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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **1240**

03/05/2013 Authored by Abeler, Ward, J.A., and Lesch

The bill was read for the first time and referred to the Committee on Judiciary Finance and Policy

03/07/2013 By motion, recalled and re-referred to the Committee on Civil Law

A bill for an act

relating to human services; modifying provisions related to licensing data, human services licensing, child care programs, financial fraud and abuse investigations, vendors of chemical dependency treatment services, background studies, and fair hearings; requiring the use of NETStudy for background studies; amending Minnesota Statutes 2012, sections 13.46, subdivisions 3, 4; 119B.125, subdivision 1b; 168.012, subdivision 1; 245A.02, subdivision 5a; 245A.04, subdivisions 1, 5, 11; 245A.06, subdivision 1; 245A.07, subdivisions 2, 3, by adding a subdivision; 245A.08, subdivisions 2a, 5a; 245A.146, subdivisions 3, 4; 245A.50, subdivision 4; 245A.65, subdivision 1; 245A.66, subdivision 1; 245B.02, subdivision 10; 245B.04; 245B.05, subdivisions 1, 7; 245B.07, subdivisions 5, 9, 10; 245C.04; 245C.05, subdivision 6; 245C.08, subdivision 1; 245C.16, subdivision 1; 245C.20, subdivision 1; 245C.22, subdivision 1; 245C.23, subdivision 2; 245C.24, subdivision 2; 245C.28, subdivisions 1, 3; 245C.29, subdivision 2; 254B.05, subdivision 5; 256.01, subdivision 18d; 256.045, subdivision 3b; 268.19, subdivision 1; 471.346; proposing coding for new law in Minnesota Statutes, chapter 245A; repealing Minnesota Statutes 2012, sections 245B.02, subdivision 8a; 245B.07, subdivision 7a.

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

ARTICLE 1

DATA PRACTICES

Section 1. Minnesota Statutes 2012, section 13.46, subdivision 3, is amended to read:

Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of services, licensees, and applicants that is collected, maintained, used, or disseminated by the welfare system in an investigation, authorized by statute, and relating to the enforcement of rules or law are confidential data on individuals pursuant to section 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section 13.02, subdivision 13, and shall not be disclosed except:

(1) pursuant to section 13.05;

(2) pursuant to statute or valid court order;

(3) to a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense; or

(4) to provide notices required or permitted by statute.

The data referred to in this subdivision shall be classified as public data upon submission to an administrative law judge or court in an administrative or judicial proceeding. Inactive welfare investigative data shall be treated as provided in section 13.39, subdivision 3.

(b) Notwithstanding any other provision in law, the commissioner of human services shall provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental health and developmental disabilities upon the request of the ombudsman.

(c) Notwithstanding paragraph (a) and section 13.39, the existence of an investigation by the commissioner of possible overpayments of public funds to a service provider ~~is public data during an investigation~~ or recipient may be disclosed if the commissioner determines that it will not compromise the investigation.

Sec. 2. Minnesota Statutes 2012, section 13.46, subdivision 4, is amended to read:

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

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

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

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

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

county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician.

(ii) When a correction order, an order to forfeit a fine, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license has been issued, or a complaint is resolved, the following data on current and former licensees and applicants are public: the general nature of the complaint or allegations leading to the temporary immediate suspension; the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the existence of settlement negotiations; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; whether a fine has been paid; and the status of any appeal of these actions.

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

(iv) When a license denial under section 245A.05 or a sanction under section 245A.07 is based on a determination that ~~the~~ a license holder or applicant, or controlling individual is disqualified under chapter 245C, the identity of the license holder ~~or~~ applicant, or controlling individual 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, or controlling individual requests reconsideration of the disqualification and the disqualification is affirmed, the reason for the disqualification and the reason to not set aside the disqualification are public data.

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

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

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the existence of settlement negotiations, 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, or controlling individual, the identity of the license holder ~~or~~ applicant, or controlling individual and the reason for the disqualification are public data; and, if the license holder ~~or~~ applicant, or controlling individual 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, or controlling individual, the identity of the disqualified individual shall remain private data.

(6) When maltreatment is substantiated under section 626.556 or 626.557 and the victim and the substantiated perpetrator are affiliated with a program licensed under chapter 245A, the commissioner of human services, local social services agency, or

county welfare agency may inform the license holder where the maltreatment occurred of the identity of the substantiated perpetrator and the victim.

