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; making changes to social worker licensing provisions; establishing licensing provisions for alcohol and drug counselors; amending Minnesota Statutes 2010, sections 13.46, subdivision 4; 148E.055, subdivision 1; 148E.060, subdivisions 1, 2, 3, 5, by adding a subdivision; 148E.065, subdivisions 2, 4, 5; 148E.120; 148E.195, subdivision 2; 148E.280; 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.24, subdivision 2; 245C.28, subdivisions 1, 3; 245C.29, subdivision 2; 256.045, subdivision 3b; proposing coding for new law in Minnesota Statutes, chapter 148E; proposing coding for new law as Minnesota Statutes, chapter 148F; repealing Minnesota Statutes 2010, sections 148C.01, subdivisions 1, 1a, 2, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 4, 4a, 5, 7, 9, 10, 11, 11a, 12, 12a, 13, 14, 15, 16, 17, 18; 148C.015; 148C.03, subdivisions 1, 4; 148C.0351, subdivisions 1, 3, 4; 148C.0355; 148C.04, subdivisions 1, 2, 3, 4, 5a, 6, 7; 148C.044; 148C.045; 148C.05; 148C.055; 148C.07; 148C.075; 148C.08; 148C.09, subdivisions 1, 1a, 2, 4; 148C.091; 148C.093; 148C.095; 148C.099; 148C.10, subdivisions 1, 2, 3; 148C.11; 148C.12, subdivisions 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; 148E.065, subdivision 3; Minnesota Rules, parts 4747.0010; 4747.0020; 4747.0030; 4747.0040; 4747.0050; 4747.0060; 4747.0070, subparts 1, 2, 3, 6; 4747.0200; 4747.0400, subpart 1; 4747.0700; 4747.0800; 4747.0900; 4747.1100, subparts 1, 2, 4, 5, 6, 7, 8, 9; 4747.1400; 4747.1500.

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

<u>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.</u>

<u>(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.</u>

(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 45 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) The applicant must be able to demonstrate competent knowledge of the applicable requirements of this chapter and chapter 245C, and the requirements of other licensing statutes and rules applicable to the program or services for which the applicant is seeking to be licensed. Effective January 1, 2012, the commissioner may require the applicant, except for child foster care, to demonstrate competence in the applicable licensing requirements by successfully completing a written examination. The commissioner may develop a prescribed written examination format.

(f) 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.

(g) When an applicant is a nonindividual, the applicant must provide the applicant's Minnesota tax identification number, the name, address, and Social Security number 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.~~ <u>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.</u>

(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.~~

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

(1) completing secondary education or a program leading to an equivalent credential;

(2) enrolled in an institution which provides postsecondary or vocational education;

(3) participating in a program or activity designed to promote, or remove barriers to, employment;

(4) employed for at least 80 hours per month; or

(5) incapable of doing any of the activities described in clauses (1) to (4) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the person.

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

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

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

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

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

245A.05 DENIAL OF APPLICATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as 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.

<u>(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.</u>

<u>(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.</u>

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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:

(1) that 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 NETStudy to submit all requests for background studies to the commissioner as required by this chapter.

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

Sec. 16. Minnesota Statutes 2010, 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. 17. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

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

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

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

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

(c) The commissioner, in consultation with the commissioner of corrections, shall 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 cover letter indicating the additional names of the programs or services, addresses, and background study identification numbers.

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

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

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

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

Sec. 19. Minnesota Statutes 2010, 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~~ <u>orders</u> the commissioner <u>to seal the commissioner's records</u>.

<u>(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.</u>

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

(1) the Bureau of Criminal Apprehension;

(2) the commissioner of health;

(3) a county attorney;

(4) a county sheriff;

(5) a county agency;

(6) a local chief of police;

(7) other states;

(8) the courts;

(9) the Federal Bureau of Investigation;

(10) the National Criminal Records Repository; ~~and~~ or

(11) criminal records from other states.

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

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

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

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

(1) the individual may remain in direct contact during the period in which the individual may request reconsideration as provided in section 245C.21, subdivision 2;

(2) the commissioner has set aside the individual's disqualification for that licensed program or entity identified in section 245C.03 as provided in section 245C.22, subdivision 4; or

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

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

245C.15 DISQUALIFYING CRIMES OR CONDUCT.

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

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

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

(d) An individual is disqualified under section 245C.14 if less than 15 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 the offenses listed in paragraph (a).

(e) 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 misdemeanor, the individual is disqualified but the disqualification look-back period for the offense is the period applicable to the gross misdemeanor or misdemeanor disposition.

(f) 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.

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).

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

(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.

Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a 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 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224

(assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 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); 609.611 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (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.

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

Sec. 24. Minnesota Statutes 2010, 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) This section does not apply to background studies that are also subject to the requirements under section 256B.0659, subdivisions 11 and 13, for personal care assistants and qualified professionals as defined in section 256B.0659, subdivision 1.

~~(e)~~ (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. 25. Minnesota Statutes 2010, 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 to the individual studied:

(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) 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;

~~(4)~~ (5) 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; ~~and~~

(6) 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

~~(5)~~ (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.

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 has 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 a 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.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 section, the commissioner may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how much time has passed, if the individual was disqualified for a crime or conduct listed in section 245C.15, subdivision 1.

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

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

(d) For background studies related to an application or license to provide child foster care for a specific child or children related to the applicant or license holder, the commissioner shall consider granting a variance under section 245C.30 to an individual with a disqualification under section 245C.15, subdivision 1. The variance shall be limited to the specific child or children related to the applicant or license holder.

(e) When a background study is required on a child foster care provider's former recipient of foster care services because the former recipient of foster care services returns for occasional overnight visits or temporarily resides with the foster parents, the commissioner shall consider granting a variance under section 245C.30 related to the former foster care recipient with a disqualification under section 245C.15, subdivision 1.

Sec. 28. 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.

<u>(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.</u>

Sec. 29. 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. 30. 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.15~~;~~, 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:

~~(i)~~ (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. 31. 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.

~~(c)~~ (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. 32. **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.

ARTICLE 3

SOCIAL WORKER LICENSING

Section 1. Minnesota Statutes 2010, section 148E.055, subdivision 1, is amended to read:

Subdivision 1. **License required.** (a) In order to practice social work, an individual must have a social work license under this section or section 148E.060, except when the individual is exempt from licensure according to section 148E.065.

(b) Individuals who teach professional social work knowledge, skills, and values to students and who have a social work degree from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar ~~accreditation~~ accrediting body designated by the board must have a social work license under this section or section 148E.060, except when the individual is exempt from licensure according to section 148E.065.

(c) An individual who is newly employed on or after July 1, 2015, by a city or state agency must be licensed if the individual who provides social work services as those services are defined in section 148E.010, subdivision 11, paragraph (b), is presented to the public by any title incorporating the words "social work" or "social worker."

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 2. **[148E.0555] LICENSE REQUIREMENTS; GRANDFATHERING.**

Subdivision 1. **Grandfathering period.** (a) The board shall issue a license to an applicant who meets all the requirements in this section and has submitted a completed, signed application and the required fee between January 1, 2012, and December 31, 2013.

(b) If the applicant does not provide all of the information requested by the board by December 31, 2014, the applicant is considered ineligible and the application for licensure is closed.

Subd. 2. **Eligible agency personnel.** When submitting the application for licensure, the applicant must provide evidence satisfactory to the board that the applicant is currently employed by a:

(1) Minnesota city or state agency, and:

(i) at any time within three years of the date of submitting an application for licensure was presented to the public by any title incorporating the words "social work" or "social worker," while employed by that agency for a minimum of six months; or

(ii) at any time within three years of the date of submitting an application for licensure was engaged in the practice of social work, including clinical social work, as described in section 148E.010, subdivisions 6 and 11, while employed by that agency for a minimum of six months; or

(2) private nonprofit, nontribal agency whose primary service focus addresses ethnic minority populations, and the applicant is a member of an ethnic minority population within the agency, previously exempt from licensure under sections 148D.065, subdivision 5, and 148E.065, subdivision 5, and:

(i) at any time within three years of the date of submitting an application for licensure was presented to the public by any title incorporating the words "social work" or "social worker," while employed by that agency for a minimum of six months; or

(ii) at any time within three years of the date of submitting an application for licensure was engaged in the practice of social work, including clinical social work, as described under section 148E.010, subdivisions 6 and 11, while employed by that agency for a minimum of six months.

Subd. 3. **Qualifications during grandfathering for licensure as LSW.** (a) To be licensed as a licensed social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has completed a baccalaureate degree:

(1) in social work from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board; or

(2) in psychology, sociology, human services, or social/behavioral sciences from an accredited college or university; or

(3) with a major in any field from an accredited college or university, and one year of experience in the practice of social work as described in section 148E.010, subdivision 11.

(b) To be licensed as a licensed social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has:

(1) submitted a completed, signed application and the license fee in section 148E.180;

(2) for applications submitted electronically, provided an attestation as specified by the board;

(3) submitted the criminal background check fee and a form provided by the board authorizing a criminal background check;

(4) paid the applicable license fee in section 148E.180; and

(5) not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148D.195 to 148D.240 and 148E.195 to 148E.240. If the applicant has engaged in conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(c) An application that is not completed and signed, or that is not accompanied by the correct license fee, must be returned to the applicant, along with any fee submitted, and is void.

(d) By submitting an application for licensure, an applicant authorizes the board to investigate any information provided or requested in the application. The board may request that the applicant provide additional information, verification, or documentation.

(e) Within one year of the time the board receives an application for licensure, the applicant must meet all the requirements and provide all of the information requested by the board according to paragraphs (a) and (b).

(f) Prelicensure supervised practice hours may be applied to meet the requirements of this section. Hours obtained prior to August 1, 2011, must meet the supervised practice requirements in sections 148D.100 to 148D.125, and hours obtained on or after August 1, 2011, must meet the supervised practice requirements in sections 148E.100 to 148E.125.

(g) In addition to the required supervisors listed in sections 148D.120 and 148E.120, an alternate supervisor may include a qualified professional who has a bachelor's or graduate degree, and the authority to direct the practice of the applicant, including but not limited to an agency director, or agency or consulting supervisor, as determined appropriate by the board.

(h) Unless completed at the time of application for licensure, a licensee granted a license by the board under this section must meet the supervised practice requirements in sections 148E.100 to 148E.125. If a licensee does not meet the supervised practice requirements, the board may take action according to sections 148E.255 to 148E.270.

Subd. 4. **Qualifications during grandfathering for licensure as LGSW.** (a) To be licensed as a licensed graduate social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has completed a graduate degree:

(1) in social work from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board; or

(2) in psychology, sociology, marriage and family therapy, human services, or social/behavioral sciences from an accredited college or university; or

(3) with a major in any field from an accredited college or university, and one year of experience in the practice of social work as described in section 148E.010, subdivisions 6 and 11.

(b) To be licensed as a licensed graduate social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has:

(1) submitted a completed, signed application and the license fee in section 148E.180;

(2) for applications submitted electronically, provided an attestation as specified by the board;

(3) submitted the criminal background check fee and a form provided by the board authorizing a criminal background check;

(4) paid the applicable license fee in section 148E.180; and

(5) not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148D.195 to 148D.240 and 148E.195 to 148E.240. If the applicant has engaged in conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(c) An application that is not completed and signed, or that is not accompanied by the correct license fee, must be returned to the applicant, along with any fee submitted, and is void.

(d) By submitting an application for licensure, an applicant authorizes the board to investigate any information provided or requested in the application. The board may request that the applicant provide additional information, verification, or documentation.

(e) Within one year of the time the board receives an application for licensure, the applicant must meet all the requirements and provide all of the information requested by the board according to paragraphs (a) and (b).

(f) Prelicensure supervised practice hours may be applied to meet the requirements of this section. Hours obtained prior to August 1, 2011, must meet the supervised practice requirements in sections 148D.100 to 148D.125, and hours obtained on or after August 1, 2011, must meet the supervised practice requirements in sections 148E.100 to 148E.125.

(g) In addition to the required supervisors listed in sections 148D.120 and 148E.120, an alternate supervisor of nonclinical practice may include a qualified professional who has a bachelor's or graduate degree, and the authority to direct the practice of the applicant, including but not limited to an agency director, or agency or consulting supervisor, as determined appropriate by the board.

(h) Unless completed at the time of application for licensure, a licensee granted a license by the board under this section must meet the supervised practice requirements specified in sections 148E.100 to 148E.125. If a licensee does not meet the supervised practice requirements, the board may take action according to sections 148E.255 to 148E.270.

Subd. 5. **Qualifications during grandfathering for licensure as LISW.** (a) To be licensed as a licensed independent social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has completed a graduate degree:

(1) in social work from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board; or

(2) in psychology, sociology, marriage and family therapy, human services, or social/behavioral sciences from an accredited college or university; or

(3) with a major in any field from an accredited college or university, and one year of experience in the practice of social work according to section 148E.010, subdivision 11.

(b) To be licensed as a licensed independent social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has:

(1) practiced social work as defined in section 148E.010, subdivision 11, and has met the supervised practice requirements as follows: (i) for hours obtained prior to August 1, 2011, has met the requirements in sections 148D.100 to 148D.125; (ii) for hours obtained after August 1, 2011, has met the requirements in sections 148E.100 to 148E.125; and (iii) in addition to the supervisors listed in section 148D.120 or 148E.120, an alternate supervisor of nonclinical practice may include a qualified professional who has a bachelor's or graduate degree and the authority to direct the practice of the applicant, including but not limited to an agency director, or agency or consulting supervisor as determined by the board.

(2) submitted a completed, signed application and the license fee in section 148E.180;

(3) for applications submitted electronically, provided an attestation as specified by the board;

(4) submitted the criminal background check fee and a form provided by the board authorizing a criminal background check;

(5) paid the applicable license fee specified in section 148E.180; and

(6) not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148D.195 to 148D.240 and 148E.195 to 148E.240. If the

applicant has engaged in conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(c) An application that is not completed, signed, and accompanied by the correct license fee, must be returned to the applicant, along with any fee submitted, and is void.

(d) By submitting an application for licensure, an applicant authorizes the board to investigate any information provided or requested in the application. The board may request that the applicant provide additional information, verification, or documentation.

(e) Within one year of the time the board receives an application for licensure, the applicant must meet all the requirements and provide all of the information requested by the board according to paragraphs (a) and (b).

(f) Upon licensure, a licensed independent social worker who practices clinical social work must meet the supervised practice requirements specified in sections 148E.100 to 148E.125. If a licensee does not meet the supervised practice requirements, the board may take action according to sections 148E.255 to 148E.270.

Subd. 6. **Qualifications during grandfathering for licensure as LICSW.** (a) To be licensed as a licensed independent clinical social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has:

(1) completed a graduate degree in social work from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board; or

(2) completed a graduate degree and is a mental health professional according to section 245.462, subdivision 18, clauses (1) to (6).

(b) To be licensed as a licensed independent clinical social worker, an applicant for licensure under this section must provide evidence satisfactory to the board that the individual has:

(1) practiced clinical social work as defined in section 148E.010, subdivision 6, including both diagnosis and treatment, and has met the supervised practice requirements specified in sections 148E.100 to 148E.125, excluding the 1,800 hours of direct clinical client contact specified in section 148E.115, subdivision 1, except that supervised practice hours obtained prior to August 1, 2011, must meet the requirements in sections 148D.100 to 148D.125;

(2) submitted a completed, signed application and the license fee in section 148E.180;

(3) for applications submitted electronically, provided an attestation as specified by the board;

(4) submitted the criminal background check fee and a form provided by the board authorizing a criminal background check;

(5) paid the license fee in section 148E.180; and

(6) not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148D.195 to 148D.240 and 148E.195 to 148E.240. If the applicant has engaged in conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(c) An application which is not completed, signed, and accompanied by the correct license fee, must be returned to the applicant, along with any fee submitted, and is void.

(d) By submitting an application for licensure, an applicant authorizes the board to investigate any information provided or requested in the application. The board may request that the applicant provide additional information, verification, or documentation.

(e) Within one year of the time the board receives an application for licensure, the applicant must meet all the requirements and provide all of the information requested by the board.

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 3. **[148E.0556] LISW TRANSITION PERIOD EXCEPTION.**

At any time on or after January 1, 2012, until December 31, 2016, to qualify for a licensed independent social worker license, an applicant must submit an application to the board for a licensed independent social worker license and:

(1) hold a current licensed graduate social worker license issued through grandfathering under section 148E.0555, subdivision 4, and:

(i) meet all requirements in effect at the time of application according to section 148E.055, subdivision 4, paragraph (a), excluding clause (1); and

(ii) meet the supervised practice requirements according to section 148E.055, subdivision 4, paragraph (a), clause (2); or

(2) hold a current licensed graduate social worker issued through grandfathering prior to July 1, 1996, and:

(i) meet all requirements in effect at the time of application according to section 148E.055, subdivision 4, paragraph (a), excluding clause (1); and

(ii) meet the supervised practice requirements according to section 148E.055, subdivision 4, paragraph (a), clause (2).

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 4. **[148E.0557] LICSW TRANSITION PERIOD EXCEPTION.**

At any time on or after January 1, 2012, until December 31, 2016, to qualify for a licensed independent clinical social worker license, an applicant must submit an application to the board for a licensed independent clinical social worker license and:

(1) hold a current licensed graduate social worker or licensed independent social worker license issued through grandfathering under section 148E.0555, subdivision 4 or 5, and:

(i) meet all requirements in effect at the time of application according to section 148E.055, subdivision 5, paragraph (a), excluding clause (1); and

(ii) meet the supervised practice requirements according to section 148E.055, subdivision 5, paragraph (a), clause (3); or

(2) hold a current licensed graduate social worker or licensed independent social worker license issued through grandfathering prior to July 1, 1996, and:

(i) meet all requirements in effect at the time of application according to section 148E.055, subdivision 5, paragraph (a), excluding clause (1); and

(ii) meet the supervised practice requirements according to section 148E.055, subdivision 5, paragraph (a), clause (3).

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 5. Minnesota Statutes 2010, section 148E.060, subdivision 1, is amended to read:

Subdivision 1. **Students and other persons not currently licensed in another jurisdiction.** (a) The board may issue a temporary license to practice social work to an applicant who is not licensed or credentialed to practice social work in any jurisdiction but has:

(1) applied for a license under section 148E.055;

(2) applied for a temporary license on a form provided by the board;

(3) submitted a form provided by the board authorizing the board to complete a criminal background check;

(4) passed the applicable licensure examination provided for in section 148E.055;

(5) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or graduate degree in social work from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar ~~accreditation~~ accrediting body designated by the board, or a doctorate in social work from an accredited university; and

(6) not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148E.195 to 148E.240. If the applicant has engaged in

conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(b) A temporary license issued under this subdivision expires after six months.

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 6. Minnesota Statutes 2010, section 148E.060, subdivision 2, is amended to read:

Subd. 2. **Emergency situations and persons currently licensed in another jurisdiction.** (a) The board may issue a temporary license to practice social work to an applicant who is licensed or credentialed to practice social work in another jurisdiction, may or may not have applied for a license under section 148E.055, and has:

(1) applied for a temporary license on a form provided by the board;

(2) submitted a form provided by the board authorizing the board to complete a criminal background check;

(3) submitted evidence satisfactory to the board that the applicant is currently licensed or credentialed to practice social work in another jurisdiction;

(4) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or graduate degree in social work from a program accredited by the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar ~~accreditation~~ accrediting body designated by the board, or a doctorate in social work from an accredited university; and

(5) not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148E.195 to 148E.240. If the applicant has engaged in conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(b) A temporary license issued under this subdivision expires after six months.

