

245C.23 COMMISSIONER'S RECONSIDERATION NOTICE.

Subdivision 1. **Disqualification that is rescinded or set aside.** (a) If the commissioner rescinds or sets aside a disqualification, the commissioner shall notify the applicant, license holder, or other entity in writing or by electronic transmission of the decision.

(b) In the notice from the commissioner that a disqualification has been rescinded, the commissioner must inform the applicant, license holder, or other entity that the information relied upon to disqualify the individual was incorrect.

(c) Except as provided in paragraphs (d) and (e), in the notice from the commissioner that a disqualification has been set aside, the commissioner must inform the applicant, license holder, or other entity of the reason for the individual's disqualification and that information about which factors under section 245C.22, subdivision 4, 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.

(d) When the commissioner has reason to know that a disqualified individual has received an order for expungement for the disqualifying record that does not limit the commissioner's access to the record, and the record was opened or exchanged with the commissioner for purposes of a background study under this chapter, the information provided under paragraph (c) must only inform the applicant, license holder, or other entity that the disqualifying criminal record is sealed under a court order.

(e) The notification requirements in paragraph (c) do not apply when the set aside is granted to an individual related to a background study for a licensed child care center, certified license-exempt child care center, or family child care license holder, or for a legal nonlicensed child care provider authorized under chapter 119B, and the individual is disqualified for a felony-level conviction for a drug-related offense that occurred within the past five years. The notice that the individual's disqualification is set aside must inform the applicant, license holder, or legal nonlicensed child care provider that the disqualifying criminal record is not public.

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.

(d) For background studies related to child foster care when the applicant or license holder resides in the home where services are provided, the commissioner shall also notify the county or private agency that initiated the study of the results of the reconsideration.

(e) For background studies related to family child care, legal nonlicensed child care, adult foster care programs when the applicant or license holder resides in the home where services are provided, and family adult day services, the commissioner shall also notify the county that initiated the study of the results of the reconsideration.

History: 2003 c 15 art 1 s 23; 2004 c 288 art 1 s 65,66; 1Sp2005 c 4 art 1 s 38; 2007 c 147 art 3 s 21; 2009 c 79 art 1 s 17; 2014 c 228 art 5 s 7; 2014 c 246 s 2; 2017 c 90 s 9; 1Sp2017 c 6 art 16 s 40