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

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

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

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

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

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

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

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, data on individuals collected by the commissioner of human services

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

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

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

6.27 ARTICLE 2

6.28 LICENSING

6.29 Section 1. Minnesota Statutes 2012, section 119B.125, subdivision 1b, is amended to
6.30 read:

6.31 Subd. 1b. **Training required.** (a) Effective November 1, 2011, prior to initial
6.32 authorization as required in subdivision 1, a legal nonlicensed family child care provider
6.33 must complete first aid and CPR training and provide the verification of first aid and CPR
6.34 training to the county. The training documentation must have valid effective dates as of
6.35 the date the registration request is submitted to the county ~~and~~. The training must have

7.1 been provided by an individual approved to provide first aid and CPR instruction and have
7.2 included CPR techniques for infants and children.

7.3 (b) Legal nonlicensed family child care providers with an authorization effective
7.4 before November 1, 2011, must be notified of the requirements before October 1, 2011, or
7.5 at authorization, and must meet the requirements upon renewal of an authorization that
7.6 occurs on or after January 1, 2012.

7.7 (c) Upon each reauthorization after the authorization period when the initial first aid
7.8 and CPR training requirements are met, a legal nonlicensed family child care provider
7.9 must provide verification of at least eight hours of additional training listed in the
7.10 Minnesota Center for Professional Development Registry.

7.11 (d) This subdivision only applies to legal nonlicensed family child care providers.

7.12 Sec. 2. Minnesota Statutes 2012, section 245A.02, subdivision 5a, is amended to read:

7.13 Subd. 5a. **Controlling individual.** "Controlling individual" means a public body,
7.14 governmental agency, business entity, officer, owner, or managerial official whose
7.15 responsibilities include the direction of the management or policies of a program. For
7.16 purposes of this subdivision, owner means an individual who has direct or indirect
7.17 ownership interest in a corporation, partnership, or other business association issued a
7.18 license under this chapter. For purposes of this subdivision, managerial official means
7.19 those individuals who have the decision-making authority related to the operation of
7.20 the program, and the responsibility for the ongoing management of or direction of the
7.21 policies, services, or employees of the program. A site director who has no ownership
7.22 interest in the program is not considered to be a managerial official for purposes of this
7.23 definition. Controlling individual does not include:

7.24 (1) a bank, savings bank, trust company, savings association, credit union, industrial
7.25 loan and thrift company, investment banking firm, or insurance company unless the entity
7.26 operates a program directly or through a subsidiary;

7.27 (2) an individual who is a state or federal official, or state or federal employee, or a
7.28 member or employee of the governing body of a political subdivision of the state or
7.29 federal government that operates one or more programs, unless the individual is also an
7.30 officer, owner, or managerial official of the program, receives remuneration from the
7.31 program, or owns any of the beneficial interests not excluded in this subdivision;

7.32 (3) an individual who owns less than five percent of the outstanding common
7.33 shares of a corporation:

7.34 (i) whose securities are exempt under section 80A.45, clause (6); or

7.35 (ii) whose transactions are exempt under section 80A.46, clause (2); or

(4) an individual who is a member of an organization exempt from taxation under section 290.05, unless the individual is also an officer, owner, or managerial official of the program or owns any of the beneficial interests not excluded in this subdivision. This clause does not exclude from the definition of controlling individual an organization that is exempt from taxation.

Sec. 3. Minnesota Statutes 2012, 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 for initial licensure 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 identify all controlling individuals and must specify 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

9.1 designation of one or more controlling individuals as agents under this paragraph does not
9.2 affect the legal responsibility of any other controlling individual under this chapter.

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

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

9.12 (e) The applicant must be able to demonstrate competent knowledge of the
9.13 applicable requirements of this chapter and chapter 245C, and the requirements of
9.14 other licensing statutes and rules applicable to the program or services for which the
9.15 applicant is seeking to be licensed. Effective January 1, 2013, the commissioner may
9.16 require the applicant, except for child foster care, to demonstrate competence in the
9.17 applicable licensing requirements by successfully completing a written examination. The
9.18 commissioner may develop a prescribed written examination format.

9.19 (f) When an applicant is an individual, the individual must provide:

9.20 (1) the applicant's taxpayer identification numbers including the Social Security
9.21 number, and federal employer identification number, if the applicant has employees;

9.22 (2) the complete business name, if any, and if doing business under a different name,
9.23 the doing business as (DBA) name, as registered with the secretary of state; and

9.24 (3) a notarized signature of the applicant.