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 7. Minnesota Statutes 2010, section 148E.060, is amended by adding a subdivision to read:

Subd. 2a. **Programs in candidacy status.** (a) The board may issue a temporary license to practice social work to an applicant who has completed the requirements for a baccalaureate or graduate degree in social work from a program in candidacy status with the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board, and has:

(1) applied for a license under section 148E.055;

(2) applied for a temporary license on a form provided by the board;

(3) submitted a form provided by the board authorizing the board to complete a criminal background check;

(4) passed the applicable licensure examination provided for in section 148E.055; and

(5) not engaged in conduct that is in violation of the standards of practice specified in sections 148E.195 to 148E.240. If the applicant has engaged in conduct that is in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(b) A temporary license issued under this subdivision expires after 12 months but may be extended at the board's discretion upon a showing that the social work program remains in good standing with the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board. If the board receives notice from the Council on Social Work Education, the Canadian Association of Schools of Social Work, or a similar accrediting body designated by the board that the social work program is not in good standing, or that the accreditation will not be granted to the social work program, the temporary license is immediately revoked.

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 8. Minnesota Statutes 2010, section 148E.060, subdivision 3, is amended to read:

Subd. 3. **Teachers.** (a) The board may issue a temporary license to practice social work to an applicant whose permanent residence is outside the United States, who is teaching social work at an academic institution in Minnesota for a period not to exceed 12 months, who may or may not have applied for a license under section 148E.055, and who has:

(1) applied for a temporary license on a form provided by the board;

(2) submitted a form provided by the board authorizing the board to complete a criminal background check;

(3) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or graduate degree in social work; and

(4) has not engaged in conduct that was or would be in violation of the standards of practice specified in sections 148E.195 to 148E.240. If the applicant has engaged in conduct that was or would be in violation of the standards of practice, the board may take action according to sections 148E.255 to 148E.270.

(b) A temporary license issued under this subdivision expires after 12 months.

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 9. Minnesota Statutes 2010, section 148E.060, subdivision 5, is amended to read:

Subd. 5. **Temporary license term.** ~~(a)~~ A temporary license is valid until expiration, or until the board issues or denies the license according to section 148E.055, or until the board revokes the temporary license, whichever comes first. A temporary license is nonrenewable.

~~(b) A temporary license issued according to subdivision 1 or 2 expires after six months.~~

~~(c) A temporary license issued according to subdivision 3 expires after 12 months.~~

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 10. Minnesota Statutes 2010, section 148E.065, subdivision 2, is amended to read:

Subd. 2. **Students.** An internship, externship, or any other social work experience that is required for the completion of an accredited program of social work does not constitute the practice of social work under this chapter. Students exempted under this section may use the title "social work intern."

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 11. Minnesota Statutes 2010, section 148E.065, subdivision 4, is amended to read:

Subd. 4. **City, county, and state agency social workers.** (a) The licensure of city, county, and state agency social workers is voluntary~~.~~, except an individual who is newly employed by a city or state agency on or after July 1, 2015, must be licensed if the individual who provides social work services, as those services are defined in section 148E.010, subdivision 11, paragraph (b), is presented to the public by any title incorporating the words "social work" or "social worker."

(b) City, county, and state agencies employing social workers are not required to employ licensed social workers.

EFFECTIVE DATE. This section is effective July 1, 2015.

Sec. 12. Minnesota Statutes 2010, section 148E.065, subdivision 5, is amended to read:

Subd. 5. **Tribes and private nonprofit agencies; voluntary licensure.** (a) The licensure of social workers who are employed by federally recognized tribes~~, or by private nonprofit agencies~~ is voluntary.

(b) The licensure of private nonprofit nontribal agency social workers whose primary service focus addresses ethnic minority populations, and who are themselves members of ethnic minority populations within those agencies, is voluntary, until July 1, 2015, when individuals who practice social work must be licensed as required under section 148E.055, subdivision 1.

EFFECTIVE DATE. This section is effective July 1, 2015.

Sec. 13. Minnesota Statutes 2010, section 148E.120, is amended to read:

148E.120 REQUIREMENTS OF SUPERVISORS.

Subdivision 1. **Supervisors licensed as social workers.** (a) Except as provided in ~~paragraph (d)~~ subdivision 2, to be eligible to provide supervision under this section, a social worker must:

(1) have completed 30 hours of training in supervision through coursework from an accredited college or university, or through continuing education in compliance with sections 148E.130 to 148E.170;

(2) be competent in the activities being supervised; and

(3) attest, on a form provided by the board, that the social worker has met the applicable requirements specified in this section and sections 148E.100 to 148E.115. The board may audit the information provided to determine compliance with the requirements of this section.

(b) A licensed independent clinical social worker providing clinical licensing supervision to a licensed graduate social worker or a licensed independent social worker must have at least 2,000 hours of experience in authorized social work practice, including 1,000 hours of experience in clinical practice after obtaining a licensed independent clinical social worker license.

(c) A licensed social worker, licensed graduate social worker, licensed independent social worker, or licensed independent clinical social worker providing nonclinical licensing supervision must have completed the supervised practice requirements specified in section 148E.100, 148E.105, 148E.106, 148E.110, or 148E.115, as applicable.

~~(d) If the board determines that supervision is not obtainable from an individual meeting the requirements specified in paragraph (a), the board may approve an alternate supervisor according to subdivision 2.~~

Subd. 2. **Alternate supervisors.** (a) ~~The board may approve an alternate supervisor if:~~ The board may approve an alternate supervisor as determined in this subdivision. The board shall approve up to 25 percent of the required supervision hours by a licensed mental health professional who is competent and qualified to provide supervision according to the mental health professional's respective licensing board, as established by section 245.462, subdivision 18, clauses (1) to (6), or 245.4871, subdivision 27, clauses (1) to (6).

~~(1) the board determines that supervision is not obtainable according to paragraph (b);~~

~~(2) the licensee requests in the supervision plan submitted according to section 148E.125, subdivision 1, that an alternate supervisor conduct the supervision;~~

~~(3) the licensee describes the proposed supervision and the name and qualifications of the proposed alternate supervisor; and~~

~~(4) the requirements of paragraph (d) are met.~~

~~(b) The board may determine that supervision is not obtainable if:~~

~~(1) the licensee provides documentation as an attachment to the supervision plan submitted according to section 148E.125, subdivision 1, that the licensee has conducted a thorough search for a supervisor meeting the applicable licensure requirements specified in sections 148E.100 to 148E.115;~~

~~(2) the licensee demonstrates to the board's satisfaction that the search was unsuccessful; and~~

~~(3) the licensee describes the extent of the search and the names and locations of the persons and organizations contacted.~~

~~(c) The requirements specified in paragraph (b) do not apply to obtaining licensing supervision for social work practice if the board determines that there are five or fewer supervisors meeting the applicable licensure requirements in sections 148E.100 to 148E.115 in the county where the licensee practices social work.~~

~~(d) An alternate supervisor must:~~

~~(1) be an unlicensed social worker who is employed in, and provides the supervision in, a setting exempt from licensure by section 148E.065, and who has qualifications equivalent to the applicable requirements specified in sections 148E.100 to 148E.115;~~

~~(2) be a social worker engaged in authorized practice in Iowa, Manitoba, North Dakota, Ontario, South Dakota, or Wisconsin, and has the qualifications equivalent to the applicable requirements specified in sections 148E.100 to 148E.115; or~~

~~(3) be a licensed marriage and family therapist or a mental health professional as established by section 245.462, subdivision 18, or 245.4871, subdivision 27, or an equivalent mental health professional, as determined by the board, who is licensed or credentialed by a state, territorial, provincial, or foreign licensing agency.~~

~~(e) In order to qualify to provide clinical supervision of a licensed graduate social worker or licensed independent social worker engaged in clinical practice, the alternate~~

~~supervisor must be a mental health professional as established by section 245.462, subdivision 18, or 245.4871, subdivision 27, or an equivalent mental health professional, as determined by the board, who is licensed or credentialed by a state, territorial, provincial, or foreign licensing agency.~~

(b) The board shall approve up to 100 percent of the required supervision hours by an alternate supervisor if the board determines that:

(1) there are five or fewer supervisors in the county where the licensee practices social work who meet the applicable licensure requirements in subdivision 1;

(2) the supervisor is an unlicensed social worker who is employed in, and provides the supervision in, a setting exempt from licensure by section 148E.065, and who has qualifications equivalent to the applicable requirements specified in sections 148E.100 to 148E.115;

(3) the supervisor is a social worker engaged in authorized social work practice in Iowa, Manitoba, North Dakota, Ontario, South Dakota, or Wisconsin, and has the qualifications equivalent to the applicable requirements in sections 148E.100 to 148E.115; or

(4) the applicant or licensee is engaged in nonclinical authorized social work practice outside of Minnesota and the supervisor meets the qualifications equivalent to the applicable requirements in sections 148E.100 to 148E.115, or the supervisor is an equivalent mental health professional, as determined by the board, who is credentialed by a state, territorial, provincial, or foreign licensing agency; or

(5) the applicant or licensee is engaged in clinical authorized social work practice outside of Minnesota and the supervisor meets qualifications equivalent to the applicable requirements in section 148E.115, or the supervisor is an equivalent mental health professional as determined by the board, who is credentialed by a state, territorial, provincial, or foreign licensing agency.

(c) In order for the board to consider an alternate supervisor under this section, the licensee must:

(1) request in the supervision plan and verification submitted according to section 148E.125, that an alternate supervisor conduct the supervision; and

(2) describe the proposed supervision and the name and qualifications of the proposed alternate supervisor. The board may audit the information provided to determine compliance with the requirements of this section.

EFFECTIVE DATE. This section is effective August 1, 2011.

Sec. 14. Minnesota Statutes 2010, section 148E.195, subdivision 2, is amended to read:

Subd. 2. **Representations.** (a) No applicant or other individual may be represented to the public by any title incorporating the words "social work" or "social worker" unless the individual holds a license according to ~~sections 148E.055 and 148E.060 or practices in a setting exempt from licensure according to~~ this section ~~148E.065~~.

(b) In all professional use of a social worker's name, the social worker must use the license designation "LSW" or "licensed social worker" for a licensed social worker, "LGSW" or "licensed graduate social worker" for a licensed graduate social worker, "LISW" or "licensed independent social worker" for a licensed independent social worker, or "LICSW" or "licensed independent clinical social worker" for a licensed independent clinical social worker.

(c) Public statements or advertisements must not be untruthful, misleading, false, fraudulent, deceptive, or potentially exploitative of clients, former clients, interns, students, supervisees, or the public.

(d) A social worker must not:

(1) use licensure status as a claim, promise, or guarantee of successful service;

(2) obtain a license by cheating or employing fraud or deception;

(3) make false statements or misrepresentations to the board or in materials submitted to the board; or

(4) engage in conduct that has the potential to deceive or defraud a social work client, intern, student, supervisee, or the public.

EFFECTIVE DATE. This section is effective July 1, 2015.

Sec. 15. Minnesota Statutes 2010, section 148E.280, is amended to read:

148E.280 USE OF TITLES.

No individual may be presented to the public by any title incorporating the words "social work" or "social worker" or in the titles in section 148E.195, unless that individual is employed by a county or holds a license under ~~sections 148E.055 and 148E.060, or practices in a setting exempt from licensure under~~ this section ~~148E.065~~.

EFFECTIVE DATE. This section is effective July 1, 2015.

Sec. 16. **REPEALER.**

Minnesota Statutes 2010, section 148E.065, subdivision 3, is repealed August 1, 2011.

ARTICLE 4

ALCOHOL AND DRUG COUNSELOR

Section 1. **[148F.001] SCOPE.**

This chapter applies to all applicants and licensees, all persons who use the title alcohol and drug counselor, and all persons in or out of this state who provide alcohol and drug counseling services to clients who reside in this state unless there are specific applicable exemptions provided by law.

Sec. 2. **[148F.010] DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of this chapter, the terms in this section have the meanings given.

Subd. 2. **Abuse.** "Abuse" means a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following occurring at any time during the same 12-month period:

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home;

(2) recurrent substance use in situations in which it is physically hazardous;

(3) recurrent substance-related legal problems; and

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

Subd. 3. **Accredited school or educational program.** "Accredited school or educational program" means a school of alcohol and drug counseling, university, college, or other postsecondary education program that, at the time the student completes the program, is accredited by a regional accrediting association whose standards are substantially equivalent to those of the North Central Association of Colleges and Postsecondary Education Institutions or an accrediting association that evaluates schools of alcohol and drug counseling for inclusion of the education, practicum, and core function standards in this chapter.

Subd. 4. **Alcohol and drug counseling practicum.** "Alcohol and drug counseling practicum" means formal experience gained by a student and supervised by a person either licensed under this chapter or exempt under its provisions, as part of an accredited school or educational program of alcohol and drug counseling.

Subd. 5. **Alcohol and drug counselor.** "Alcohol and drug counselor" means a person who holds a valid license issued under this chapter to engage in the practice of alcohol and drug counseling.

Subd. 6. **Applicant.** "Applicant" means a person seeking a license or temporary permit under this chapter.

Subd. 7. **Board.** "Board" means the Board of Behavioral Health and Therapy established in section 148B.51.

Subd. 8. **Client.** "Client" means an individual who is the recipient of any of the alcohol and drug counseling services described in this section. Client also means "patient" as defined in Minnesota Statutes, section 144.291, subdivision 2, paragraph (g).

Subd. 9. **Competence.** "Competence" means the ability to provide services within the practice of alcohol and drug counseling as defined in subdivision 18, that:

(1) are rendered with reasonable skill and safety;

(2) meet minimum standards of acceptable and prevailing practice as described in section 148F.120; and

(3) take into account human diversity.

Subd. 10. **Core functions.** "Core functions" means the following services provided in alcohol and drug treatment:

(1) "screening" means the process by which a client is determined appropriate and eligible for admission to a particular program;

(2) "intake" means the administrative and initial assessment procedures for admission to a program;

(3) "orientation" means describing to the client the general nature and goals of the program; rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program; in a nonresidential program, the hours during which services are available; treatment costs to be borne by the client, if any; and client's rights;

(4) "assessment" means those procedures by which a counselor identifies and evaluates an individual's strengths, weaknesses, problems, and needs to develop a treatment plan or make recommendations for level of care placement;

(5) "treatment planning" means the process by which the counselor and the client identify and rank problems needing resolution; establish agreed upon immediate and long-term goals; and decide on a treatment process and the sources to be utilized;

(6) "counseling" means the utilization of special skills to assist individuals, families, or groups in achieving objectives through exploration of a problem and its ramifications; examination of attitudes and feelings; consideration of alternative solutions; and decision making;

(7) "case management" means activities that bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals;

(8) "crisis intervention" means those services which respond to an alcohol or other drug user's needs during acute emotional or physical distress;

(9) "client education" means the provision of information to clients who are receiving or seeking counseling concerning alcohol and other drug abuse and the available services and resources;

(10) "referral" means identifying the needs of the client which cannot be met by the counselor or agency and assisting the client to utilize the support systems and available community resources;

(11) "reports and record keeping" means charting the results of the assessment and treatment plan and writing reports, progress notes, discharge summaries, and other client-related data; and

(12) "consultation with other professionals regarding client treatment and services" means communicating with other professionals in regard to client treatment and services to assure comprehensive, quality care for the client.

Subd. 11. **Credential.** "Credential" means a license, permit, certification, registration, or other evidence of qualification or authorization to engage in the practice of an occupation in any state or jurisdiction.

Subd. 12. **Dependent on the provider.** "Dependent on the provider" means that the nature of a former client's emotional or cognitive condition and the nature of the services by the provider are such that the provider knows or should have known that the former client is unable to withhold consent to sexually exploitative behavior by the provider.

Subd. 13. **Familial.** "Familial" means of, involving, related to, or common to a family member as defined in subdivision 14.

Subd. 14. **Family member or member of the family.** "Family member" or "member of the family" means a spouse, parent, offspring, sibling, grandparent, grandchild, uncle, aunt, niece, or nephew, or an individual who serves in the role of one of the foregoing.

Subd. 15. **Group clients.** "Group clients" means two or more individuals who are each a corecipient of alcohol and drug counseling services. Group clients may include, but are not limited to, two or more family members, when each is the direct recipient of services, or each client receiving group counseling services.

Subd. 16. **Human diversity.** "Human diversity" means individual client differences that are associated with the client's cultural group, including race, ethnicity, national origin, religious affiliation, language, age, gender, gender identity, physical and mental capabilities, sexual orientation, marital status, or socioeconomic status.

Subd. 17. **Informed consent.** "Informed consent" means an agreement between a provider and a client that authorizes the provider to engage in a professional activity affecting the client. Informed consent requires:

(1) the provider to give the client sufficient information so the client is able to decide knowingly whether to agree to the proposed professional activity;

(2) the provider to discuss the information in language that the client can reasonably be expected to understand; and

(3) the client's consent to be given without undue influence by the provider.

Subd. 18. **Licensee.** "Licensee" means a person who holds a valid license under this chapter.

Subd. 19. **Practice of alcohol and drug counseling.** "Practice of alcohol and drug counseling" means the observation, description, evaluation, interpretation, and modification of human behavior by the application of core functions as it relates to the harmful or pathological use or abuse of alcohol or other drugs. The practice of alcohol and drug counseling includes, but is not limited to, the following activities, regardless of whether the counselor receives compensation for the activities:

(1) assisting clients who use alcohol or drugs, evaluating that use, and recognizing dependency if it exists;

(2) assisting clients with alcohol or other drug problems to gain insight and motivation aimed at resolving those problems;

(3) providing experienced professional guidance, assistance, and support for the client's efforts to develop and maintain a responsible functional lifestyle;

(4) recognizing problems outside the scope of the counselor's training, skill, or competence and referring the client to other appropriate professional services;

(5) diagnosing the level of alcohol or other drug use involvement to determine the level of care;

(6) individual planning to prevent a return to harmful alcohol or chemical use;

(7) alcohol and other drug abuse education for clients;

(8) consultation with other professionals;

(9) gaining diversity awareness through ongoing training and education; and

(10) providing the above services, as needed, to family members or others who are directly affected by someone using alcohol or other drugs.

Subd. 20. **Practice foundation.** "Practice foundation" means that an alcohol and drug counseling service or continuing education activity is based upon observations, methods, procedures, or theories that are generally accepted by the professional community in alcohol and drug counseling.

Subd. 21. **Private information.** "Private information" means any information, including, but not limited to, client records as defined in section 148F.150, test results, or test interpretations developed during a professional relationship between a provider and a client.

Subd. 22. **Provider.** "Provider" means a licensee, a temporary permit holder, or an applicant.

Subd. 23. **Public statement.** "Public statement" means any statement, communication, or representation, by a provider to the public regarding the provider or the provider's professional services or products. Public statements include, but are not limited to, advertising, representations in reports or letters, descriptions of credentials and qualifications, brochures and other descriptions of services, directory listings, personal resumes or curricula vitae, comments for use in the media, websites, grant and credentialing applications, or product endorsements.

