individual is  
13.28 ~~subsequently disqualified under section 245C.15, the individual has a right to request~~  
13.29 ~~reconsideration on the risk of harm under section 245C.21 unless the commissioner is~~  
13.30 ~~barred from setting aside the disqualification under 245C.24. Subsequent determinations~~  
13.31 The commissioner's decision regarding the risk of harm shall be ~~made according to section~~  
13.32 ~~245C.22 and are not subject to another the final agency decision and is not subject to a~~  
13.33 ~~hearing under this chapter, section 256.045 or chapter 14, or section 256.045.~~

13.34 Sec. 12. Minnesota Statutes 2012, section 256.045, subdivision 3b, is amended to read:

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

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

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

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

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

14.14 (b) If the disqualification is affirmed, the state human services referee shall  
14.15 determine whether the individual poses a risk of harm in accordance with the requirements  
14.16 of section 245C.22, and whether the disqualification should be set aside or not set aside.  
14.17 In determining whether the disqualification should be set aside, the human services  
14.18 referee shall consider all of the characteristics that cause the individual to be disqualified,  
14.19 including those characteristics that were not subject to review under paragraph (a), in  
14.20 order to determine whether the individual poses a risk of harm. A decision to set aside  
14.21 a disqualification that is the subject of the hearing constitutes a determination that the  
14.22 individual does not pose a risk of harm and that the individual may provide direct contact  
14.23 services in the individual program specified in the set aside. ~~If a determination that the~~  
14.24 ~~information relied upon to disqualify an individual was correct and is conclusive under~~  
14.25 ~~section 245C.29, and the individual is subsequently disqualified under section 245C.14,~~  
14.26 ~~the individual has a right to again request reconsideration on the risk of harm under section~~  
14.27 ~~245C.21. Subsequent determinations regarding risk of harm are not subject to another~~  
14.28 ~~hearing under this section.~~

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

14.32 ~~(e)~~ (d) The state human services referee shall recommend an order to the  
14.33 commissioner of health, education, or human services, as applicable, who shall issue a  
14.34 final order. The commissioner shall affirm, reverse, or modify the final disposition. Any  
14.35 order of the commissioner issued in accordance with this subdivision is conclusive upon  
14.36 the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing

- 15.1 appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to  
15.2 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided  
15.3 under section 245C.29.