9.25 (g) When an applicant is a nonindividual, the applicant must provide the:

9.26 (1) applicant's taxpayer identification numbers including the Minnesota tax
9.27 identification number, the and federal employer identification number;

9.28 (2) complete business name, and if doing business under a different name, the doing
9.29 business as (DBA) name, as registered with the secretary of state;

9.30 (3) first, middle, and last name, and address for all individuals who will be
9.31 controlling individuals, including all officers, owners, and managerial officials as defined
9.32 in section 245A.02, subdivision 5a, and the date that the background study was initiated
9.33 by the applicant for each controlling individual. The applicant must also provide the; and

9.34 (4) first, middle, and last name, mailing address, and notarized signature of the agent
9.35 authorized by the applicant to accept service on behalf of the controlling individuals.

(h) At the time of application for licensure or renewal of a license, the applicant or license holder must acknowledge on the form provided by the commissioner if the applicant or license holder elects to receive any public funding reimbursement from the commissioner for services provided under the license that:

(1) the applicant's or license holder's compliance with the provider enrollment agreement or registration requirements for receipt of public funding may be monitored by the commissioner as part of a licensing investigation or licensing inspection; and

(2) noncompliance with the provider enrollment agreement or registration requirements for receipt of public funding that is identified through a licensing investigation or licensing inspection, or noncompliance with a licensing requirement that is a basis of enrollment for reimbursement for a service, may result in:

(i) a correction order or a conditional license under section 245A.06, or sanctions under section 245A.07;

(ii) nonpayment of claims submitted by the license holder for public program reimbursement;

(iii) recovery of payments made for the service;

(iv) disenrollment in the public payment program; or

(v) other administrative, civil, or criminal penalties as provided by law.

Sec. 4. Minnesota Statutes 2012, section 245A.04, subdivision 5, is amended to read:

Subd. 5. **Commissioner's right of access.** (a) When the commissioner is exercising the powers conferred by this chapter and sections 245.69, 626.556, and 626.557, the commissioner must be given access to:

(1) the physical plant and grounds where the program is provided;

(2) documents and records, including records maintained in electronic format;

(3) persons served by the program; and

(4) staff and personnel records of current and former staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. Upon request, the license holder must provide the commissioner verification of documentation of staff work experience, training, or educational requirements.

The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is investigating alleged maltreatment, conducting a licensing inspection, or investigating an alleged violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy,

photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. The commissioner shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

(b) Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.

Sec. 5. Minnesota Statutes 2012, section 245A.04, subdivision 11, is amended to read:

Subd. 11. **Education program; permitted ages, additional requirement.** (a) 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 on-site educational program from the commissioner of education according to section 125A.515.

(b) A 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 subdivision precludes the license holder from seeking other variances under subdivision 9.

Sec. 6. Minnesota Statutes 2012, section 245A.06, subdivision 1, is amended to read:

Subdivision 1. **Contents of correction orders and conditional licenses.** (a) If the commissioner finds that the applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the applicant or license holder. When issuing a conditional license, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. The correction order or conditional license must state:

(1) the conditions that constitute a violation of the law or rule;

(2) the specific law or rule violated;

(3) the time allowed to correct each violation; and

(4) if a license is made conditional, the length and terms of the conditional license.

(b) Nothing in this section prohibits the commissioner from proposing a sanction as specified in section 245A.07, prior to issuing a correction order or conditional license.

(c) The commissioner may also issue a conditional license when a background study subject who is disqualified and has been ordered immediately removed continues to be affiliated with the license holder in some manner.

Sec. 7. Minnesota Statutes 2012, section 245A.07, subdivision 2, is amended to read:

Subd. 2. **Temporary immediate suspension.** If the license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, or if the commissioner identifies a pattern of continued noncompliance by a license holder that continues operating under an appeal of an order of revocation issued under this section, the commissioner shall act immediately to temporarily suspend the license. No state funds shall be made available or be expended by any agency or department of state, county, or municipal government for use by a license holder regulated under this chapter while a license is under immediate suspension. A notice stating the reasons for the immediate suspension and informing the license holder

of the right to an expedited hearing under chapter 14 and specifically Minnesota Rules, parts 1400.8505 to 1400.8612, must be delivered by personal service to the address shown on the application or the last known address of the license holder. The license holder may appeal an order immediately suspending a license. The appeal of an order immediately suspending 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 five calendar days after the license holder receives notice that the license has been immediately suspended. If a request is made by personal service, it must be received by the commissioner within five calendar days after the license holder received the order. A license holder and any controlling individual shall discontinue operation of the program upon receipt of the commissioner's order to immediately suspend the license.