Subd. 24. **Report.** "Report" means any written or oral professional communication, including a letter, regarding a client or subject that includes one or more of the following: historical data, behavioral observations, opinions, diagnostic or evaluative statements, or recommendations. The testimony of a provider as an expert or fact witness in a legal proceeding also constitutes a report. For purposes of this chapter, letters of recommendation for academic or career purposes are not considered reports.

Subd. 25. **Significant risks and benefits.** "Significant risks and benefits" means those risks and benefits that are known or reasonably foreseeable by the provider, including the possible range and likelihood of outcomes, and that are necessary for the client to know in order to decide whether to give consent to proposed services or to reasonable alternative services.

Subd. 26. **Student.** "Student" means an individual who is enrolled in a program in alcohol and drug counseling at an accredited educational institution, or who is taking an alcohol and drug counseling course or practicum for credit.

Subd. 27. **Supervisee.** "Supervisee" means an individual whose supervision is required to obtain credentialing by a licensure board or to comply with a board order.

Subd. 28. **Supervisor.** "Supervisor" means a licensed alcohol and drug counselor licensed under this chapter or other licensed professional practicing alcohol and drug counseling under section 148F.110, who meets the requirements of section 148F.040, subdivision 3, and who provides supervision to persons seeking licensure under section 148F.025, subdivision 3, paragraph (2), clause (ii).

Subd. 29. **Test.** "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing, describing, or predicting personality, behavior, traits, cognitive functioning, aptitudes, attitudes, skills, values, interests, abilities, or other characteristics of individuals.

Subd. 30. **Unprofessional conduct.** "Unprofessional conduct" means any conduct violating sections 148F.001 to 148F.205, or any conduct that fails to conform to the minimum standards of acceptable and prevailing practice necessary for the protection of the public.

Subd. 31. **Variance.** "Variance" means board-authorized permission to comply with a law or rule in a manner other than that generally specified in the law or rule.

Sec. 3. **[148F.015] DUTIES OF THE BOARD.**

The board shall:

(1) adopt and enforce rules for licensure and regulation of alcohol and drug counselors and temporary permit holders, including a standard disciplinary process and rules of professional conduct;

(2) issue licenses and temporary permits to qualified individuals under sections148F.001 to 148F.205;

(3) carry out disciplinary actions against licensees and temporary permit holders;

(4) educate the public about the existence and content of the regulations for alcohol and drug counselor licensing to enable consumers to file complaints against licensees who may have violated the rules; and

(5) collect nonrefundable license fees for alcohol and drug counselors.

Sec. 4. **[148F.020] DUTY TO MAINTAIN CURRENT INFORMATION.**

All individuals licensed as alcohol and drug counselors, all individuals with temporary permits, and all applicants for licensure must notify the board within 30 days of the occurrence of any of the following:

(1) a change of name, address, place of employment, and home or business telephone number; and

(2) a change in any other application information.

Sec. 5. **[148F.025] REQUIREMENTS FOR LICENSURE.**

Subdivision 1. **Form; fee.** Individuals seeking licensure as a licensed alcohol and drug counselor shall fully complete and submit a notarized written application on forms provided by the board together with the appropriate fee in the amount set by the board. No portion of the fee is refundable.

Subd. 2. **Education requirements for licensure.** An applicant for licensure must submit evidence satisfactory to the board that the applicant has:

(1) received a bachelor's degree from an accredited school or educational program; and

(2) received 18 semester credits or 270 clock hours of academic course work and 880 clock hours of supervised alcohol and drug counseling practicum from an accredited school or education program. The course work and practicum do not have to be part of the bachelor's degree earned under clause (1). The academic course work must be in the following areas:

(i) an overview of the transdisciplinary foundations of alcohol and drug counseling, including theories of chemical dependency, the continuum of care, and the process of change;

(ii) pharmacology of substance abuse disorders and the dynamics of addiction, including medication-assisted therapy;

(iii) professional and ethical responsibilities;

(iv) multicultural aspects of chemical dependency;

(v) co-occurring disorders; and

(vi) the core functions defined in section 148F.010, subdivision 10.

Subd. 3. **Examination requirements for licensure.** (a) To be eligible for licensure, the applicant must:

(1) satisfactorily pass the International Certification and Reciprocity Consortium Alcohol and Other Drug Abuse Counselor (IC&RC AODA) written examination adopted June 2008, or other equivalent examination as determined by the board; or

(2) satisfactorily pass a written examination for licensure as an alcohol and drug counselor, as determined by the board, and one of the following:

(i) complete a written case presentation and pass an oral examination that demonstrates competence in the core functions as defined in section 148F.010, subdivision 10; or

(ii) complete 2,000 hours of postdegree supervised professional practice under section 148F.040.

Subd. 4. **Background investigation.** The applicant must sign a release authorizing the board to obtain information from the Bureau of Criminal Apprehension, the Federal Bureau of Investigation, the Department of Human Services, the Office of Health Facilities Complaints, and other agencies specified by the board. After the board has given written notice to an individual who is the subject of a background investigation, the agencies shall assist the board with the investigation by giving the board criminal conviction data, reports about substantiated maltreatment of minors and vulnerable adults, and other information. The board may contract with the commissioner of human services to obtain criminal history data from the Bureau of Criminal Apprehension.

Sec. 6. **[148F.030] RECIPROCITY.**

(a) An individual who holds a current license or national certification as an alcohol and drug counselor from another jurisdiction must file with the board a completed application for licensure by reciprocity containing the information required in this section.

(b) The applicant must request the credentialing authority of the jurisdiction in which the credential is held to send directly to the board a statement that the credential is current and in good standing, the applicant's qualifications that entitled the applicant to the credential, and a copy of the jurisdiction's credentialing laws and rules that were in effect at the time the applicant obtained the credential.

(c) The board shall issue a license if the board finds that the requirements which the applicant met to obtain the credential from the other jurisdiction were substantially similar to the current requirements for licensure in this chapter and that the applicant is not otherwise disqualified under section 148F.090.

Sec. 7. **[148F.035] TEMPORARY PERMIT.**

(a) The board may issue a temporary permit to practice alcohol and drug counseling to an individual prior to being licensed under this chapter if the person:

(1) received an associate degree, or an equivalent number of credit hours, completed 880 clock hours of supervised alcohol and drug counseling practicum, and 18 semester credits or 270 clock hours of academic course work in alcohol and drug counseling from an accredited school or education program; and

(2) completed academic course work in the following areas:

(i) overview of the transdisciplinary foundations of alcohol and drug counseling, including theories of chemical dependency, the continuum of care, and the process of change;

(ii) pharmacology of substance abuse disorders and the dynamics of addiction, including medication-assisted therapy;

(iii) professional and ethical responsibilities;

(iv) multicultural aspects of chemical dependency;

(v) co-occurring disorders; and

(vi) core functions defined in section 148F.010, subdivision 10.

(b) An individual seeking a temporary permit shall fully complete and submit a notarized written application on forms provided by the board together with the nonrefundable temporary permit fee specified in section 148F.115, subdivision 3, clause (1).

(c) An individual practicing under this section:

(1) must be supervised by a licensed alcohol and drug counselor or other licensed professional practicing alcohol and drug counseling under section 148F.110, subdivision 1;

(2) is subject to all statutes and rules to the same extent as an individual who is licensed under this chapter, except the individual is not subject to the continuing education requirements of section 148F.075; and

(3) must use the title "Alcohol and Drug Counselor-Trainee" or the letters "ADC-T" in professional activities.

(d) (1) An individual practicing with a temporary permit must submit a renewal application annually on forms provided by the board with the renewal fee required in section 148F.115, subdivision 3.

(2) A temporary permit is automatically terminated if not renewed, upon a change in supervision, or upon the granting or denial by the board of the applicant's application for licensure as an alcohol and drug counselor.

(3) A temporary permit may be renewed no more than five times.

Sec. 8. **[148F.040] SUPERVISED POSTDEGREE PROFESSIONAL PRACTICE.**

Subdivision 1. **Supervision.** For the purposes of this section, "supervision" means documented interactive consultation, which, subject to the limitations of subdivision 4, paragraph (b), may be conducted in person, by telephone, or by audio or audiovisual electronic device by a supervisor with a supervisee. The supervision must be adequate to ensure the quality and competence of the activities supervised. Supervisory consultation must include discussions on the nature and content of the practice of the supervisee, including, but not limited to, a review of a representative sample of alcohol and drug counseling services in the supervisee's practice.

Subd. 2. **Postdegree professional practice.** "Postdegree professional practice" means paid or volunteer work experience and training following graduation from an accredited school or educational program that involves professional oversight by a supervisor approved by the board and that satisfies the supervision requirements in subdivision 4.

Subd. 3. **Supervisor requirements.** For the purposes of this section, a supervisor shall:

(1) be a licensed alcohol and drug counselor or other qualified professional as determined by the board;

(2) have three years of experience providing alcohol and drug counseling services; and

(3) have received a minimum of 12 hours of training in clinical and ethical supervision, which may include course work, continuing education courses, workshops, or a combination thereof.

Subd. 4. **Supervised practice requirements for licensure.** (a) The content of supervision must include:

(1) knowledge, skills, values, and ethics with specific application to the practice issues faced by the supervisee, including the core functions in section 148F.010, subdivision 10;

(2) the standards of practice and ethical conduct, with particular emphasis given to the counselor's role and appropriate responsibilities, professional boundaries, and power dynamics; and

(3) the supervisee's permissible scope of practice, as defined in section 148F.010, subdivision 19.

(b) The supervision must be obtained at the rate of one hour of supervision per 40 hours of professional practice, for a total of 50 hours of supervision. The supervision must be evenly distributed over the course of the supervised professional practice. At least 75 percent of the required supervision hours must be received in person. The remaining 25 percent of the required hours may be received by telephone or by audio or audiovisual electronic device. At least 50 percent of the required hours of supervision must be received on an individual basis. The remaining 50 percent may be received in a group setting.

(c) The supervision must be completed in no fewer than 12 consecutive months and no more than 36 consecutive months.

(d) The applicant shall include with an application for licensure a verification of completion of the 2,000 hours of supervised professional practice. Verification must be on a form specified by the board. The supervisor shall verify that the supervisee has completed the required hours of supervision according to this section. The supervised practice required under this section is unacceptable if the supervisor attests that the supervisee's performance, competence, or adherence to the standards of practice and ethical conduct has been unsatisfactory.

Sec. 9. **[148F.045] ALCOHOL AND DRUG COUNSELOR TECHNICIAN.**

An alcohol and drug counselor technician may perform the screening intake and orientation services described in section 148F.010, subdivision 19, clauses (1), (2), and (3), while under the direct supervision of a licensed alcohol and drug counselor.

Sec. 10. **[148F.050] LICENSE RENEWAL REQUIREMENTS.**

Subdivision 1. **Biennial renewal.** A license must be renewed every two years.

Subd. 2. **License renewal notice.** At least 60 calendar days before the renewal deadline date, the board shall mail a renewal notice to the licensee's last known address on file with the board. The notice must include instructions for accessing an online application for license renewal, the renewal deadline, and notice of fees required for renewal. The licensee's failure to receive notice does not relieve the licensee of the obligation to meet the renewal deadline and other requirements for license renewal.

Subd. 3. **Renewal requirements.** (a) To renew a license, a licensee must submit to the board:

(1) a completed, signed, and notarized application for license renewal;

(2) the renewal fee required under section 148F.115, subdivision 2; and

(3) evidence satisfactory to the board that the licensee has completed 40 clock hours of continuing education during the preceding two year renewal period that meet the requirements of section 148F.075.

(b) The application must be postmarked or received by the board by the end of the day on which the license expires or the following business day if the expiration date falls on a Saturday, Sunday, or holiday. An application which is not completed, signed, notarized, or which is not accompanied by the correct fee, is void and must be returned to the licensee.

Subd. 4. **Pending renewal.** If a licensee's application for license renewal is postmarked or received by the board by the end of the business day on the expiration date of the license, the licensee may continue to practice after the expiration date while the application for license renewal is pending with the board.

Subd. 5. **Late renewal fee.** If the application for license renewal is postmarked or received after the expiration date, the licensee shall pay a late fee as specified by section 148F.115, subdivision 5, clause (1), in addition to the renewal fee, before the application for license renewal will be considered by the board.

Sec. 11. **[148F.055] EXPIRED LICENSE.**

Subdivision 1. **Expiration of license.** A licensee who fails to submit an application for license renewal, or whose application for license renewal is not postmarked or received by the board as required, is not authorized to practice after the expiration date and is subject to disciplinary action by the board for any practice after the expiration date.

Subd. 2. **Termination for nonrenewal.** (a) Within 30 days after the renewal date, a licensee who has not renewed the license shall be notified by letter sent to the last known address of the licensee in the board's file that the renewal is overdue and that failure to pay the current fee and current late fee within 60 days after the renewal date will result in termination of the license.

(b) The board shall terminate the license of a licensee whose license renewal is at least 60 days overdue and to whom notification has been sent as provided in paragraph (a). Failure of a licensee to receive notification is not grounds for later challenge of the termination. The former licensee shall be notified of the termination by letter within seven days after the board action, in the same manner as provided in paragraph (a).

Sec. 12. **[148F.060] VOLUNTARY TERMINATION.**

A license may be voluntarily terminated by the licensee at any time upon written notification to the board, unless a complaint is pending against the licensee. The notification must be received by the board prior to termination of the license for failure to renew. A former licensee may be licensed again only after complying with the relicensure following termination requirements under section 148F.065. For purposes of this section, the board retains jurisdiction over any licensee whose license has been voluntarily terminated and against whom the board receives a complaint for conduct occurring during the period of licensure.

Sec. 13. **[148F.065] RELICENSURE FOLLOWING TERMINATION.**

Subdivision 1. **Relicensure.** For a period of two years, a former licensee whose license has been voluntarily terminated or terminated for nonrenewal as provided in section 148F.055, subdivision 2, may be relicensed by completing an application for relicensure, paying the applicable fee, and verifying that the former licensee has not engaged in the practice of alcohol and drug counseling in this state since the date of termination. The verification must be accompanied by a notarized affirmation that the statement is true and correct to the best knowledge and belief of the former licensee.

Subd. 2. **Continuing education for relicensure.** A former licensee seeking relicensure after license termination must provide evidence of having completed at least 20 hours of continuing education activities for each year, or portion thereof, that the former licensee did not hold a license.

Subd. 3. **Cancellation of license.** The board shall not renew, reissue, reinstate, or restore the license of a former licensee which was terminated for nonrenewal, or voluntarily terminated, and for which relicensure was not sought for more than two years from the date the license was terminated for nonrenewal, or voluntarily terminated. A former licensee seeking relicensure after this two-year period must obtain a new license by applying for licensure and fulfilling all requirements then in existence for an initial license to practice alcohol and drug counseling in Minnesota.

Sec. 14. **[148F.070] INACTIVE LICENSE STATUS.**

Subdivision 1. **Request for inactive status.** Unless a complaint is pending against the licensee, a licensee whose license is in good standing may request, in writing, that the license be placed on the inactive list. If a complaint is pending against a licensee, a license may not be placed on the inactive list until action relating to the complaint is concluded. The board must receive the request for inactive status before expiration of the license, or the person must pay the late fee. A licensee may renew a license that is inactive under this subdivision by meeting the renewal requirements of subdivision 2. A licensee must not practice alcohol and drug counseling while the license is inactive.

Subd. 2. **Renewal of inactive license.** A licensee whose license is inactive must renew the inactive status by the inactive status expiration date determined by the board, or the license will expire. An application for renewal of inactive status must include evidence satisfactory to the board that the licensee has completed 40 clock hours of continuing education required in section 148F.075. Late renewal of inactive status must be accompanied by a late fee as required in section 148F.115, subdivision 5, paragraph (2).

Sec. 15. **[148F.075] CONTINUING EDUCATION REQUIREMENTS.**

Subdivision 1. **Purpose.** (a) The purpose of mandatory continuing education is to promote the professional development of alcohol and drug counselors so that the services they provide promote the health and well-being of clients who receive services.

(b) Continued professional growth and maintaining competence in providing alcohol and drug counseling services are the ethical responsibilities of each licensee.

Subd. 2. **Requirement.** Every two years, all licensees must complete a minimum of 40 clock hours of continuing education activities that meet the requirements in this section. The 40 clock hours shall include a minimum of nine clock hours on human diversity, and a minimum of three clock hours on professional ethics. A licensee may be given credit only for activities that directly relate to the practice of alcohol and drug counseling.

Subd. 3. **Standards for approval.** In order to obtain clock hour credit for a continuing education activity, the activity must:

(1) constitute an organized program of learning;

(2) reasonably be expected to advance the knowledge and skills of the alcohol and drug counselor;

(3) pertain to subjects that directly relate to the practice of alcohol and drug counseling;

(4) be conducted by individuals who have education, training, and experience and are knowledgeable about the subject matter; and

(5) be presented by a sponsor who has a system to verify participation and maintains attendance records for three years, unless the sponsor provides dated evidence to each participant with the number of clock hours awarded.

Subd. 4. **Qualifying activities.** Clock hours may be earned through the following:

(1) attendance at educational programs of annual conferences, lectures, panel discussions, workshops, in-service training, seminars, and symposia;

(2) successful completion of college or university courses offered by a regionally accredited school or education program, if not being taken in order to meet the educational requirements for licensure under this chapter. The licensee must obtain a grade of at least a "C" or its equivalent or a pass in a pass/fail course in order to receive the following continuing education credits:

(i) one semester credit equals 15 clock hours;

(ii) one trimester credit equals 12 clock hours;

(iii) one quarter credit equals 10 clock hours;

(3) successful completion of home study or online courses offered by an accredited school or education program and that require a licensee to demonstrate knowledge following completion of the course;

(4) teaching a course at a regionally accredited institution of higher education. To qualify for continuing education credit, the course must directly relate to the practice of alcohol and drug counseling, as determined by the board. Continuing education hours may be earned only for the first time the licensee teaches the course. Ten continuing education hours may be earned for each semester credit hour taught; or

(5) presentations at workshops, seminars, symposia, meetings of professional organizations, in-service trainings, or postgraduate institutes. The presentation must be related to alcohol and drug counseling. A presenter may claim one hour of continuing education for each hour of presentation time. A presenter may also receive continuing education hours for development time at the rate of three hours for each hour of

presentation time. Continuing education hours may be earned only for the licensee's first presentation on the subject developed.

Subd. 5. **Activities not qualifying for continuing education clock hours.** Approval shall not be given for courses that do not do meet the requirements of this section or are limited to the following:

(1) any subject contrary to the rules of professional conduct;

(2) supervision of personnel;

(3) entertainment or recreational activities;

(4) employment orientation sessions;

(5) policy meetings;

(6) marketing;

(7) business;

(8) first aid, CPR, and similar training classes; and

(9) training related to payment systems, including covered services, coding, and billing.

Subd. 6. **Documentation of reporting compliance.** (a) When the licensee applies for renewal of the license, the licensee must complete and submit an affidavit of continuing education compliance showing that the licensee has completed a minimum of 40 approved continuing education clock hours since the last renewal. Failure to submit the affidavit when required makes the licensee's renewal application incomplete and void.