Sec. 8. Minnesota Statutes 2012, 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;

(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;

(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 specifically 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

14.1 postmarked and sent to the commissioner within ten calendar days after the license holder
14.2 receives notice that the license has been suspended or revoked. If a request is made by
14.3 personal service, it must be received by the commissioner within ten calendar days after
14.4 the license holder received the order. Except as provided in subdivision 2a, paragraph
14.5 (c), if a license holder submits a timely appeal of an order suspending or revoking a
14.6 license, the license holder may continue to operate the program as provided in section
14.7 245A.04, subdivision 7, paragraphs (g) and (h), until the commissioner issues a final order
14.8 on the suspension or revocation.

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

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

14.24 (3) A license holder shall promptly notify the commissioner of human services,
14.25 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon
14.26 reinspection the commissioner determines that a violation has not been corrected as
14.27 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The
14.28 commissioner shall notify the license holder by certified mail or personal service that a
14.29 second fine has been assessed. The license holder may appeal the second fine as provided
14.30 under this subdivision.

14.31 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for
14.32 each determination of maltreatment of a child under section 626.556 or the maltreatment
14.33 of a vulnerable adult under section 626.557 for which the license holder is determined
14.34 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),
14.35 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each
14.36 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 2012, section 245A.07, is amended by adding a subdivision to read:

Subd. 7. **Time frame for conducting hearing.** Within 15 working days of receipt of the license holder's timely appeal of a sanction under this section other than a temporary immediate suspension, the commissioner shall request assignment of an administrative law judge. The commissioner's request must include a proposed date, time, and place of a hearing. A hearing must be conducted by an administrative law judge within 90 calendar days of the request for assignment, unless an extension is requested by either party and granted by the administrative law judge for good cause or for purposes of discussing settlement. In no case shall one or more extensions be granted for a total of more than 90 calendar days.

Sec. 10. Minnesota Statutes 2012, 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 timely 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.

17.1 (d) The commissioner's final order under subdivision 5 is the final agency action
17.2 on the issue of maltreatment and disqualification, including for purposes of subsequent
17.3 background studies under chapter 245C and is the only administrative appeal of the final
17.4 agency determination, specifically, including a challenge to the accuracy and completeness
17.5 of data under section 13.04.

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

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

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

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

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

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

17.34 (h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction
17.35 under section 245A.07 is based on the termination of a variance under section 245C.30,
17.36 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.

Sec. 11. Minnesota Statutes 2012, section 245A.08, subdivision 5a, is amended to read:

Subd. 5a. **Granting subsequent license.** (a) A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation. Notwithstanding the five-year restriction, when a license is revoked because a person, other than the license holder, resides in the home where services are provided and that person has a disqualification that is not set aside and no variance has been granted, the former license holder may reapply for a license when:

(1) the person with a disqualification, who is not a minor child, is no longer residing in the home and is prohibited from residing in or returning to the home; or

(2) the person with the disqualification is a minor child, the restriction applies until the minor child becomes an adult and permanently moves away from the home or five years, whichever is less.

(b) An applicant or controlling individual whose application was denied must not be granted a license for two years following a denial, unless the applicant's subsequent application contains new information which constitutes a substantial change in the conditions that caused the previous denial. The addition of a new co-applicant in a subsequent application does not constitute a substantial change. If an applicant or controlling individual whose application was denied is affiliated with a subsequent application, and two years have not passed since the denial, the subsequent application must be denied.

Sec. 12. Minnesota Statutes 2012, section 245A.146, subdivision 3, is amended to read:

Subd. 3. **License holder documentation of cribs.** (a) Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission Web site listing of unsafe cribs.

(b) The license holder shall maintain written documentation to be reviewed on site for each crib showing that the review required in paragraph (a) has been completed, and which of the following conditions applies:

19.1 (1) the crib was not identified as unsafe on the United States Consumer Product
19.2 Safety Commission Web site;

19.3 (2) the crib was identified as unsafe on the United States Consumer Product Safety
19.4 Commission Web site, but the license holder has taken the action directed by the United
19.5 States Consumer Product Safety Commission to make the crib safe; or

19.6 (3) the crib was identified as unsafe on the United States Consumer Product Safety
19.7 Commission Web site, and the license holder has removed the crib so that it is no longer
19.8 used by or accessible to children in care.