(b) All licensees shall retain original documentation of completion of continuing education hours for a period of five years. For purposes of compliance with this section, a receipt for payment of the fee for the course is not sufficient evidence of completion of the required hours of continuing education. Information retained shall include:

(1) the continuing education activity title;

(2) a brief description of the continuing education activity;

(3) the sponsor, presenter, or author;

(4) the location and the dates attended;

(5) the number of clock hours; and

(6) the certificate of attendance, if applicable.

(c) Only continuing education obtained during the two-year reporting period may be considered at the time of reporting.

Subd. 7. **Continuing education audit.** (a) At the time of renewal, the board may randomly audit a percentage of its licensees for compliance with continuing education requirements.

(b) The board shall mail a notice to a licensee selected for an audit of continuing education hours. The notice must include the reporting periods selected for audit.

(c) Selected licensees shall submit copies of the original documentation of completed continuing education hours. Upon specific request, the licensee shall submit original documentation. Failure to submit required documentation shall result in the renewal application being considered incomplete and void and constitute grounds for nonrenewal of the license and disciplinary action.

Subd. 8. **Variance of continuing education requirements.** (a) If a licensee is unable to meet the continuing education requirements by the renewal date, the licensee may request a time-limited variance to fulfill the requirements after the renewal date. A licensee seeking a variance is considered to be renewing late and is subject to the late renewal fee, regardless of when the request is received or whether the variance is granted.

(b) The licensee shall submit the variance request on a form designated by the board, include the variance fee subject to section 14.056, subdivision 2, and the late fee for license renewal under section 148F.115. The variance request is subject to the criteria for rule variances in section 14.055, subdivision 4, and must include a written plan listing the activities offered to meet the requirement. Hours completed after the renewal date pursuant to the written plan count toward meeting only the requirements of the previous renewal period.

(c) A variance granted under this subdivision expires six months after the license renewal date. A licensee who is granted a variance but fails to complete the required continuing education within the six-month period may apply for a second variance according to this subdivision.

(d) If an initial variance request is denied, the license of the licensee shall not be renewed until the licensee completes the continuing education requirements. If an initial variance is granted, and the licensee fails to complete the required continuing education within the six-month period, the license shall be administratively suspended until the licensee completes the required continuing education, unless the licensee has obtained a second variance according to paragraph (c).

Sec. 16. **[148F.080] SPONSOR'S APPLICATION FOR APPROVAL.**

Subdivision 1. **Content.** Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer continuing education activities for approval must submit to the board the sponsor application fee and a completed application for approval on a form provided by the board. The sponsor must comply with the following to receive and maintain approval:

(1) submit the application for approval at least 60 days before the activity is scheduled to begin; and

(2) include the following information in the application for approval to enable the board to determine whether the activity complies with section 148F.075:

(i) a statement of the objectives of the activity and the knowledge the participants will have gained upon completion of the activity;

(ii) a description of the content and methodology of the activity which will allow the participants to meet the objectives;

(iii) a description of the method the participants will use to evaluate the activity;

(iv) a list of the qualifications of each instructor or developer that shows the instructor's or developer's current knowledge and skill in the activity's subject;

(v) a description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the activity;

(vi) the sponsor's agreement to retain attendance lists for a period of five years from the date of the activity; and

(vii) a copy of any proposed advertisement or other promotional literature.

Subd. 2. **Approval expiration.** If the board approves an activity it shall assign the activity a number. The approval remains in effect for one year from the date of initial approval. Upon expiration, a sponsor must submit a new application for activity approval to the board as required by subdivision 1.

Subd. 3. **Statement of board approval.** Each sponsor of an approved activity shall include in any promotional literature a statement that "This activity has been approved by the Minnesota Board of Behavioral Health and Therapy for ... hours of credit."

Subd. 4. **Changes.** The activity sponsor must submit proposed changes in an approved activity to the board for its approval.

Subd. 5. **Denial of approval.** The board shall not approve an activity if it does not meet the continuing education requirements in section 148F.075. The board shall notify the sponsor in writing of its reasons for denial.

Subd. 6. **Revocation of approval.** The board shall revoke its approval of an activity if a sponsor falsifies information contained in its application for approval, or if a sponsor fails to notify the board of changes to an approved activity as required in subdivision 4.

Sec. 17. **[148F.085] NONTRANSFERABILITY OF LICENSES.**

An alcohol and drug counselor license is not transferable.

Sec. 18. **[148F.090] DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.**

Subdivision 1. **Grounds.** The board may impose disciplinary action as described in subdivision 2 against an applicant or licensee whom the board, by a preponderance of the evidence, determines:

(1) has violated a statute, rule, or order that the board issued or is empowered to enforce;

(2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of licensed alcohol and drug counseling that adversely affects the person's ability or fitness to practice alcohol and drug counseling;

(3) has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or other crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in the practice of alcohol and drug counseling;

(5) has employed fraud or deception in obtaining or renewing a license, or in passing an examination;

(6) has had any license, certificate, registration, privilege to take an examination, or other similar authority denied, revoked, suspended, canceled, limited, or not renewed for cause in any jurisdiction or has surrendered or voluntarily terminated a license or certificate during a board investigation of a complaint, as part of a disciplinary order, or while under a disciplinary order;

(7) has failed to meet any requirement for the issuance or renewal of the person's license. The burden of proof is on the applicant or licensee to demonstrate the qualifications or satisfy the requirements for a license under chapter 148F;

(8) has failed to cooperate with an investigation by the board;

(9) has demonstrated an inability to practice alcohol and drug counseling with reasonable skill and safety as a result of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition;

(10) has engaged in conduct with a client that is sexual or may reasonably be interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning to a client;

(11) has been subject to a corrective action or similar, nondisciplinary action in another jurisdiction or by another regulatory authority;

(12) has been adjudicated as mentally incompetent, mentally ill, or developmentally disabled or as a chemically dependent person, a person dangerous to the public, a sexually dangerous person, or a person who has a sexual psychopathic personality by a court of competent jurisdiction within this state or an equivalent adjudication from another state. Adjudication automatically suspends a license for the duration thereof unless the board orders otherwise;

(13) fails to comply with a client's request for health records made under sections 144.291 to 144.298, or to furnish a client record or report required by law;

(14) has engaged in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws; or

(15) has engaged in fee splitting. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the licensee or under a licensee's administrative authority. Fee splitting includes, but is not limited to:

(i) dividing fees with another person or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional;

(ii) referring a client to any health care provider as defined in sections 144.291 to 144.298 in which the referring licensee has a significant financial interest, unless the licensee has disclosed in advance to the client the licensee's own financial interest; or

(iii) paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of clients.

Subd. 2. **Forms of disciplinary action.** If grounds for disciplinary action exist under subdivision 1, the board may take one or more of the following actions;

(1) refuse to grant or renew a license;

(2) revoke a license;

(3) suspend a license;

(4) impose limitations or conditions on a licensee's practice of alcohol and drug counseling, including, but not limited to, limiting the scope of practice to designated competencies, imposing retraining or rehabilitation requirements, requiring the licensee to practice under supervision, or conditioning continued practice on the demonstration of knowledge or skill by appropriate examination or other review of skill and competence;

(5) censure or reprimand the licensee;

(6) impose a civil penalty not exceeding $10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the applicant or licensee

of any economic advantage gained by reason of the violation charged, to discourage similar violations or to reimburse the board for the cost of the investigation and proceeding, including, but not limited to, fees paid for services provided by the Office of Administrative Hearings, legal and investigative services provided by the Office of the Attorney General, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and travel costs and expenses incurred by board staff and board members; or

(7) any other action justified by the case.

Subd. 3. **Evidence.** In disciplinary actions alleging violations of subdivision 1, clause (4), (12), or (14), a copy of the judgment or proceedings under the seal of the court administrator or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

Subd. 4. **Temporary suspension.** (a) In addition to any other remedy provided by law, the board may issue an order to temporarily suspend the credentials of a licensee after conducting a preliminary inquiry to determine if the board reasonably believes that the licensee has violated a statute or rule that the board is empowered to enforce and whether continued practice by the licensee would create an imminent risk of harm to others.

(b) The order may prohibit the licensee from engaging in the practice of alcohol and drug counseling in whole or in part and may condition the end of a suspension on the licensee's compliance with a statute, rule, or order that the board has issued or is empowered to enforce.

(c) The order shall give notice of the right to a hearing according to this subdivision and shall state the reasons for the entry of the order.

(d) Service of the order is effective when the order is served on the licensee personally or by certified mail, which is complete upon receipt, refusal, or return for nondelivery to the most recent address of the licensee provided to the board.

(e) At the time the board issues a temporary suspension order, the board shall schedule a hearing to be held before its own members. The hearing shall begin no later than 60 days after issuance of the temporary suspension order or within 15 working days of the date of the board's receipt of a request for hearing by a licensee, on the sole issue of whether there is a reasonable basis to continue, modify, or lift the temporary suspension. The hearing is not subject to chapter 14. Evidence presented by the board or the licensee shall be in affidavit form only. The licensee or counsel of record may appear for oral argument.

(f) Within five working days of the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 30 days of the issuance of the order. Notwithstanding chapter 14, the administrative law judge shall issue a report within 30 days after closing the contested case hearing record. The board shall issue a final order within 30 days of receipt of the administrative law judge's report.

Subd. 5. **Automatic suspension.** (a) The right to practice is automatically suspended when:

(1) a guardian of an alcohol and drug counselor is appointed by order of a district court under sections 524.5-101 to 524.5-502; or

(2) the counselor is committed by order of a district court under chapter 253B.

(b) The right to practice remains suspended until the counselor is restored to capacity by a court and, upon petition by the counselor, the suspension is terminated by the board after a hearing or upon agreement between the board and the counselor.

Subd. 6. **Mental, physical, or chemical health evaluation.** (a) If the board has probable cause to believe that an applicant or licensee is unable to practice alcohol and drug counseling with reasonable skill and safety due to a mental or physical illness or condition, the board may direct the individual to submit to a mental, physical, or chemical dependency examination or evaluation.

(1) For the purposes of this section, every licensee and applicant is deemed to have consented to submit to a mental, physical, or chemical dependency examination or evaluation when directed in writing by the board and to have waived all objections to the admissibility of the examining professionals' testimony or examination reports on the grounds that the testimony or examination reports constitute a privileged communication.

(2) Failure of a licensee or applicant to submit to an examination when directed by the board constitutes an admission of the allegations against the person, unless the failure was due to circumstances beyond the person's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence.

(3) A licensee or applicant affected under this subdivision shall at reasonable intervals be given an opportunity to demonstrate that the licensee or applicant can resume the competent practice of licensed alcohol and drug counseling with reasonable skill and safety to the public.

(4) In any proceeding under this subdivision, neither the record of proceedings nor the orders entered by the board shall be used against the licensee or applicant in any other proceeding.

(b) In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.384 or 144.651, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that subdivision 1, clause (9), applies to the licensee or applicant. The medical data may be requested from:

(1) a provider, as defined in section 144.291, subdivision 2, paragraph (h);

(2) an insurance company; or

(3) a government agency, including the Department of Human Services.

(c) A provider, insurance company, or government agency must comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the provider giving the information knew, or had reason to believe, the information was false.

(d) Information obtained under this subdivision is classified as private under sections 13.01 to 13.87.

Sec. 19. **[148F.095] ADDITIONAL REMEDIES.**

Subdivision 1. **Cease and desist.** (a) The board may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the board has issued or has authority to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the board and is not reviewable by a court or agency.

(b) A hearing must be initiated by the board not later than 30 days from the date of the board's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, and any written agreement or exceptions filed by the parties, the board shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the board.

(c) When a request for a stay accompanies a timely hearing request, the board may, in the board's discretion, grant the stay. If the board does not grant a requested stay, the board shall refer the request to the Office of Administrative Hearings within three working days of receipt of the request. Within ten days after receiving the request from the board, an administrative law judge shall issue a recommendation to grant or deny the stay. The board shall grant or deny the stay within five working days of receiving the administrative law judge's recommendation.

(d) In the event of noncompliance with a cease and desist order, the board may institute a proceeding in district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the board, not to exceed $10,000 for each separate violation.

Subd. 2. **Injunctive relief.** In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the board may in the board's own name bring an action in district court for injunctive relief to restrain an alcohol and drug counselor from a violation or threatened violation of any statute, rule, or order which the board has authority to administer, enforce, or issue.

Subd. 3. **Additional powers.** The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a counselor from criminal prosecution by a competent authority or from disciplinary action by the board.

Sec. 20. **[148F.100] COOPERATION.**

An alcohol and drug counselor who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the board, shall cooperate fully with the investigation. Cooperation includes responding fully to any question raised by or on behalf of the board relating to the subject of the investigation, whether tape recorded or not. Challenges to requests of the board may be brought before the appropriate agency or court.

Sec. 21. **[148F.105] PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.**

Subdivision 1. **Practice.** No person shall engage in alcohol and drug counseling without first being licensed under this chapter as an alcohol and drug counselor. For purposes of this chapter, an individual engages in the practice of alcohol and drug counseling if the individual performs or offers to perform alcohol and drug counseling services as defined in section 148F.010, subdivision 18, or if the individual is held out as able to perform those services.

Subd. 2. **Use of titles.** (a) No individual shall present themselves or any other individual to the public by any title incorporating the words "licensed alcohol and drug counselor," "alcohol and drug counselor," or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed or otherwise qualified to practice alcohol and drug counseling, unless that individual holds a valid license.

(b) An individual issued a temporary permit must use titles consistent with section 148F.035, subdivisions 1 and 2, paragraph (c), clause (3).

(c) An individual who is participating in an alcohol and drug counseling practicum for purposes of licensure by the board may be designated an "alcohol and drug counselor intern."

(d) Individuals who are trained in alcohol and drug counseling and employed by an educational institution recognized by a regional accrediting organization, by a federal, state, county, or local government institution, by agencies, or research facilities, may represent themselves by the titles designated by that organization provided the title does not indicate the individual is licensed by the board.

Subd. 3. **Penalty.** A person who violates sections 148F.001 to 148F.205 is guilty of a misdemeanor.

Sec. 22. **[148F.110] EXCEPTIONS TO LICENSE REQUIREMENT.**

Subdivision 1. **Other professionals.** (a) Nothing in this chapter prevents members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes, but is not limited to: licensed physicians; registered nurses; licensed practical nurses; licensed psychologists and licensed psychological practitioners; members of the clergy provided such services are provided within the scope of regular ministries; American Indian medicine men and women; licensed attorneys; probation officers; licensed marriage and family therapists; licensed social workers; social workers employed by city, county, or state agencies; licensed professional counselors; licensed professional clinical counselors; licensed school counselors; registered occupational therapists or occupational therapy assistants; Upper Midwest Indian Council on Addictive Disorders (UMICAD) certified counselors when providing services to Native American people; city, county, or state employees when providing assessments or case management under Minnesota Rules, chapter 9530; and individuals providing integrated dual-diagnosis treatment in adult mental health rehabilitative programs certified by the Department of Human Services under section 256B.0622 or 256B.0623.

(b) Nothing in this chapter prohibits technicians and resident managers in programs licensed by the Department of Human Services from discharging their duties as provided in Minnesota Rules, chapter 9530.

(c) Any person who is exempt from licensure under this section must not use a title incorporating the words "alcohol and drug counselor" or "licensed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are engaged in the practice of alcohol and drug counseling, or that they are licensed to engage in the practice of alcohol and drug counseling, unless that person is also licensed as an alcohol and drug counselor. Persons engaged in the practice of alcohol and drug counseling are not exempt from the board's jurisdiction solely by the use of one of the titles in paragraph (a).

Subd. 2. **Students.** Nothing in sections 148F.001 to 148F.110 shall prevent students enrolled in an accredited school of alcohol and drug counseling from engaging in the practice of alcohol and drug counseling while under qualified supervision in an accredited school of alcohol and drug counseling.

Subd. 3. **Federally recognized tribes.** Alcohol and drug counselors practicing alcohol and drug counseling according to standards established by federally recognized tribes, while practicing under tribal jurisdiction, are exempt from the requirements of this chapter. In practicing alcohol and drug counseling under tribal jurisdiction, individuals practicing under that authority shall be afforded the same rights, responsibilities, and recognition as persons licensed under this chapter.

Sec. 23. **[148F.115] FEES.**

Subdivision 1. **Application fee.** The application fee is $295.

Subd. 2. **Biennial renewal fee.** The license renewal fee is $295. If the board establishes a renewal schedule, and the scheduled renewal date is less than two years, the fee may be prorated.

Subd. 3. **Temporary permit fee.** Temporary permit fees are as follows:

(1) initial application fee is $100; and

(2) annual renewal fee is $150. If the initial term is less or more than one year, the fee may be prorated.

Subd. 4. **Inactive license renewal fee.** The inactive license renewal fee is $150.

Subd. 5. **Late fees.** Late fees are as follows:

(1) biennial renewal late fee is $74;

(2) inactive license renewal late fee is $37; and

(3) annual temporary permit late fee is $37.

Subd. 6. **Fee to renew after expiration of license.** The fee for renewal of a license that has been expired for less than two years is the total of the biennial renewal fee in effect at the time of late renewal and the late fee.

Subd. 7. **Fee for license verification.** The fee for license verification is $25.

Subd. 8. **Surcharge fee.** Notwithstanding section 16A.1285, subdivision 2, a surcharge of $99 shall be paid at the time of initial application for or renewal of an alcohol and drug counselor license until June 30, 2013.

Subd. 9. **Sponsor application fee.** The fee for a sponsor application for approval of a continuing education course is $60.

Subd. 10. **Order or stipulation fee.** The fee for a copy of a board order or stipulation is $10.

Subd. 11. **Duplicate certificate fee.** The fee for a duplicate certificate is $25.

Subd. 12. **Supervisor application processing fee.** The fee for licensure supervisor application processing is $30.

Subd. 13. **Nonrefundable fees.** All fees in this section are nonrefundable.

Sec. 24. **[148F.120] CONDUCT.**

Subdivision 1. **Scope.** Sections 148F.120 to 148F.205 apply to the conduct of all alcohol and drug counselors, licensees, and applicants, including conduct during the period of education, training, and employment that is required for licensure.

Subd. 2. **Purpose.** Sections 148F.120 to 148F.205 constitute the standards by which the professional conduct of alcohol and drug counselors is measured.

Subd. 3. **Violations.** A violation of sections 148F.120 to 148F.205 is unprofessional conduct and constitutes grounds for disciplinary action, corrective action, or denial of licensure.

Subd. 4. **Conflict with organizational demands.** If the organizational policies at the provider's work setting conflict with any provision in sections 148F.120 to 148F.205, the provider shall discuss the nature of the conflict with the employer, make known the requirement to comply with these sections of law, and attempt to resolve the conflict in a manner that does not violate the law.

Sec. 25. **[148F.125] COMPETENT PROVISION OF SERVICES.**

Subdivision 1. **Limits on practice.** Alcohol and drug counselors shall limit their practice to the client populations and services for which they have competence or for which they are developing competence.

Subd. 2. **Developing competence.** When an alcohol and drug counselor is developing competence in a service, method, procedure, or to treat a specific client population, the alcohol and drug counselor shall obtain professional education, training, continuing education, consultation, supervision, or experience, or a combination thereof, necessary to demonstrate competence.

Subd. 3. **Experimental, emerging, or innovative services.** Alcohol and drug counselors may offer experimental services, methods, or procedures competently and in a manner that protects clients from harm. However, when doing so, they have a heightened responsibility to understand and communicate the potential risks to clients, to use reasonable skill and safety, and to undertake appropriate preparation as required in subdivision 2.

Subd. 4. **Limitations.** Alcohol and drug counselors shall recognize the limitations to the scope of practice of alcohol and drug counseling. When the needs of clients appear to be outside their scope of practice, providers shall inform the clients that there may be other professional, technical, community, and administrative resources available to them. Providers shall assist with identifying resources when it is in the best interests of clients to be provided with alternative or complementary services.

Subd. 5. **Burden of proof.** Whenever a complaint is submitted to the board involving a violation of this section, the burden of proof is on the provider to demonstrate that the elements of competence have reasonably been met.

Sec. 26. **[148F.130] PROTECTING CLIENT PRIVACY.**

Subdivision 1. **Protecting private information.** The provider shall safeguard private information obtained in the course of the practice of alcohol and drug counseling. Private information may be disclosed to others only according to section 148F.135, or with certain exceptions as specified in subdivisions 2 to 13.

Subd. 2. **Duty to warn; limitation on liability.** Private information may be disclosed without the consent of the client when a duty to warn arises, or as otherwise provided by law or court order. The duty to warn of, or take reasonable precautions to provide protection from, violent behavior arises only when a client or other person has communicated to the provider a specific, serious threat of physical violence to self or a specific, clearly identified or identifiable potential victim. If a duty to warn arises, the duty is discharged by the provider if reasonable efforts are made to communicate the threat to law enforcement agencies, the potential victim, the family of the client, or appropriate third parties who are in a position to prevent or avert the harm. No monetary liability and no cause of action or disciplinary action by the board may arise against a provider for disclosure of confidences to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure of confidences to third parties in a good faith effort to warn against or take precautions against a client's violent behavior or threat of suicide.

Subd. 3. **Services to group clients.** Whenever alcohol and drug counseling services are provided to group clients, the provider shall initially inform each client of the provider's responsibility and each client's individual responsibility to treat any information gained in the course of rendering the services as private information, including any limitations to each client's right to privacy.

Subd. 4. **Obtaining collateral information.** Prior to obtaining collateral information about a client from other individuals, the provider shall obtain consent from the client unless the consent is not required by law or court order, and shall inform the other individuals that the information obtained may become part of the client's records and may therefore be accessed or released by the client, unless prohibited by law. For purposes of this subdivision, "other individual" means any individual, except for credentialed health care providers acting in their professional capacities, who participates adjunctively in the provision of services to a client. Examples of other individuals include, but are not limited to, family members, friends, coworkers, day care workers, guardian ad litems, foster parents, or school personnel.

Subd. 5. **Minor clients.** At the beginning of a professional relationship, the provider shall inform a minor client that the law imposes limitations on the right of privacy of the minor with respect to the minor's communications with the provider. This requirement is waived when the minor cannot reasonably be expected to understand the privacy statement.

Subd. 6. **Limited access to client records.** The provider shall limit access to client records. The provider shall make reasonable efforts to inform individuals associated with the provider's agency or facility, such as staff members, students, volunteers, or community aides, that access to client records, regardless of their format, is limited only to the provider with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, or individuals authorized to have access by the written informed consent of the client.

Subd. 7. **Billing statements for services.** The provider shall comply with the privacy wishes of clients regarding to whom and where statements for services are to be sent.

Subd. 8. **Case reports.** The identification of the client shall be reasonably disguised in case reports or other clinical materials used in teaching, presentations, professional meetings, or publications.

Subd. 9. **Observation and recording.** Diagnostic interviews or therapeutic sessions with a client may be observed or electronically recorded only with the client's written informed consent.

Subd. 10. **Continued protection of client information.** The provider shall maintain the privacy of client data indefinitely after the professional relationship has ended.

Subd. 11. **Court-ordered or other mandated disclosures.** The proper disclosure of private client data upon a court order or to conform with state or federal law shall not be considered a violation of sections 148F.120 to 148F.205.

Subd. 12. **Abuse or neglect of minor or vulnerable adults.** An applicant or licensee must comply with the reporting of maltreatment of minors established in section 626.556 and the reporting of maltreatment of vulnerable adults established in section 626.557.

Subd. 13. **Initial contacts.** When an individual initially contacts a provider regarding alcohol and drug counseling services, the provider or another individual designated by the provider may, with oral consent from the potential client, contact third parties to determine payment or benefits information, arrange for precertification of services when required by the individual's health plan, or acknowledge a referral from another health care professional.

Sec. 27. **[148F.135] PRIVATE INFORMATION; ACCESS AND RELEASE.**

Subdivision 1. **Client right to access and release private information.** A client has the right to access and release private information maintained by the provider, including client records as provided in Minnesota Statutes, sections 144.291 to 144.298, relating to the provider's counseling services to that client, except as otherwise provided by law or court order.

Subd. 2. **Release of private information.** (a) When a client makes a request for the provider to release the client's private information, the request must be in writing and signed by the client. Informed consent is not required. When the request involves client records, all pertinent information shall be released in compliance with sections 144.291 to 144.298.

(b) If the provider initiates the request to release the client's private information, written authorization for the release of information must be obtained from the client and must include, at a minimum:

(1) the name of the client;

(2) the name of the individual or entity providing the information;

(3) the name of the individual or entity to which the release is made;

(4) the types of information to be released, such as progress notes, diagnoses, assessment data, or other specific information;

(5) the purpose of the release, such as whether the release is to coordinate professional care with another provider, to obtain insurance payment for services, or for other specified purposes;

(6) the time period covered by the consent;

(7) a statement that the consent is valid for one year, except as otherwise allowed by statute, or for a lesser period that is specified in the consent;

(8) a declaration that the individual signing the statement has been told of and understands the nature and purpose of the authorized release;

(9) a statement that the consent may be rescinded, except to the extent that the consent has already been acted upon or that the right to rescind consent has been waived separately in writing;

(10) the signature of the client or the client's legally authorized representative, whose relationship to the client must be stated; and

(11) the date on which the consent is signed.

Subd. 3. **Group client records.** Whenever counseling services are provided to group clients, each client has the right to access or release only that information in the records that the client has provided directly or has authorized other sources to provide, unless otherwise directed by law or court order. Upon a request by one client to access or release group client records, that information in the records that has not been provided directly or by authorization of the requesting client must be redacted unless written authorization to disclose this information has been obtained from the other clients.

Subd. 4. **Board investigation.** The board shall be allowed access to any records of a client provided services by an applicant or licensee who is under investigation. If the client has not signed a consent permitting access to the client's records, the applicant or licensee must delete any data that identifies the client before providing them to the board. The board shall maintain any records as investigative data pursuant to chapter 13.

Sec. 28. **[148F.140] INFORMED CONSENT.**

Subdivision 1. **Obtaining informed consent for services.** The provider shall obtain informed consent from the client before initiating services. The informed consent must be in writing, signed by the client, and include the following, at a minimum:

(1) authorization for the provider to engage in an activity which directly affects the client;

(2) the goals, purposes, and procedures of the proposed services;

(3) the factors that may impact the duration of the service;

(4) the applicable fee schedule;

(5) the limits to the client's privacy, including but not limited to the provider's duty to warn pursuant to section 148F.130, subdivision 2;

(6) the provider's responsibilities if the client terminates the service;

(7) the significant risks and benefits of the service, including whether the service may affect the client's legal or other interests;

(8) the provider's responsibilities under section 148F.125, subdivision 3, if the proposed service, method, or procedure is of an experimental, emerging, or innovative nature; and

(9) if applicable, information that the provider is developing competence in the proposed service, method, or procedure, and alternatives to the proposed service, if any.

Subd. 2. **Updating informed consent.** If there is a substantial change in the nature or purpose of a service, the provider must obtain a new informed consent from the client.

Subd. 3. **Emergency or crisis services.** Informed consent is not required when a provider is providing emergency or crisis services. If services continue after the emergency or crisis has abated, informed consent must be obtained.

Sec. 29. **[148F.145] TERMINATION OF SERVICES.**

Subdivision 1. **Right to terminate services.** Either the client or the provider may terminate the professional relationship unless prohibited by law or court order.

Subd. 2. **Mandatory termination of services.** The provider shall promptly terminate services to a client whenever:

(1) the provider's objectivity or effectiveness is impaired, unless a resolution can be achieved as permitted in section 148F.155, subdivision 2; or

(2) the client would be harmed by further services.

Subd. 3. **Notification of termination.** When the provider initiates a termination of professional services, the provider shall inform the client either orally or in writing. This requirement shall not apply when the termination is due to the successful completion of a predefined service such as an assessment, or if the client terminates the professional relationship.

Subd. 4. **Recommendation upon termination.** (a) Upon termination of counseling services, the provider shall make a recommendation for alcohol and drug counseling services if requested by the client or if the provider believes the services are needed by the client.

(b) A recommendation for alcohol and drug counseling services is not required if the professional service provided is limited to an alcohol and drug assessment and a recommendation for continued services is not requested.

Subd. 5. **Absence from practice.** Nothing in this section requires the provider to terminate a client due to an absence from practice that is the result of a period of illness or injury that does not affect the provider's ability to practice with reasonable skill and safety, as long as arrangements have been made for temporary counseling services that may be needed by the client during the provider's absence.

Sec. 30. **[148F.150] RECORD KEEPING.**

Subdivision 1. **Record-keeping requirements.** Providers must maintain accurate and legible client records. Records must include, at a minimum:

(1) an accurate chronological listing of all substantive contacts with the client;

(2) documentation of services, including:

(i) assessment methods, data, and reports;

(ii) an initial treatment plan and any revisions to the plan;

(iii) the name of the individual providing services;

(iv) the name and credentials of the individual who is professionally responsible for the services provided;

(v) case notes for each date of service, including interventions;

(vi) consultations with collateral sources;

(vii) diagnoses or presenting problems; and

(viii) documentation that informed consent was obtained, including written informed consent documents;

(3) copies of all correspondence relevant to the client;

(4) a client personal data sheet;

(5) copies of all client authorizations for release of information;

(6) an accurate chronological listing of all fees charged, if any, to the client or a third party payer; and

(7) any other documents pertaining to the client.

Subd. 2. **Duplicate records.** If the client records containing the documentation required by subdivision 1 are maintained by the agency, clinic, or other facility where the provider renders services, the provider is not required to maintain duplicate records of client information.

Subd. 3. **Record retention.** The provider shall retain a client's record for a minimum of seven years after the date of the provider's last professional service to the client, except as otherwise provided by law. If the client is a minor, the record retention period does not begin until the client reaches the age of 18, except as otherwise provided by law.

Sec. 31. **[148F.155] IMPAIRED OBJECTIVITY OR EFFECTIVENESS.**

Subdivision 1. **Situations involving impaired objectivity or effectiveness.** (a) An alcohol and drug counselor must not provide alcohol and drug counseling services to a client or potential client when the counselor's objectivity or effectiveness is impaired.

(b) The provider shall not provide alcohol and drug counseling services to a client if doing so would create a multiple relationship. For purposes of this section, "multiple relationship" means one that is both professional and:

(1) cohabitational;

(2) familial;

(3) one in which there has been personal involvement with the client or family member of the client that is reasonably likely to adversely affect the client's welfare or ability to benefit from services; or

(4) one in which there is significant financial involvement other than legitimate payment for professional services rendered that is reasonably likely to adversely affect the client's welfare or ability to benefit from services.

If an unforeseen multiple relationship arises after services have been initiated, the provider shall promptly terminate the professional relationship.

(c) The provider shall not provide alcohol and drug counseling services to a client who is also the provider's student or supervisee. If an unforeseen situation arises in which both types of services are required or requested by the client or a third party, the provider shall decline to provide the services.

(d) The provider shall not provide alcohol and drug counseling services to a client when the provider is biased for or against the client for any reason that interferes with the provider's impartial judgment, including where the client is a member of a class legally protected from discrimination. The provider may provide services if the provider is working to resolve the impairment in the manner required under subdivision 2.

(e) The provider shall not provide alcohol and drug counseling services to a client when there is a fundamental divergence or conflict of service goals, interests, values, or attitudes between the client and the provider that adversely affects the professional relationship. The provider may provide services if the provider is working to resolve the impairment in the manner required under subdivision 2.

Subd. 2. **Resolution of impaired objectivity or effectiveness.** (a) When an impairment occurs that is listed in subdivision 1, paragraph (d) or (e), the provider may provide services only if the provider actively pursues resolution of the impairment and is able to do so in a manner that results in minimal adverse effects on the client or potential client.

(b) If the provider attempts to resolve the impairment, it must be by means of professional education, training, continuing education, consultation, psychotherapy, intervention, supervision, or discussion with the client or potential client, or an appropriate combination thereof.

Sec. 32. **[148F.160] PROVIDER IMPAIRMENT.**

The provider shall not provide counseling services to clients when the provider is unable to provide services with reasonable skill and safety as a result of a physical or mental illness or condition, including, but not limited to, substance abuse or dependence. During the period the provider is unable to practice with reasonable skill and safety, the provider shall either promptly terminate the professional relationship with all clients or shall make arrangements for other alcohol and drug counselors to provide temporary services during the provider's absence.

Sec. 33. **[148F.165] CLIENT WELFARE.**

Subdivision 1. **Explanation of procedures.** A client has the right to have, and a counselor has the responsibility to provide, a nontechnical explanation of the nature and purpose of the counseling procedures to be used and the results of tests administered to the client. The counselor shall establish procedures to be followed if the explanation is to be provided by another individual under the direction of the counselor.

Subd. 2. **Clients' bill of rights.** The client bill of rights required by section 144.652, shall be prominently displayed on the premises of the professional practice or provided as a handout to each client. The document must state that consumers of alcohol and drug counseling services have the right to:

(1) expect that the provider meets the minimum qualifications of training and experience required by state law;

(2) examine public records maintained by the Board of Behavioral Health and Therapy that contain the credentials of the provider;

(3) report complaints to the Board of Behavioral Health and Therapy;

(4) be informed of the cost of professional services before receiving the services;

(5) privacy as defined and limited by law and rule;

(6) be free from being the object of unlawful discrimination while receiving counseling services;

(7) have access to their records as provided in sections 144.92 and 148F.135, subdivision 1, except as otherwise provided by law;

(8) be free from exploitation for the benefit or advantage of the provider;

(9) terminate services at any time, except as otherwise provided by law or court order;

(10) know the intended recipients of assessment results;

(11) withdraw consent to release assessment results, unless the right is prohibited by law or court order or was waived by prior written agreement;

(12) a nontechnical description of assessment procedures; and

(13) a nontechnical explanation and interpretation of assessment results, unless this right is prohibited by law or court order or was waived by prior written agreement.

Subd. 3. **Stereotyping.** The provider shall treat the client as an individual and not impose on the client any stereotypes of behavior, values, or roles related to human diversity.

Subd. 4. **Misuse of client relationship.** The provider shall not misuse the relationship with a client due to a relationship with another individual or entity.

Subd. 5. **Exploitation of client.** The provider shall not exploit the professional relationship with a client for the provider's emotional, financial, sexual, or personal advantage or benefit. This prohibition extends to former clients who are vulnerable or dependent on the provider.

Subd. 6. **Sexual behavior with client.** A provider shall not engage in any sexual behavior with a client including:

(1) sexual contact, as defined in section 604.20, subdivision 7; or

(2) any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing to the client.

Subd. 7. **Sexual behavior with a former client.** A provider shall not engage in any sexual behavior as described in subdivision 6 within the two-year period following the date of the last counseling service to a former client. This prohibition applies whether or not the provider has formally terminated the professional relationship. This prohibition extends indefinitely for a former client who is vulnerable or dependent on the provider.

Subd. 8. **Preferences and options for treatment.** A provider shall disclose to the client the provider's preferences for choice of treatment or outcome and shall present other options for the consideration or choice of the client.

Subd. 9. **Referrals.** A provider shall make a prompt and appropriate referral of the client to another professional when requested to make a referral by the client.

Sec. 34. **[148F.170] WELFARE OF STUDENTS, SUPERVISEES, AND RESEARCH SUBJECTS.**

Subdivision 1. **General.** Due to the evaluative, supervisory, or other authority that providers who teach, evaluate, supervise, or conduct research have over their students, supervisees, or research subjects, they shall protect the welfare of these individuals.

Subd. 2. **Student, supervisee, and research subject protections.** To protect the welfare of their students, supervisees, or research subjects, providers shall not:

(1) discriminate on the basis of race, ethnicity, national origin, religious affiliation, language, age, gender, physical disabilities, mental capabilities, sexual orientation or identity, marital status, or socioeconomic status;

(2) exploit or misuse the professional relationship for the emotional, financial, sexual, or personal advantage or benefit of the provider or another individual or entity;

(3) engage in any sexual behavior with a current student, supervisee, or research subject, including sexual contact, as defined in section 604.20, subdivision 7, or any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing. Nothing in this part shall prohibit a provider from engaging in teaching or research with an individual with whom the provider has a preexisting and ongoing sexual relationship;

(4) engage in any behavior likely to be deceptive or fraudulent;

(5) disclose evaluative information except for legitimate professional or scientific purposes; or

(6) engage in any other unprofessional conduct.

Sec. 35. **[148F.175] MEDICAL AND OTHER HEALTH CARE CONSIDERATIONS.**

Subdivision 1. **Coordinating services with other health care professionals.** Upon initiating services, the provider shall inquire whether the client has a preexisting relationship with another health care professional. If the client has such a relationship, and it is relevant to the provider's services to the client, the provider shall, to the extent possible and consistent with the wishes and best interests of the client, coordinate services for the client with the other health care professional. This requirement does not apply if brief crisis intervention services are provided.

Subd. 2. **Reviewing health care information.** If the provider determines that a client's preexisting relationship with another health care professional is relevant to the provider's services to the client, the provider shall, to the extent possible and consistent with the wishes and best interests of the client, review this information with the treating health care professional.

Subd. 3. **Relevant medical conditions.** If the provider believes that a client's psychological condition may have medical etiology or consequence, the provider shall, within the limits of the provider's competence, discuss this with the client and offer to assist in identifying medical resources for the client.

Sec. 36. **[148F.180] ASSESSMENTS; TESTS; REPORTS.**

Subdivision 1. **Assessments.** Providers who conduct assessments of individuals shall base their assessments on records, information, observations, and techniques sufficient to substantiate their findings. They shall render opinions only after they have conducted an examination of the individual adequate to support their statements or conclusions, unless an examination is not practical despite reasonable efforts. An assessment may be limited to reviewing records or providing testing services when an individual examination is not necessary for the opinion requested.

Subd. 2. **Tests.** Providers may administer and interpret tests within the scope of the counselor's training, skill, and competence.