19.9 (c) Documentation of the review completed under this subdivision shall be
19.10 maintained by the license holder on site and made available to parents or guardians of
19.11 children in care and the commissioner.

19.12 (d) Notwithstanding Minnesota Rules, part 9502.0425, a family child care provider
19.13 that complies with this section may use a mesh-sided or fabric-sided play yard, pack
19.14 and play, or playpen or crib that has not been identified as unsafe on the United States
19.15 Consumer Product Safety Commission Web site for the care or sleeping of infants.

19.16 (e) On at least a monthly basis, the family child care license holder shall perform
19.17 safety inspections of every mesh-sided or fabric-sided play yard, pack and play, or playpen
19.18 used by or that is accessible to any child in care, and must document the following:

19.19 (1) there are no tears, holes, or loose or unraveling threads in mesh or fabric sides of
19.20 crib;

19.21 (2) the weave of the mesh on the crib is no larger than 1/4 of an inch;

19.22 (3) no mesh fabric is unsecure or unattached to top rail and floor plate of crib;

19.23 (4) no tears or holes to top rail of crib;

19.24 (5) the mattress floor board is not soft and does not exceed one-inch thick;

19.25 (6) the mattress floor board has no rips or tears in covering;

19.26 (7) the mattress floor board in use is a waterproof original mattress or replacement
19.27 mattress provided by the manufacturer of the crib;

19.28 (8) there are no protruding or loose rivets, metal nuts, or bolts on the crib;

19.29 (9) there are no knobs or wing nuts on outside crib legs;

19.30 (10) there are no missing, loose, or exposed staples; and

19.31 (11) the latches on top and side rails used to collapse crib are secure, they lock
19.32 properly, and are not loose.

19.33 Sec. 13. Minnesota Statutes 2012, section 245A.146, subdivision 4, is amended to read:

19.34 Subd. 4. **Crib safety standards and inspection.** (a) On at least a monthly basis,
19.35 the license holder shall perform safety inspections of every crib or portable crib of rigid

20.1 construction including full size and non-full size cribs used by or that is accessible to any
20.2 child in care, and must document the following:

20.3 ~~(1) no corner posts extend more than 1/16 of an inch;~~
20.4 ~~(2) no spaces between side slats exceed 2.375 inches;~~
20.5 ~~(3) no mattress supports can be easily dislodged from any point of the crib;~~
20.6 ~~(4) no cutout designs are present on end panels;~~
20.7 ~~(5) no heights of the rail and end panel are less than 26 inches when measured from~~
20.8 ~~the top of the rail or panel in the highest position to the top of the mattress support in~~
20.9 ~~its lowest position;~~

20.10 ~~(6) no heights of the rail and end panel are less than nine inches when measured~~
20.11 ~~from the top of the rail or panel in its lowest position to the top of the mattress support in~~
20.12 ~~its highest position;~~

20.13 ~~(7)~~ (2) no screws, bolts, or hardware are loose or not secured, and there is no use
20.14 of woodscrews in components that are designed to be assembled and disassembled by
20.15 the crib owner;

20.16 ~~(8)~~ (3) no sharp edges, points, or rough surfaces are present;
20.17 ~~(9)~~ (4) no wood surfaces are rough, splintered, split, or cracked; and
20.18 ~~(10) no tears in mesh of fabric sides in non-full-size cribs;~~
20.19 ~~(11) no mattress pads in non-full-size mesh or fabric cribs exceed one inch; and~~
20.20 ~~(12)~~ (5) no unacceptable gaps between the mattress and any sides of the crib are

20.21 present as follows:

20.22 (i) when the noncompressed mattress is centered in the non-full-size crib, at any of
20.23 the adjustable mattress support positions, the gap between the perimeter of the mattress
20.24 and the perimeter of the crib cannot be greater than one-half inch at any point. When the
20.25 mattress is placed against the perimeter of the crib, the resulting gap cannot be greater
20.26 than one inch at any point; and

20.27 (ii) when the noncompressed mattress is centered in the full-size crib, at any of
20.28 the adjustable mattress support positions, the gap between the perimeter of the mattress
20.29 and the perimeter of the crib cannot be greater than 11/16 inch at any point. When the
20.30 mattress is placed against the perimeter of the crib, the resulting gap cannot be greater
20.31 than 1-3/8 inch at any point.