Subd. 3. **Reports.** Written and oral reports, including testimony as an expert witness and letters to third parties concerning a client, must be based on information and techniques sufficient to substantiate their findings. Reports must include:

(1) a description of all assessments, evaluations, or other procedures, including materials reviewed, which serve as a basis for the provider's conclusions;

(2) reservations or qualifications concerning the validity or reliability of the opinions and conclusions formulated and recommendations made;

(3) a statement concerning any discrepancy, disagreement, or inconsistent or conflicting information regarding the circumstances of the case that may have a bearing on the provider's conclusions;

(4) a statement of the nature of and reason for the use of a test that is administered, recorded, scored, or interpreted in other than a standard and objective manner; and

(5) a statement indicating when test interpretations or report conclusions are not based on direct contact between the client and the provider.

Subd. 4. **Private information.** Test results and interpretations regarding an individual are private information.

Sec. 37. **[148F.185] PUBLIC STATEMENTS.**

Subdivision 1. **Prohibition against false or misleading information.** Public statements by providers must not include false or misleading information. Providers shall not solicit or use testimonials by quotation or implication from current clients or former clients who are vulnerable to undue influence. The provider shall make reasonable efforts to ensure that public statements by others on behalf of the provider are truthful and shall make reasonable remedial efforts to bring a public statement into compliance with sections 148F.120 to 148F.205 when the provider becomes aware of a violation.

Subd. 2. **Misrepresentation.** The provider shall not misrepresent directly or by implication professional qualifications including education, training, experience, competence, credentials, or areas of specialization. The provider shall not misrepresent, directly or by implication, professional affiliations or the purposes and characteristics of institutions and organizations with which the provider is professionally associated.

Subd. 3. **Use of specialty board designation.** Providers may represent themselves as having an area of specialization from a specialty board, such as a designation as a diplomate or fellow, if the specialty board used, at a minimum, the following criteria to award such a designation:

(1) specified educational requirements defined by the specialty board;

(2) specified experience requirements defined by the specialty board;

(3) a work product evaluated by other specialty board members; and

(4) a face-to-face examination by a committee of specialty board members or a comprehensive written examination in the area of specialization.

Sec. 38. **[148F.190] FEES; STATEMENTS.**

Subdivision 1. **Disclosure.** The provider shall disclose the fees for professional services to a client before providing services.

Subd. 2. **Itemized statement.** The provider shall itemize fees for all services for which the client or a third party is billed and make the itemized statement available to the client. The statement shall identify the date the service was provided, the nature of the service, the name of the individual who provided the service, and the name of the individual who is professionally responsible for the service.

Subd. 3. **Representation of billed services.** The provider shall not directly or by implication misrepresent to the client or to a third party billed for services the nature or the extent of the services provided.

Subd. 4. **Claiming fees.** The provider shall not claim a fee for counseling services unless the provider is either the direct provider of the services or is clinically responsible for providing the services and under whose supervision the services were provided.

Subd. 5. **Referrals.** No commission, rebate, or other form of remuneration may be given or received by a provider for the referral of clients for counseling services.

Sec. 39. **[148F.195] AIDING AND ABETTING UNLICENSED PRACTICE.**

A provider shall not aid or abet an unlicensed individual to engage in the practice of alcohol and drug counseling. A provider who supervises a student as part of an alcohol and drug counseling practicum is not in violation of this section. Properly qualified individuals who administer and score testing instruments under the direction of a provider who maintains responsibility for the service are not considered in violation of this section.

Sec. 40. **[148F.200] VIOLATION OF LAW.**

A provider shall not violate any law in which the facts giving rise to the violation involve the practice of alcohol and drug counseling as defined in sections 148F.001 to 148F.205. In any board proceeding alleging a violation of this section, the proof of a conviction of a crime constitutes proof of the underlying factual elements necessary to that conviction.

Sec. 41. **[148F.205] COMPLAINTS TO BOARD.**

Subdivision 1. **Mandatory reporting requirements.** A provider is required to file a complaint when the provider knows or has reason to believe that another provider:

(1) is unable to practice with reasonable skill and safety as a result of a physical or mental illness or condition, including, but not limited to, substance abuse or dependence, except that this mandated reporting requirement is deemed fulfilled by a report made to the Health Professionals Services Program (HPSP) as provided by Minnesota Statutes, section 214.33, subdivision 1;

(2) is engaging in or has engaged in sexual behavior with a client or former client in violation of section 148F.165, subdivision 6 or 7;

(3) has failed to report abuse or neglect of children or vulnerable adults in violation of section 626.556 or 626.557; or

(4) has employed fraud or deception in obtaining or renewing an alcohol and drug counseling license.

Subd. 2. **Optional reporting requirements.** Other than conduct listed in subdivision 1, a provider who has reason to believe that the conduct of another provider appears to be in violation of sections 148F.001 to 148F.205 may file a complaint with the board.

Subd. 3. **Institutions.** A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an alcohol and drug counselor's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the board under sections 148F.001 to 148F.205. The institution, organization, or governmental entity shall also report the resignation of any alcohol and drug counselors before the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or before the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

Subd. 4. **Professional societies.** A state or local professional society for alcohol and drug counselors shall report to the board any termination, revocation, or suspension of membership or any other disciplinary action taken against an alcohol and drug counselor. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the board.

Subd. 5. **Insurers.** Each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to alcohol and drug counselors or the Medical Joint Underwriting Association under chapter 62F, shall submit to the board quarterly reports concerning the alcohol and drug counselors against whom malpractice settlements and awards have been made. The report must contain at least the following information:

(1) the total number of malpractice settlements or awards made;

(2) the date the malpractice settlements or awards were made;

(3) the allegations contained in the claim or complaint leading to the settlements or awards made;

(4) the dollar amount of each settlement or award;

(5) the address of the practice of the alcohol and drug counselor against whom an award was made or with whom a settlement was made; and

(6) the name of the alcohol and drug counselor against whom an award was made or with whom a settlement was made. The insurance company shall, in addition to the above information, submit to the board any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that a licensed alcohol and drug counselor may have engaged in conduct violating this chapter.

Subd. 6. **Self-reporting.** An alcohol and drug counselor shall report to the board any personal action that would require that a report be filed with the board by any person, health care facility, business, or organization under subdivisions 1 and 3 to 5. The alcohol and drug counselor shall also report the revocation, suspension, restriction, limitation, or other disciplinary action in this state and report the filing of charges regarding the practitioner's license or right of practice in another state or jurisdiction.

Subd. 7. **Permission to report.** A person who has knowledge of any conduct constituting grounds for disciplinary action relating to the practice of alcohol and drug counseling under this chapter may report the violation to the board.

Subd. 8. **Client complaints to the board.** A provider shall, upon request, provide information regarding the procedure for filing a complaint with the board and shall, upon request, assist with filing a complaint. A provider shall not attempt to dissuade a client from filing a complaint with the board, or require that the client waive the right to file a complaint with the board as a condition for providing services.

Subd. 9. **Deadlines; forms.** Reports required by subdivisions 1 and 3 to 6 must be submitted no later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The board may provide forms for the submission of the reports required by this section and may require that reports be submitted on the forms provided.

Sec. 42. **REPORT; BOARD OF BEHAVIORAL HEALTH AND THERAPY.**

(a) The Board of Behavioral Health and Therapy shall convene a working group to evaluate the feasibility of a tiered licensure system for alcohol and drug counselors in Minnesota. This evaluation shall include proposed scopes of practice for each tier, specific degree and other education and examination requirements for each tier, the clinical settings in which each tier of practitioner would be utilized, and any other issues the board deems necessary.

(b) Members of the working group shall include, but not be limited to, members of the board, licensed alcohol and drug counselors, alcohol and drug counselor temporary permit holders, faculty members from two- and four-year education programs, professional organizations, and employers.

(c) The board shall present its written report, including any proposed legislation, to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services no later than December 15, 2014.

(d) The working group is not subject to the provisions of Minnesota Statutes, section 15.059.

Sec. 43. **REPEALER.**

(a) Minnesota Rules, parts 4747.0010; 4747.0020; 4747.0030; 4747.0040; 4747.0050; 4747.0060; 4747.0070, subparts 1, 2, 3, and 6; 4747.0200; 4747.0400, subpart 1; 4747.0700; 4747.0800; 4747.0900; 4747.1100, subparts 1, 2, 4, 5, 6, 7, 8, and 9; 4747.1400; and 4747.1500, are repealed.

(b) Minnesota Statutes 2010, sections 148C.01, subdivisions 1, 1a, 2, 2a, 2b, 2c, 2d, 2e, 2f, 2g, 4, 4a, 5, 7, 9, 10, 11, 11a, 12, 12a, 13, 14, 15, 16, 17, and 18; 148C.015; 148C.03, subdivisions 1 and 4; 148C.0351, subdivisions 1, 3, and 4; 148C.0355; 148C.04, subdivisions 1, 2, 3, 4, 5a, 6, and 7; 148C.044; 148C.045; 148C.05; 148C.055; 148C.07;

148C.075; 148C.08; 148C.09, subdivisions 1, 1a, 2, and 4; 148C.091; 148C.093; 148C.095; 148C.099; 148C.10, subdivisions 1, 2, and 3; 148C.11; and 148C.12, subdivisions 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, are repealed.

APPENDIX
Article locations in H1461-1

148C.01 DEFINITIONS.

Subdivision 1. **Definitions.** For the purposes of sections 148C.01 to 148C.11 and 595.02, subdivision 1, the following terms have the meanings given them.

Subd. 1a. **Accrediting association.** "Accrediting association" means an organization recognized by the board that evaluates schools and education programs of alcohol and drug counseling or is listed in Nationally Recognized Accrediting Agencies and Associations, Criteria and Procedures for Listing by the U.S. Secretary of Education and Current List (1996), which is incorporated by reference.

Subd. 2. **Alcohol and drug counselor.** "Alcohol and drug counselor" or "counselor" means a person who:

(1) uses, as a representation to the public, any title, initials, or description of services incorporating the words "alcohol and drug counselor";

(2) offers to render professional alcohol and drug counseling services relative to the abuse of or the dependency on alcohol or other drugs to the general public or groups, organizations, corporations, institutions, or government agencies for compensation, implying that the person is licensed and trained, experienced or expert in alcohol and drug counseling;

(3) holds a valid license issued under this chapter to engage in the practice of alcohol and drug counseling; or

(4) is an applicant for an alcohol and drug counseling license.

Subd. 2a. **Alcohol and drug counselor academic course work.** "Alcohol and drug counselor academic course work" means classroom education, which is directly related to alcohol and drug counseling and meets the requirements of section 148C.04, subdivision 5a, and is taken through an accredited school or educational program.

Subd. 2b. **Alcohol and drug counselor continuing education activity.** "Alcohol and drug counselor continuing education activity" means clock hours that meet the requirements of section 148C.075 and Minnesota Rules, part 4747.1100, and are obtained by a licensee at educational programs of annual conferences, lectures, panel discussions, workshops, seminars, symposiums, employer-sponsored inservices, or courses taken through accredited schools or education programs, including home study courses. A home study course need not be provided by an accredited school or education program to meet continuing education requirements.

Subd. 2c. **Alcohol and drug counselor technician.** "Alcohol and drug counselor technician" means a person not licensed as an alcohol and drug counselor who is performing acts authorized under section 148C.045.

Subd. 2d. **Alcohol and drug counselor training.** "Alcohol and drug counselor training" means clock hours obtained by an applicant at educational programs of annual conferences, lectures, panel discussions, workshops, seminars, symposiums, employer-sponsored inservices, or courses taken through accredited schools or education programs, including home study courses. Clock hours obtained from accredited schools or education programs must be measured under Minnesota Rules, part 4747.1100, subpart 5.

Subd. 2e. **Board.** "Board" means the Board of Behavioral Health and Therapy established by section 148B.51.

Subd. 2f. **Clock hour.** "Clock hour" means an instructional session of 50 consecutive minutes, excluding coffee breaks, registration, meals without a speaker, and social activities.

Subd. 2g. **Credential.** "Credential" means a license, permit, certification, registration, or other evidence of qualification or authorization to engage in the practice of an occupation.

Subd. 4. **Dependency.** "Dependency" means a maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

(a) tolerance, as defined by either of the following:

(1) a need for markedly increased amounts of the substance to achieve intoxication or desired effect; or

(2) a markedly diminished effect with continued use of the same amount of the substance;

(b) withdrawal, as manifested by either of the following:

(1) the characteristic withdrawal syndrome for the substance, as referred to in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders; or

(2) the same or closely related substance is taken to relieve or avoid withdrawal symptoms;

(c) the substance is often taken in larger amounts or over a longer period than was intended;

(d) a persistent desire or unsuccessful efforts to cut down or control substance use;

(e) a great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects;

(f) important social, occupational, or recreational activities are given up or reduced because of the substance use; or

(g) substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by the substance.

Subd. 4a. **Licensee.** "Licensee" means a person who holds a valid license under this chapter.

Subd. 5. **Abuse.** "Abuse" means a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following occurring at any time during the same 12-month period:

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home;

(2) recurrent substance use in situations in which it is physically hazardous;

(3) recurrent substance-related legal problems; and

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

For substance use to be considered abuse, the individual must never have met the criteria for dependence in subdivision 4 for the class of substance in question.

Subd. 7. **Accredited school or educational program.** "Accredited school or educational program" means a school of alcohol and drug counseling, university, college, or other postsecondary education program that, at the time the student completes the program, is accredited by a regional accrediting association whose standards are substantially equivalent to those of the North Central Association of Colleges and Postsecondary Education Institutions or an accrediting association that evaluates schools of alcohol and drug counseling for inclusion of the education, practicum, and core function standards in this chapter.

Subd. 9. **Core functions.** "Core functions" means the following services provided in alcohol and drug treatment:

(1) "Screening" means the process by which a client is determined appropriate and eligible for admission to a particular program.

(2) "Intake" means the administrative and initial assessment procedures for admission to a program.

(3) "Orientation" means describing to the client the general nature and goals of the program; rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program; in a nonresidential program, the hours during which services are available; treatment costs to be borne by the client, if any; and client's rights.

(4) "Assessment" means those procedures by which a counselor identifies and evaluates an individual's strengths, weaknesses, problems, and needs to develop a treatment plan or make recommendations for level of care placement.

(5) "Treatment planning" means the process by which the counselor and the client identify and rank problems needing resolution; establish agreed-upon immediate and long-term goals; and decide on a treatment process and the sources to be utilized.

(6) "Counseling" means the utilization of special skills to assist individuals, families, or groups in achieving objectives through exploration of a problem and its ramifications; examination of attitudes and feelings; consideration of alternative solutions; and decision making.

(7) "Case management" means activities which bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals.

(8) "Crisis intervention" means those services which respond to an alcohol or other drug user's needs during acute emotional or physical distress.

(9) "Client education" means the provision of information to clients who are receiving or seeking counseling concerning alcohol and other drug abuse and the available services and resources.

(10) "Referral" means identifying the needs of the client which cannot be met by the counselor or agency and assisting the client to utilize the support systems and available community resources.

(11) "Reports and record keeping" means charting the results of the assessment and treatment plan, writing reports, progress notes, discharge summaries, and other client-related data.

(12) "Consultation with other professionals regarding client treatment and services" means communicating with other professionals in regard to client treatment and services to assure comprehensive, quality care for the client.

Subd. 10. **Practice of alcohol and drug counseling.** "Practice of alcohol and drug counseling" means the observation, description, evaluation, interpretation, and modification of human behavior as it relates to the harmful or pathological use or abuse of alcohol or other drugs by the application of the core functions. The practice of alcohol and drug counseling includes, but is not limited to, the following activities, regardless of whether the counselor receives compensation for the activities:

(1) assisting clients who use alcohol or drugs, evaluating that use, and recognizing dependency if it exists;

(2) assisting clients with alcohol or other drug problems to gain insight and motivation aimed at resolving those problems;

(3) providing experienced professional guidance, assistance, and support for the client's efforts to develop and maintain a responsible functional lifestyle;

(4) recognizing problems outside the scope of the counselor's training, skill, or competence and referring the client to other appropriate professional services;

(5) assessing the level of alcohol or other drug use involvement;

(6) individual planning to prevent a return to harmful alcohol or chemical use;

(7) alcohol and other drug abuse education for clients;

(8) consultation with other professionals;

(9) gaining cultural competence through ongoing training and education according to standards established by rule; and

(10) providing the above services, as needed, to family members or others who are directly affected by someone using alcohol or other drugs.

Subd. 11. **Sexual contact.** "Sexual contact" means contact as defined in section 604.20 with a client or former client, or engaging in contact that may reasonably be interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the client, or engaging in sexual exploitation of a client or former client.

Subd. 11a. **Student.** "Student" means a person enrolled in an alcohol and drug counselor education program at an accredited school or educational program and earning a minimum of nine semester credits per calendar year towards completion of an associate's, bachelor's, master's, or doctorate degree requirements that include an additional 18 semester credits or 270 clock hours of alcohol and drug counseling specific course work and 440 clock hours of practicum.

Subd. 12. **Supervised alcohol and drug counselor.** "Supervised alcohol and drug counselor" means a student, either before, during, or after the student completes a program from an accredited school or educational program of alcohol and drug counseling, an intern, or a person issued a temporary permit under section 148C.04, subdivision 4, and who is supervised by a person either licensed under this chapter or exempt under its provisions.

Subd. 12a. **Supervisor.** "Supervisor" means a licensed alcohol and drug counselor licensed under this chapter or other licensed professional practicing alcohol and drug counseling under section 148C.11 who monitors activities of and accepts legal liability for the person practicing under supervision. A supervisor shall supervise no more than three trainees practicing under section 148C.04, subdivision 6.

Subd. 13. **Alcohol and drug counseling practicum.** "Alcohol and drug counseling practicum" means formal experience gained by a student and supervised by a person either licensed under this chapter or exempt under its provisions, in an accredited school or educational program of alcohol and drug counseling as part of the education requirements of this chapter.

Subd. 14. **Applicant.** "Applicant" means a person seeking a license under this chapter.

Subd. 15. **Client.** "Client" means an individual who is the recipient of any of the alcohol and drug counseling services described in this section.

Subd. 16. **Compensation.** "Compensation" means a fee, salary, reward, payment, or the expectation of payment from a client or a client's agent, insurer, employer, or other representative for providing alcohol and drug counseling services. Compensation does not include bartering for services.

Subd. 17. **Alcohol and drug counselor internship.** "Alcohol and drug counselor internship" means supervised, practical, on-the-job training as an intern, volunteer, or employee in alcohol and drug counseling.

Subd. 18. **Psychometrically valid and reliable.** "Psychometrically valid and reliable" means developed on the basis of role delineation, validation, reliability, passing point, and sensitivity review factors, according to generally accepted standards.

148C.015 SCOPE; DEFINITIONS.

Before engaging in the practice of alcohol and drug counseling as defined in section 148C.01, all persons, except as provided in section 148C.11, regardless of their titles, must obtain a license as provided in this chapter.

148C.03 DUTIES OF BOARD.