20.32 (b) Upon discovery of any unsafe condition identified by the license holder during
20.33 the safety inspection required under paragraph (a) or subdivision 3, paragraph (e), the
20.34 license holder shall immediately remove the crib from use and ensure that the crib is not
20.35 accessible to children in care, and as soon as practicable, but not more than two business

21.1 days after the inspection, remove the crib from the area where child care services are
21.2 routinely provided for necessary repairs or to destroy the crib.

21.3 (c) Documentation of the inspections and actions taken with unsafe cribs required in
21.4 paragraphs (a) and (b), and subdivision 3, paragraph (e), shall be maintained on site by the
21.5 license holder and made available to parents of children in care and the commissioner.

21.6 Sec. 14. Minnesota Statutes 2012, section 245A.50, subdivision 4, is amended to read:

21.7 Subd. 4. **Cardiopulmonary resuscitation.** (a) When children are present in a
21.8 family child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at
21.9 least one ~~staff person~~ caregiver must be present in the home who has been trained in
21.10 cardiopulmonary resuscitation (CPR), including CPR techniques for infants and children,
21.11 and in the treatment of obstructed airways. The CPR training must have been provided by
21.12 an individual approved to provide CPR instruction, must be repeated at least once every
21.13 three years, and must be documented in the staff person's records.

21.14 (b) A family child care provider is exempt from the CPR training requirement in
21.15 this subdivision related to any substitute caregiver who provides less than 30 hours of
21.16 care during any 12-month period.

21.17 (c) Video training reviewed and approved by the county licensing agency satisfies
21.18 the training requirement of this subdivision.

21.19 Sec. 15. **[245A.55] APPLICABILITY OF LAWS AND RULES TO A FAMILY**
21.20 **CHILD CARE LICENSE HOLDER'S OWN CHILDREN.**

21.21 Any provision of statute or rule governing the care of a child in a licensed family
21.22 child care program applies to the care of a child of any license holder, controlling
21.23 individual, or caregiver when the child:

21.24 (1) is ten years old or younger; and

21.25 (2) is present in the licensed family child care home when the program is in operation.

21.26 Sec. 16. Minnesota Statutes 2012, section 245A.65, subdivision 1, is amended to read:

21.27 Subdivision 1. **License holder requirements.** All license holders serving vulnerable
21.28 adults shall establish and enforce written policies and procedures related to suspected or
21.29 alleged maltreatment, and shall orient clients and mandated reporters who are under
21.30 the control of the license holder to these procedures, as defined in section 626.5572,
21.31 subdivision 16.

22.1 (a) License holders must establish policies and procedures allowing but not
22.2 mandating the internal reporting of alleged or suspected maltreatment. License holders
22.3 shall ensure that the policies and procedures on internal reporting:

22.4 (1) meet all the requirements identified for the optional internal reporting policies
22.5 and procedures in section 626.557, subdivision 4a; and

22.6 (2) identify the primary and secondary person or position to whom internal reports
22.7 may be made and the primary and secondary person or position responsible for forwarding
22.8 internal reports to the common entry point as defined in section 626.5572, subdivision 5.

22.9 The secondary person must be involved when there is reason to believe that the primary
22.10 person was involved in the alleged or suspected maltreatment.

22.11 (b) The license holder shall:

22.12 (1) establish and maintain policies and procedures to ensure that an internal review
22.13 is completed within 30 calendar days and that corrective action is taken as necessary to
22.14 protect the health and safety of vulnerable adults when the facility has reason to know
22.15 that an internal or external report of alleged or suspected maltreatment has been made.

22.16 The review must include an evaluation of whether related policies and procedures were
22.17 followed, whether the policies and procedures were adequate, whether there is a need for
22.18 additional staff training, whether the reported event is similar to past events with the
22.19 vulnerable adults or the services involved, and whether there is a need for corrective
22.20 action by the license holder to protect the health and safety of vulnerable adults. Based on
22.21 the results of this review, the license holder must develop, document, and implement a
22.22 corrective action plan designed to correct current lapses and prevent future lapses in
22.23 performance by individuals or the license holder, if any.

22.24 (2) identify the primary and secondary person or position who will ensure that, when
22.25 required, internal reviews are completed. The secondary person shall be involved when
22.26 there is reason to believe that the primary person was involved in the alleged or suspected
22.27 maltreatment; and

22.28 (3) document and make internal reviews accessible to the commissioner immediately
22.29 upon the commissioner's request. For the purposes of this section, the documentation
22.30 provided to the commissioner by the license holder may consist of a completed checklist
22.31 that verifies completion of each of the requirements of the review.

22.32 (c) The license holder shall provide an orientation to the internal and external
22.33 reporting procedures to all persons receiving services. The orientation shall include the
22.34 telephone number for the license holder's common entry point as defined in section
22.35 626.5572, subdivision 5. If applicable, the person's legal representative must be notified of
22.36 the orientation. The program shall provide this orientation for each new person within 24

23.1 hours of admission, or for persons who would benefit more from a later orientation, the
23.2 orientation may take place within 72 hours.

23.3 (d) The license holder shall post a copy of the internal and external reporting policies
23.4 and procedures, including the telephone number of the common entry point as defined
23.5 in section 626.5572, subdivision 5, in a prominent location in the program and have it
23.6 available upon request to mandated reporters, persons receiving services, and the person's
23.7 legal representatives.

23.8 Sec. 17. Minnesota Statutes 2012, section 245A.66, subdivision 1, is amended to read:

23.9 Subdivision 1. **Internal review.** Except for family child care settings and foster care
23.10 for children in the license holder's residence, license holders serving children shall:

23.11 (1) establish and maintain policies and procedures to ensure that an internal review
23.12 is completed within 30 calendar days and that corrective action is taken if necessary to
23.13 protect the health and safety of children in care when the facility has reason to know that
23.14 an internal or external report of alleged or suspected maltreatment has been made. The
23.15 review must include an evaluation of whether:

23.16 (i) related policies and procedures were followed;

23.17 (ii) the policies and procedures were adequate;

23.18 (iii) there is a need for additional staff training;

23.19 (iv) the reported event is similar to past events with the children or the services
23.20 involved; and

23.21 (v) there is a need for corrective action by the license holder to protect the health and
23.22 safety of children in care.

23.23 Based on the results of this review, the license holder must develop, document, and
23.24 implement a corrective action plan designed to correct current lapses and prevent future
23.25 lapses in performance by individuals or the license holder, if any;

23.26 (2) identify the primary and secondary person or position who will ensure that, when
23.27 required, internal reviews are completed. The secondary person shall be involved when
23.28 there is reason to believe that the primary person was involved in the alleged or suspected
23.29 maltreatment; and

23.30 (3) document ~~that the~~ and make internal review ~~has been completed and provide~~
23.31 ~~documentation showing the review was completed~~ reviews accessible to the commissioner
23.32 immediately upon the commissioner's request. For the purposes of this section, the
23.33 documentation provided to the commissioner by the license holder may consist of a
23.34 completed checklist that verifies completion of each of the requirements of the review.

24.1 Sec. 18. Minnesota Statutes 2012, section 245B.02, subdivision 10, is amended to read:

24.2 Subd. 10. **Incident.** "Incident" means ~~an occurrence that affects the ordinary~~
 24.3 ~~provision of services to a person and includes~~ any of the following:

24.4 (1) serious injury as determined by section 245.91, subdivision 6;

24.5 (2) a consumer's death;

24.6 (3) any medical ~~emergency~~ emergencies, unexpected serious ~~illness~~ illnesses, or
 24.7 ~~significant unexpected changes in an illness or medical condition, or the mental health~~
 24.8 ~~status of a person~~ accidents that requires calling 911 or a mental health mobile crisis
 24.9 ~~intervention team,~~ require physician treatment, or hospitalization;

24.10 (4) a consumer's unauthorized ~~or unexplained~~ absence;

24.11 (5) any fires or other events that require the relocation of services for more than 24
 24.12 hours, or circumstances involving a law enforcement agency or fire department related to
 24.13 the health, safety, or supervision of a consumer;

24.14 (6) physical aggression by a consumer against another consumer that causes
 24.15 physical pain, injury, or persistent emotional distress, including, but not limited to, hitting,
 24.16 slapping, kicking, scratching, pinching, biting, pushing, and spitting;

24.17 ~~(6)~~ (7) any sexual activity between consumers involving force or coercion as defined
 24.18 under section 609.341, subdivisions 3 and 14; or

24.19 ~~(7)~~ (8) a report of child or vulnerable adult maltreatment under section 626.556 or
 24.20 626.557.