Subdivision 1. **General.** The board shall:

(a) adopt and enforce rules for licensure of alcohol and drug counselors, including establishing standards and methods of determining whether applicants and licensees are qualified under section 148C.04. The rules must provide for examinations and establish standards for the regulation of professional conduct. The rules must be designed to protect the public;

(b) issue licenses to individuals qualified under sections 148C.01 to 148C.11;

(c) issue copies of the rules for licensure to all applicants;

(d) adopt rules to establish and implement procedures, including a standard disciplinary process and rules of professional conduct;

(e) carry out disciplinary actions against licensees;

(f) establish written internal operating procedures for receiving and investigating complaints and for taking disciplinary actions as appropriate;

(g) educate the public about the existence and content of the rules for alcohol and drug counselor licensing to enable consumers to file complaints against licensees who may have violated the rules;

(h) evaluate the rules in order to refine and improve the methods used to enforce the board's standards; and

(i) collect license fees for alcohol and drug counselors.

Subd. 4. **Professional accountability.** The board shall maintain and keep current a file containing the reports and complaints filed against alcohol and drug counselors within the board's jurisdiction.

148C.0351 PROCEDURES FOR ADMISSION TO LICENSURE.

Subdivision 1. **Application forms.** Unless exempted under section 148C.11, a person who practices alcohol and drug counseling in Minnesota must:

(1) apply to the board for a license to practice alcohol and drug counseling on forms provided by the board;

(2) include with the application a statement that the statements in the application are true and correct to the best of the applicant's knowledge and belief;

(3) include with the application a nonrefundable application fee specified in section 148C.12;

(4) include with the application information describing the applicant's experience, including the number of years and months the applicant has practiced alcohol and drug counseling as defined in section 148C.01;

(5) include with the application the applicant's business address and telephone number, or home address and telephone number if the applicant conducts business out of the home, and if applicable, the name of the applicant's supervisor, manager, and employer;

(6) include with the application a written and signed authorization for the board to make inquiries to appropriate state regulatory agencies and private credentialing organizations in this or any other state where the applicant has practiced alcohol and drug counseling; and

(7) complete the application in sufficient detail for the board to determine whether the applicant meets the requirements for filing. The board may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subd. 3. **Requirement to maintain current information.** An alcohol and drug counselor must notify the board within 30 days of the occurrence of any of the following:

(1) a change of name, address, place of employment, and home or business telephone number; and

(2) a settlement or award based on negligent or intentional acts committed in providing alcohol and drug counseling services.

Subd. 4. **Initial license; term.** (a) An initial license is effective on the date the board indicates on the license certificate, with the license number, sent to the applicant upon approval of the application.

(b) An initial license is valid for a period beginning with the effective date in paragraph (a) and ending on the date specified by the board on the license certificate placing the applicant in an existing two-year renewal cycle, as established under section 148C.05, subdivision 1.

148C.0355 BOARD ACTION ON APPLICATIONS FOR LICENSURE.

The board shall act on each application for licensure within 90 days from the date the completed application and all required information is received by the board. The board shall determine if the applicant meets the requirements for licensure and whether there are grounds for denial of licensure under this chapter. If the board denies an application on grounds other than the applicant's failure of an examination, the board shall:

(1) notify the applicant, in writing, of the denial and the reason for the denial and provide the applicant 30 days from the date of the letter informing the applicant of the denial in which the applicant may provide additional information to address the reasons for the denial. If the applicant does not respond in writing to the board within the 30-day period, the denial is final. If the board receives additional information, the board shall review it and make a final determination thereafter;

(2) notify the applicant that an application submitted following denial is a new application and must be accompanied by the appropriate fee as specified in section 148C.12; and

(3) notify the applicant of the right to request a hearing under chapter 14.

148C.04 REQUIREMENTS FOR LICENSURE.

Subdivision 1. **General requirements.** The board shall issue licenses to the individuals qualified under this chapter to practice alcohol and drug counseling.

Subd. 2. **Fee.** Each applicant shall pay a nonrefundable fee as specified in section 148C.12. Fees paid to the board shall be deposited in the special revenue fund.

Subd. 3. **Requirements for licensure before July 1, 2008.** An applicant for a license must furnish evidence satisfactory to the board that the applicant has met all the requirements in clauses (1) to (3). The applicant must have:

(1) received an associate degree, or an equivalent number of credit hours, and a certificate in alcohol and drug counseling, including 18 semester credits or 270 clock hours of academic course work in accordance with subdivision 5a, paragraph (a), from an accredited school or educational program and 880 clock hours of supervised alcohol and drug counseling practicum;

(2) completed one of the following:

(i) a written case presentation and satisfactorily passed an oral examination that demonstrates competence in the core functions as determined by the board; or

(ii) satisfactorily completed 2,000 hours of supervised postdegree equivalent professional practice in accordance with section 148C.044; and

(3) satisfactorily passed written examinations for licensure as determined by the board.

Subd. 4. **Requirements for licensure after July 1, 2008.** An applicant for a license must submit evidence to the board that the applicant has met one of the following requirements:

(1) the applicant must have:

(i) received a bachelor's degree from an accredited school or educational program, including 18 semester credits or 270 clock hours of academic course work in accordance with subdivision 5a, paragraph (a), from an accredited school or educational program and 880 clock hours of supervised alcohol and drug counseling practicum;

(ii) completed a written case presentation and satisfactorily passed an oral examination that demonstrates competence in the core functions as determined by the board; or submitted to the board a plan for supervision during the first 2,000 hours of professional practice, or submitted proof of supervised professional practice that is acceptable to the board; and

(iii) satisfactorily passed written examinations as determined by the board established by the board; or

(2) the applicant must meet the requirements of section 148C.07.

Subd. 5a. **Academic course work.** (a) Minimum academic course work requirements for licensure as referred to under subdivision 3, clause (1), and subdivision 4, clause (1), item (i), must be in the following areas:

(1) overview of alcohol and drug counseling focusing on the transdisciplinary foundations of alcohol and drug counseling and providing an understanding of theories of chemical dependency, the continuum of care, and the process of change;

(2) pharmacology of substance abuse disorders and the dynamics of addiction;

(3) screening, intake, assessment, and treatment planning;

(4) counseling theory and practice, crisis intervention, orientation, and client education;

(5) case management, consultation, referral, treatment planning, reporting, record keeping, and professional and ethical responsibilities; and

(6) multicultural aspects of chemical dependency to include awareness of learning outcomes described in Minnesota Rules, part 4747.1100, subpart 2, and the ability to know when consultation is needed.

(b) Advanced academic course work includes, at a minimum, the course work required in paragraph (a) and additional course work in the following areas:

(1) advanced study in the areas listed in paragraph (a);

(2) chemical dependency and the family;

(3) treating substance abuse disorders in culturally diverse and identified populations;

(4) dual diagnoses/co-occurring disorders with substance abuse disorders; and

(5) ethics and chemical dependency.

Subd. 6. **Temporary permit requirements.** (a) The board shall issue a temporary permit to practice alcohol and drug counseling prior to being licensed under this chapter if the person:

(1) either:

(i) submits verification of a current and unrestricted credential for the practice of alcohol and drug counseling from a national certification body or a certification or licensing body from another state, United States territory, or federally recognized tribal authority;

(ii) submits verification of the completion of at least 64 semester credits, including 270 clock hours or 18 semester credits of formal classroom education in alcohol and drug counseling and at least 880 clock hours of alcohol and drug counseling practicum from an accredited school or educational program;

(iii) applies to renew a lapsed license according to the requirements of section 148C.055, subdivision 3, clauses (1) and (2), or section 148C.055, subdivision 4, clauses (1) and (2); or

(iv) meets the requirements of section 148C.11, subdivision 1, paragraph (c), or 6, clauses (1), (2), and (5);

(2) applies, in writing, on an application form provided by the board, which includes the nonrefundable temporary permit fee as specified in section 148C.12 and an affirmation by the person's supervisor, as defined in paragraph (c), clause (1), which is signed and dated by the person and the person's supervisor; and

(3) has not been disqualified to practice temporarily on the basis of a background investigation under section 148C.09, subdivision 1a.

(b) The board must notify the person in writing within 90 days from the date the completed application and all required information is received by the board whether the person is qualified to practice under this subdivision.

(c) A person practicing under this subdivision:

(1) may practice under tribal jurisdiction or under the direct supervision of a person who is licensed under this chapter;

(2) is subject to the Rules of Professional Conduct set by rule; and

(3) is not subject to the continuing education requirements of section 148C.075.

(d) A person practicing under this subdivision must use the title or description stating or implying that the person is a trainee engaged in the practice of alcohol and drug counseling.

(e) A person practicing under this subdivision must annually submit a renewal application on forms provided by the board with the renewal fee required in section 148C.12, subdivision 3, and the board may renew the temporary permit if the trainee meets the requirements of this subdivision. A trainee may renew a practice permit no more than five times.

(f) A temporary permit expires if not renewed, upon a change of employment of the trainee or upon a change in supervision, or upon the granting or denial by the board of a license.

Subd. 7. **Effect and suspension of temporary permit.** Approval of a person's application for temporary permit creates no rights to or expectation of approval from the board for licensure as an alcohol and drug counselor. The board may suspend or restrict a person's temporary permit status according to section 148C.09.

148C.044 SUPERVISED POSTDEGREE PROFESSIONAL PRACTICE.

Subdivision 1. **Supervision.** For the purpose of this section, "supervision" means documented interactive consultation, which, subject to the limitations in subdivision 4, paragraph (a), clause (2), may be conducted in person, by telephone, or by audio or audiovisual electronic device, with a supervisor as defined in subdivision 2. The supervision must be adequate to ensure the quality and competence of the activities supervised. Supervisory consultation must include discussions on the nature and content of the practice of the supervisee, including, but not limited to, a review of a representative sample of counseling services in the supervisee's practice.

Subd. 2. **Postdegree professional practice.** "Postdegree professional practice" means required postdegree paid or volunteer work experience and training that involves the professional oversight by a supervisor approved by the board and that satisfies the supervision requirements in subdivision 4.

Subd. 3. **Supervisor requirements.** For purposes of this section, a supervisor shall:

(1) be a licensed alcohol and drug counselor or other qualified professional as determined by the board;

(2) have four years of experience in providing alcohol and drug counseling; and

(3) have received a minimum of 12 hours of training in clinical and ethical supervision, which may include graduate course work, continuing education courses, workshops, or a combination thereof.

Subd. 4. **Supervised practice requirements for licensure.** (a) The content of supervision must include:

(1) knowledge, skills, values, and ethics with specific application to the practice issues faced by the supervisee, including the core functions as described in section 148C.01, subdivision 9;

(2) the standards of practice and ethical conduct, with particular emphasis given to the counselor's role and appropriate responsibilities, professional boundaries, and power dynamics; and

(3) the supervisee's permissible scope of practice, as defined by section 148C.01, subdivision 10.

(b) The supervision must be obtained at the rate of one hour of supervision per 40 hours of professional practice, for a total of 50 hours of supervision. The supervision must be evenly distributed over the course of the supervised professional practice. At least 75 percent of the required supervision hours must be received in person. The remaining 25 percent of the required hours may be received by telephone or by audio or audiovisual electronic device. At least 50 percent of the required hours of supervision must be received on an individual basis. The remaining 50 percent may be received in a group setting.

(c) The supervision must be completed in no fewer than 12 consecutive months and no more than 36 consecutive months.

(d) The applicant shall include with an application for licensure verification of completion of the 2,000 hours of supervised professional practice. Verification must be on a form specified by the board. The supervisor shall verify that the supervisee has completed the required hours of supervision in accordance with this section. The supervised practice required under this section is unacceptable if the supervisor attests that the supervisee's performance, competence, or adherence to the standards of practice and ethical conduct has been unsatisfactory.

148C.045 ALCOHOL AND DRUG COUNSELOR TECHNICIAN.

An alcohol and drug counselor technician may perform the services described in section 148C.01, subdivision 9, paragraphs (1), (2), and (3), while under the direct supervision of a licensed alcohol and drug counselor.

148C.05 LICENSE RENEWAL REQUIREMENTS; LAPSE.

Subdivision 1. **Biennial renewal.** A license must be renewed every two years.

Subd. 1a. **Renewal requirements.** To renew a license, an applicant must submit to the board:

(1) a completed and signed application for license renewal, including a signed consent authorizing the board to obtain information about the applicant from third parties, including, but not limited to, employers, former employers, and law enforcement agencies;

(2) the renewal fee required under section 148C.12; and

(3) additional information as requested by the board to clarify information presented in the renewal application. The licensee must submit information within 30 days of the date of the board's request.

Subd. 5. **License renewal notice.** At least 60 calendar days before the renewal deadline date in subdivision 6, the board shall mail a renewal notice to the licensee's last known address on file with the board. The notice must include an application for license renewal, the renewal deadline, and notice of fees required for renewal. The licensee's failure to receive notice does not relieve the licensee of the obligation to meet the renewal deadline and other requirements for license renewal.

Subd. 6. **Renewal deadline and lapse of licensure.** (a) Licensees must comply with paragraphs (b) to (d).

(b) Each license certificate must state an expiration date. An application for license renewal must be received by the board or postmarked at least 30 calendar days before the expiration date. If the postmark is illegible, the application must be considered timely if received at least 21 calendar days before the expiration date.

(c) An application for license renewal not received within the time required under paragraph (b) must be accompanied by a late fee in addition to the renewal fee required in section 148C.12.

(d) A licensee's license lapses if the licensee fails to submit to the board a license renewal application by the licensure expiration date. A licensee shall not engage in the practice of alcohol and drug counseling while the license is lapsed. A licensee whose license has lapsed may renew the license by complying with section 148C.055.

148C.055 INACTIVE OR LAPSED LICENSE.

Subdivision 1. **Inactive license status.** Unless a complaint is pending against the licensee, a licensee whose license is in good standing may request, in writing, that the license be placed on the inactive list. If a complaint is pending against a licensee, a license may not be placed on the inactive list until action relating to the complaint is concluded. The board must receive the request for inactive status before expiration of the license. A request for inactive status received after the license expiration date must be denied. A licensee may renew a license that is inactive under this subdivision by meeting the renewal requirements of subdivision 2, except that payment of a late renewal fee is not required. A licensee must not practice alcohol and drug counseling while the license is inactive.

Subd. 2. **Renewal of inactive license.** A licensee whose license is inactive shall renew the inactive status by the inactive status expiration date determined by the board or the license will lapse. An application for renewal of inactive status must include evidence satisfactory to the board that the licensee has completed 40 clock hours of continuing professional education required in section 148C.075, and be received by the board at least 30 calendar days before the expiration date. If the postmark is illegible, the application must be considered timely if received at least 21 calendar days before the expiration date. Late renewal of inactive status must be accompanied by a late fee as required in section 148C.12.

Subd. 3. **Renewal of lapsed license.** An individual whose license has lapsed for less than two years may renew the license by submitting:

(1) a completed and signed license renewal application;

(2) the inactive license renewal fee or the renewal fee and the late fee as required under section 148C.12; and

(3) proof of having met the continuing education requirements in section 148C.075 since the individual's initial licensure or last license renewal. The license issued is then effective for the remainder of the next two-year license cycle.

Subd. 4. **License renewal for two years or more after license expiration date.** An individual who submitted a license renewal two years or more after the license expiration date must submit the following:

(1) a completed and signed application for licensure, as required by section 148C.0351;

(2) the initial license fee as required in section 148C.12; and

(3) verified documentation of having achieved a passing score within the past year on an examination required by the board.

148C.07 RECIPROCITY.

(a) An individual who holds a current license or national certification as an alcohol and drug counselor from another jurisdiction must file with the board a completed application for licensure by reciprocity containing the information required under this section.

(b) The applicant must request the credentialing authority of the jurisdiction in which the credential is held to send directly to the board a statement that the credential is current and in good standing, the applicant's qualifications that entitled the applicant to the credential, and a copy of the jurisdiction's credentialing laws and rules that were in effect at the time the applicant obtained the credential.

(c) The board shall issue a license if the board finds that the requirements, which the applicant had to meet to obtain the credential from the other jurisdiction were substantially similar to the current requirements for licensure in this chapter, and the applicant is not otherwise disqualified under section 148C.09.

148C.075 CONTINUING EDUCATION REQUIREMENTS.

Subdivision 1. **General requirements.** The board shall establish a two-year continuing education reporting schedule requiring licensees to report completion of the requirements of this section. Licensees must document completion of a minimum of 40 clock hours of continuing education activities each reporting period. A licensee may be given credit only for activities that directly relate to the practice of alcohol and drug counseling, the core functions, or the Rules of Professional Conduct in Minnesota Rules, part 4747.1400. The continuing education reporting form must require reporting of the following information:

(1) the continuing education activity title;

(2) a brief description of the continuing education activity;

(3) the sponsor, presenter, or author;

(4) the location and attendance dates;

(5) the number of clock hours; and

(6) a statement that the information is true and correct to the best knowledge of the licensee.

Only continuing education obtained during the previous two-year reporting period may be considered at the time of reporting. Clock hours must be earned and reported in increments of one-half clock hour with a minimum of one clock hour for each continuing education activity.

Subd. 2. **Continuing education requirements for licensee's first four years.** A licensee must, as part of meeting the clock hour requirement of this section, obtain and document 18 hours of cultural diversity training within the first four years after the licensee's initial license effective date according to the board's reporting schedule. Cultural diversity training includes gaining knowledge in areas described in Minnesota Rules, part 4747.1100, subpart 2, and in identified population groups defined in Minnesota Rules, part 4747.0030, subpart 20.

Subd. 3. **Continuing education requirements after licensee's initial four years.** Beginning four years following a licensee's initial license effective date and according to the board's reporting schedule, a licensee must document completion of a minimum of six clock hours each reporting period of cultural diversity training. Licensees must also document completion of six clock hours in courses directly related to the Rules of Professional Conduct in Minnesota Rules, part 4747.1400.

Subd. 4. **Standards for approval.** In order to obtain clock hour credit for a continuing education activity, the activity must:

(1) constitute an organized program of learning;

(2) reasonably be expected to advance the knowledge and skills of the alcohol and drug counselor;

(3) pertain to subjects that directly relate to the practice of alcohol and drug counseling and the core functions of an alcohol and drug counselor, or the Rules of Professional Conduct in Minnesota Rules, part 4747.1400;

(4) be conducted by individuals who have education, training, and experience and are knowledgeable about the subject matter; and

(5) be presented by a sponsor who has a system to verify participation and maintains attendance records for three years, unless the sponsor provides dated evidence to each participant with the number of clock hours awarded.

Subd. 5. **Course work.** A licensee may obtain a maximum of six clock hours in any two-year continuing education period for teaching course work in an accredited school or educational program that meets the requirements of section 148C.04, subdivision 5a. A licensee may earn a maximum of two clock hours as preparation time for each clock hour of presentation time. Clock hours may be claimed only once per course in any two-year continuing education period. The licensee shall maintain a course schedule or brochure for audit.

148C.08 NONTRANSFERABILITY OF LICENSES.

An alcohol and drug counselor license is not transferable.

148C.09 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. **Grounds.** The board may refuse to grant a license to, or may suspend, revoke, or restrict the license of an individual if the board determines that a licensee or applicant:

(1) is incompetent to engage in alcohol and drug counseling practice or is found to be engaged in alcohol and drug counseling practice in a manner harmful or dangerous to a client or the public;

(2) has violated the rules of the board or the statutes the board is empowered to enforce; or any law, rule order, stipulation and consent order, agreement, or settlement;

(3) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent misrepresentation;

(4) has knowingly made a false statement on the form required to be submitted to the board for licensing or license renewal;

(5) has failed to obtain continuing education credits required by the board;

(6) has failed to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the board. The burden of proof shall be upon the applicant to demonstrate qualifications or satisfaction of requirements;

(7) has been convicted of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to the provision of alcohol and drug counseling services. Conviction, as used in this subdivision, includes conviction of an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered;

(8) has been convicted of a crime against another person. For purposes of this chapter, a crime against another person means an offense listed in section 148B.68, subdivision 1, paragraph (b);

(9) has failed to comply with the self-reporting requirements of section 148C.095, subdivision 7;

(10) has engaged in sexual contact with a client, or a former client, as defined in section 604.20, or has engaged in conduct that may be reasonably interpreted by a client as sexual, or has engaged in any verbal behavior that is seductive or sexually demeaning to the client, or has engaged in sexual exploitation of a client or former client;

(11) has engaged in false, fraudulent, deceptive, or misleading advertising;

(12) has engaged in conduct likely to deceive, defraud, or harm the public; or has demonstrated a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established;

(13) has been adjudicated as mentally incompetent, or as a person who has a psychopathic personality, or who is dangerous to self, or has been adjudicated as a person who is chemically dependent, mentally ill, developmentally disabled, or mentally ill and dangerous to the public pursuant to chapter 253B;

(14) is unable to provide alcohol and drug counseling services with reasonable safety to clients;

(15) has habitually overindulged in the use of or the dependence on alcohol within the past two years;

(16) has engaged in the improper or unauthorized personal or other use of any legend drugs as defined in section 151.01, any chemicals as defined in section 151.01, or any controlled substance as defined in section 152.01 within the past two years;

(17) reveals a communication from, or relating to, a client except when required or permitted by law;

(18) fails to comply with a client's request for health records made under sections 144.291 to 144.298, or to furnish a client record or report required by law;

(19) has engaged in fee splitting or promises to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client;

(20) has engaged in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(21) fails to make reports as required by section 148C.095, or cooperate with an investigation of the board;

(22) obtains money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud;

(23) undertakes or continues a professional relationship with a client in which the objectivity of the alcohol and drug counselor may be impaired;

(24) engages in conduct that constitutes grounds for discipline as established by the board in rule; or

(25) engages in bartering for services with a client.

Subd. 1a. **Background investigation.** The applicant must sign a release authorizing the board to obtain information from the Bureau of Criminal Apprehension, the Federal Bureau of Investigation, the Office of Mental Health Practice, the Department of Human Services, the Office of Health Facilities Complaints, and other agencies specified in the rules. After the board has given written notice to an individual who is the subject of a background investigation, the agencies shall assist the board with the investigation by giving the board criminal conviction data, reports about substantiated maltreatment of minors and vulnerable adults, and other information specified in the rules. The board may contract with the commissioner of human services to obtain criminal history data from the Bureau of Criminal Apprehension.

Subd. 2. **Appeal; restoring a license.** If a license is denied, suspended, restricted, or revoked, an applicant or licensee may request a hearing under the contested case provisions of chapter 14. The board may, for good cause demonstrated by the applicant or counselor, grant a license previously refused, restore a license that has been revoked, or reduce a period of suspension or restriction of a license. The board may impose any conditions or limitations as the board deems reasonable.

Subd. 4. **Evidence.** In disciplinary actions alleging violations of subdivision 1, paragraph (7), (8), (13), or (14), a copy of the judgment or proceedings under the seal of the court administrator or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

148C.091 DISCIPLINARY ACTIONS.

Subdivision 1. **Forms of disciplinary action.** When the board finds that an applicant or a licensed alcohol and drug counselor has violated a provision or provisions of sections 148C.01 to 148C.11, or rules promulgated under this chapter, the board may take one or more of the following actions:

(1) refuse to grant a license;

(2) revoke the license;

(3) suspend the license;

(4) impose limitations or conditions;

(5) impose a civil penalty not exceeding $10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the counselor of any economic advantage gained by reason of the violation charged or to reimburse the board for all costs of the investigation and proceeding; including, but not limited to, the amount paid by the board for services from the Office of Administrative Hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by staff of the department;

(6) order the counselor to provide uncompensated professional service under supervision at a designated public hospital, clinic, or other health care institution;

(7) censure or reprimand the counselor; or

(8) any other action justified by the case.

Subd. 2. **Discovery; subpoenas.** In all matters relating to the board's investigation and enforcement activities related to alcohol and drug counselors, the board of behavioral health and therapy may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary materials. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so may, upon application by the board to the district court in any district, be ordered to comply with the order or subpoena. The board may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 3. **Temporary suspension.** In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the right of an alcohol and drug counselor to practice if the board finds that the counselor has violated a statute or rule that the board has authority to enforce and that continued practice by the practitioner would create a serious risk of harm to others. The suspension takes effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the board issues a final order in the matter after a hearing or upon agreement between the board and the counselor.

Service of the order is effective if the order is served on the counselor or the counselor's attorney either personally or by first class mail. Within ten days of service of the order, the board shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the board or counselor must be by affidavit only. The counselor or the counselor's attorney of record may appear for oral argument. Within five working days after the hearing, the board shall issue an order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The board shall issue a final order within 30 days after receipt of that report, the hearing record, and any exceptions to the report filed by the parties.

Subd. 4. **Automatic suspension.** The right to practice is automatically suspended if (1) a guardian of an alcohol and drug counselor is appointed by order of a district court under sections 524.5-101 to 524.5-502, or (2) the counselor is committed by order of a district court under chapter 253B. The right to practice remains suspended until the counselor is restored to capacity by a court and, upon petition by the counselor, the suspension is terminated by the board after a hearing or upon agreement between the board and the counselor.

148C.093 ADDITIONAL REMEDIES.

Subdivision 1. **Cease and desist.** The board may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the board has issued or has authority to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the board and is not reviewable by a court or agency.

A hearing must be initiated by the board not later than 30 days from the date of the board's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, and any written agreement or exceptions filed by the parties, the board shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the board.

When a request for a stay accompanies a timely hearing request, the board may, in the board's discretion, grant the stay. If the board does not grant a requested stay, the board shall refer the request to the Office of Administrative Hearings within three working days of receipt of the request. Within ten days after receiving the request from the board, an administrative law judge shall issue a recommendation to grant or deny the stay. The board shall grant or deny the stay within five working days of receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the board may institute a proceeding in district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the board not exceeding $10,000 for each separate violation.

Subd. 2. **Injunctive relief.** In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the board may in the board's own name bring an action in district court for injunctive relief to restrain an alcohol and drug counselor from a violation or threatened violation of any statute, rule, or order which the board has authority to administer, enforce, or issue.

Subd. 3. **Additional powers.** The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a counselor from criminal prosecution by a competent authority or from disciplinary action by the board.

148C.095 REPORTING OBLIGATIONS.

Subdivision 1. **Permission to report.** A person who has knowledge of any conduct constituting grounds for disciplinary action relating to the practice of alcohol and drug counseling under this chapter may report the violation to the board.

Subd. 2. **Institutions.** A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an alcohol and drug counselor's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the board under this chapter. The institution, organization, or governmental entity shall also report the resignation of any alcohol and drug counselors before the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or before the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

Subd. 3. **Professional societies.** A state or local professional society for alcohol and drug counselors shall report to the board any termination, revocation, or suspension of membership or any other disciplinary action taken against an alcohol and drug counselor. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the board.

Subd. 4. **Licensed professionals.** A licensed health professional shall report to the board personal knowledge of any conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action under this chapter by an alcohol and drug counselor, including conduct indicating that the individual may be medically incompetent, or may be medically or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is an alcohol and drug counselor, and the treating individual successfully counsels the alcohol and drug counselor to limit or withdraw from practice to the extent required by the impairment, the board may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. **Insurers.** Each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to alcohol and drug counselors or the Medical Joint Underwriting Association under chapter 62F, shall submit to the board quarterly reports concerning the alcohol and drug counselors against whom malpractice settlements and awards have been made. The report must contain at least the following information:

(1) the total number of malpractice settlements or awards made;

(2) the date the malpractice settlements or awards were made;

(3) the allegations contained in the claim or complaint leading to the settlements or awards made;

(4) the dollar amount of each settlement or award;

(5) the address of the practice of the alcohol and drug counselor against whom an award was made or with whom a settlement was made; and

(6) the name of the alcohol and drug counselor against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the above information, submit to the board any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that a licensed alcohol and drug counselor may have engaged in conduct violating this chapter.

Subd. 6. **Self-reporting.** An alcohol and drug counselor shall report to the board any personal action that would require that a report be filed with the board by any person, health care facility, business, or organization under subdivisions 2 to 5. The alcohol and drug counselor shall also report the revocation, suspension, restriction, limitation, or other disciplinary action in this state and report the filing of charges regarding the practitioner's license or right of practice in another state or jurisdiction.

Subd. 7. **Deadlines; forms.** Reports required by subdivisions 2 to 6 must be submitted no later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The board may provide forms for the submission of the reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

148C.099 INVESTIGATIONS; COOPERATION; EXCHANGING INFORMATION.

Subdivision 1. **Cooperation.** An alcohol and drug counselor who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the board, shall cooperate fully with the investigation. Cooperation includes responding fully to any question raised by or on behalf of the board relating to the subject of the investigation whether tape recorded or not. Challenges to requests of the board may be brought before the appropriate agency or court.

Subd. 2. **Exchanging information.** (a) The board shall establish internal operating procedures for:

(1) exchanging information with state boards; agencies, including the Office of Ombudsman for Mental Health and Developmental Disabilities; health-related and law

enforcement facilities; departments responsible for licensing health-related occupations, facilities, and programs; and law enforcement personnel in this and other states; and

(2) coordinating investigations involving matters within the jurisdiction of more than one regulatory agency.

(b) The procedures for exchanging information must provide for forwarding to an entity described in paragraph (a), clause (1), any information or evidence, including the results of investigations, that is relevant to matters within the regulatory jurisdiction of that entity. The data have the same classification in the possession of the agency receiving the data as they have in the possession of the agency providing the data.

(c) The board shall establish procedures for exchanging information with other states regarding disciplinary action against alcohol and drug counselors.

(d) The board shall forward to another governmental agency any complaints received by the board that do not relate to the board's jurisdiction but that relate to matters within the jurisdiction of the other governmental agency. The agency to which a complaint is forwarded shall advise the board of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule that the board is empowered to enforce must be forwarded to the board to be processed according to this section.

(e) The board shall furnish to a person who made a complaint a description of the actions of the board relating to the complaint.

148C.10 PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. **Practice.** No person, other than those individuals exempted under section 148C.11 or 148C.045, shall engage in alcohol and drug counseling without first being licensed under this chapter as an alcohol and drug counselor. For purposes of this chapter, an individual engages in the practice of alcohol and drug counseling if the individual performs or offers to perform alcohol and drug counseling services as defined in section 148C.01, subdivision 10, or if the individual is held out as able to perform those services.

Subd. 2. **Use of titles.** No person shall present themselves or any other individual to the public by any title incorporating the words "licensed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed or otherwise qualified to practice alcohol and drug counseling unless that individual holds a valid license. Persons issued a temporary permit must use titles consistent with section 148C.04, subdivision 6, paragraph (d).

Subd. 3. **Penalty.** A person who violates sections 148C.01 to 148C.11 is guilty of a misdemeanor.

148C.11 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. **Other professionals.** (a) Nothing in this chapter prevents members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes, but is not limited to: licensed physicians; registered nurses; licensed practical nurses; licensed psychological practitioners; members of the clergy; American Indian medicine men and women; licensed attorneys; probation officers; licensed marriage and family therapists; licensed social workers; social workers employed by city, county, or state agencies; licensed professional counselors; licensed school counselors; registered occupational therapists or occupational therapy assistants; city, county, or state employees when providing assessments or case management under Minnesota Rules, chapter 9530; and individuals providing integrated dual-diagnosis treatment in adult mental health rehabilitative programs certified by the Department of Human Services under section 256B.0622 or 256B.0623.

(b) Nothing in this chapter prohibits technicians and resident managers in programs licensed by the Department of Human Services from discharging their duties as provided in Minnesota Rules, chapter 9530.

(c) Any person who is exempt under this subdivision but who elects to obtain a license under this chapter is subject to this chapter to the same extent as other licensees. The board shall issue a license without examination to an applicant who is licensed or registered in a profession identified in paragraph (a) if the applicant:

(1) shows evidence of current licensure or registration; and

(2) has submitted to the board a plan for supervision during the first 2,000 hours of professional practice or has submitted proof of supervised professional practice that is acceptable to the board.

(d) Any person who is exempt from licensure under this section must not use a title incorporating the words "alcohol and drug counselor" or "licensed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are engaged in the practice of alcohol and drug counseling, or that they are licensed to engage in the practice of alcohol and drug counseling unless that person is also licensed as an alcohol and drug counselor. Persons engaged in the practice of alcohol and drug counseling are not exempt from the board's jurisdiction solely by the use of one of the above titles.

Subd. 2. **Students.** Nothing in sections 148C.01 to 148C.10 shall prevent students enrolled in an accredited school of alcohol and drug counseling from engaging in the practice of alcohol and drug counseling while under qualified supervision in an accredited school of alcohol and drug counseling.

Subd. 3. **Federally recognized tribes; ethnic minorities.** (a) Alcohol and drug counselors practicing alcohol and drug counseling according to standards established by federally recognized tribes, while practicing under tribal jurisdiction, are exempt from the requirements of this chapter. In practicing alcohol and drug counseling under tribal jurisdiction, individuals practicing under that authority shall be afforded the same rights, responsibilities, and recognition as persons licensed pursuant to this chapter.

(b) The board shall develop special licensing criteria for issuance of a license to alcohol and drug counselors who: (1) practice alcohol and drug counseling with a member of an ethnic minority population or with a person with a disability as defined by rule; or (2) are employed by agencies whose primary agency service focus addresses ethnic minority populations or persons with a disability as defined by rule. These licensing criteria may differ from the licensing requirements specified in section 148C.04. To develop, implement, and evaluate the effect of these criteria, the board shall establish a committee comprised of, but not limited to, representatives from the Commission of Deaf, DeafBlind and Hard-of-Hearing Minnesotans, the Council on Affairs of Chicano/Latino People, the Council on Asian-Pacific Minnesotans, the Council on Black Minnesotans, the Council on Disability, and the Indian Affairs Council. The committee does not expire.

(c) MS 2002 [Expired, 2002 c 354 s 1]

Subd. 4. **Hospital alcohol and drug counselors.** Effective January 1, 2007, hospitals employing alcohol and drug counselors shall be required to employ licensed alcohol and drug counselors. An alcohol or drug counselor employed by a hospital must be licensed as an alcohol and drug counselor in accordance with this chapter.

Subd. 5. **City, county, and state agency alcohol and drug counselors.** Effective January 1, 2007, city, county, and state agencies employing alcohol and drug counselors shall be required to employ licensed alcohol and drug counselors. An alcohol and drug counselor employed by a city, county, or state agency must be licensed as an alcohol and drug counselor in accordance with this chapter.

Subd. 6. **Transition period for hospital and city, county, and state agency alcohol and drug counselors.** For the period between July 1, 2003, and January 1, 2007, the board shall grant a license to an individual who is employed as an alcohol and drug counselor at a Minnesota school district or hospital, or a city, county, or state agency in Minnesota, if the individual meets the requirements in section 148C.0351 and:

(1) was employed as an alcohol and drug counselor at a school district, a hospital, or a city, county, or state agency before August 1, 2002; has 8,000 hours of alcohol and drug counselor work experience; has satisfactorily completed 2,000 hours of supervised postdegree equivalent professional practice according to section 148C.04, subdivision 4; or has completed a written case presentation and satisfactorily passed an oral examination established by the board; and has satisfactorily passed a written examination as established by the board; or

(2) is credentialed as a board certified counselor (BCC) or board certified counselor reciprocal (BCCR) by the Minnesota Certification Board; or

(3) has 14,000 hours of supervised alcohol and drug counselor work experience as documented by the employer.

148C.12 FEES.

Subdivision 1. **Application fee.** The application fee is $295.

Subd. 2. **Biennial renewal fee.** The license renewal fee is $295. If the board establishes the renewal schedule and the expiration date is less than two years, the fee must be prorated.

Subd. 3. **Temporary permit fee.** The initial fee for applicants under section 148C.04, subdivision 6, paragraph (a), is $100. The fee for annual renewal of a temporary permit is $150, but when the first expiration date occurs in less or more than one year, the fee must be prorated.

Subd. 5. **Inactive renewal fee.** The inactive renewal fee is $150.

Subd. 6. **Late fee.** The late fee is 25 percent of the biennial renewal fee, the inactive renewal fee, or the annual fee for renewal of temporary practice status.

Subd. 7. **Fee to renew after expiration of license.** The fee for renewal of a license that has expired for less than two years is the total of the biennial renewal fee, the late fee, and a fee of $100 for review and approval of the continuing education report.

Subd. 8. **Fee for license verifications.** The fee for license verification to institutions and other jurisdictions is $25.

Subd. 9. **Surcharge fee.** Notwithstanding section 16A.1285, subdivision 2, a surcharge of $99 shall be paid at the time of initial application for or renewal of an alcohol and drug counselor license until June 30, 2013.

Subd. 10. **Nonrefundable fees.** All fees are nonrefundable.

Subd. 11. **Penalty fees.** (a) The penalty fee for practicing alcohol and drug counseling without a current license after the credential has expired and before it is renewed is the amount of the license renewal fee for any part of the first month, plus the license renewal fee for any part of any subsequent month up to 36 months.

(b) The penalty fee for applicants who engage in the unauthorized practice of alcohol and drug counseling before being issued a license is the amount of the license application fee for any part of the first month, plus the license application fee for any part of any subsequent month up to 36 months. This paragraph does not apply to applicants not qualifying for a license who engage in the unauthorized practice of alcohol and drug counseling.

(c) The penalty fee for failing to submit a continuing education report by the due date with the correct number or type of hours in the correct time period is $100 plus $20 for each missing clock hour. The licensee must obtain the correct number of continuing education hours by the next reporting due date.

(d) Civil penalties and discipline incurred by licensees prior to August 1, 2005, for conduct described in paragraph (a), (b), or (c) shall be recorded as nondisciplinary penalty fees. For conduct described in paragraph (a) or (b) occurring after August 1, 2005, and exceeding 12 months, payment of a penalty fee does not preclude any disciplinary action reasonably justified by the individual case.

Subd. 12. **Sponsor application fee.** The fee for sponsor application for approval of a continuing education course is $60.

Subd. 13. **Order or stipulation fee.** The fee for a copy of a board order or stipulation is $10.

Subd. 14. **Duplicate certificate fee.** The fee for a duplicate certificate is $25.

Subd. 15. **Supervisor application processing fee.** The fee for licensure supervisor application processing is $30.

148E.065 EXEMPTIONS.

Subd. 3. **Geographic waiver.** A geographic waiver may be granted by the board on a case-by-case basis to agencies with special regional hiring problems. The waiver is for the purpose of permitting agencies to hire individuals who do not meet the qualifications of section 148E.055 or 148E.060 to practice social work.