24.21 Sec. 19. Minnesota Statutes 2012, section 245B.04, is amended to read:

24.22 **245B.04 CONSUMER RIGHTS.**

24.23 Subdivision 1. **License holder's responsibility for consumers' rights.** The license
 24.24 holder must:

24.25 (1) provide the consumer or the consumer's legal representative a copy of the
 24.26 consumer's rights on the day that services are initiated and an explanation of the rights
 24.27 in subdivisions 2 and 3 within five working days of service initiation ~~and annually~~
 24.28 ~~thereafter~~. Reasonable accommodations shall be made by the license holder to provide
 24.29 this information in other formats as needed to facilitate understanding of the rights by the
 24.30 consumer and the consumer's legal representative, if any;

24.31 (2) document the consumer's or the consumer's legal representative's receipt of a
 24.32 copy of the rights and an explanation of the rights; and

24.33 (3) ensure the exercise and protection of the consumer's rights in the services
 24.34 provided by the license holder and authorized in the individual service plan.

25.1 Subd. 2. **Service-related rights.** A consumer's service-related rights include the
25.2 right to:

25.3 (1) refuse or terminate services and be informed of the consequences of refusing
25.4 or terminating services;

25.5 (2) know, in advance, limits to the services available from the license holder;

25.6 (3) know conditions and terms governing the provision of services, including the
25.7 ~~license holder's policies and procedures~~ those related to initiation and termination;

25.8 (4) know what the charges are for services, regardless of who will be paying for the
25.9 services, and be notified upon request of changes in those charges;

25.10 (5) know, in advance, whether services are covered by insurance, government
25.11 funding, or other sources, and be told of any charges the consumer or other private party
25.12 may have to pay; and

25.13 (6) receive licensed services from individuals who are competent and trained,
25.14 who have professional certification or licensure, as required, and who meet additional
25.15 qualifications identified in the individual service plan.

25.16 Subd. 3. **Protection-related rights.** ~~(a)~~ The consumer's protection-related rights
25.17 include the right to:

25.18 (1) have personal, financial, services, and medical information kept private, and
25.19 be advised of the license holder's policies and procedures regarding disclosure of such
25.20 information;

25.21 (2) access records and recorded information ~~about the person in accordance with~~
25.22 ~~applicable state and federal law, regulation, or rule;~~

25.23 (3) be free from maltreatment;

25.24 (4) be treated with courtesy and respect for the consumer's individuality, mode of
25.25 communication, and culture, and receive respectful treatment of the consumer's property;

25.26 ~~(5) reasonable observance of cultural and ethnic practice and religion;~~

25.27 ~~(6) be free from bias and harassment regarding race, gender, age, disability,~~
25.28 ~~spirituality, and sexual orientation;~~

25.29 ~~(7) be informed of and use the license holder's grievance policy and procedures,~~
25.30 ~~including knowing how to contact persons responsible for addressing problems and to~~
25.31 ~~appeal under section 256.045;~~

25.32 ~~(8) know the name, telephone number, and the Web site, e-mail, and street~~
25.33 ~~addresses of protection and advocacy services, including the appropriate state-appointed~~
25.34 ~~ombudsman, and a brief description of how to file a complaint with these offices;~~

25.35 (9) voice grievances, know the contact persons responsible for addressing problems
25.36 and how to contact those persons;

26.1 ~~(10)~~ (6) any procedures for grievance or complaint resolution and the right to appeal
 26.2 under section 256.045;

26.3 ~~(11)~~ (7) know the name and address of the state, county, or advocacy agency to
 26.4 contact for additional information or assistance;

26.5 ~~(12)~~ (8) assert these rights personally, or have them asserted by the consumer's
 26.6 family or legal representative, without retaliation;

26.7 ~~(13)~~ (9) give or withhold written informed consent to participate in any research or
 26.8 experimental treatment;

26.9 ~~(14)~~ (10) have daily, private access to and use of a non-coin-operated telephone for
 26.10 local calls and long-distance calls made collect or paid for by the resident;

26.11 ~~(15)~~ (11) receive and send, ~~without interference,~~ uncensored, unopened mail ~~or~~
 26.12 ~~electronic correspondence or communication;~~

26.13 ~~(16)~~ (12) marital privacy for visits with the consumer's spouse and, if both are
 26.14 residents of the site, the right to share a bedroom and bed;

26.15 ~~(17)~~ (13) associate with other persons of the consumer's choice;

26.16 ~~(18)~~ (14) personal privacy; and

26.17 ~~(19)~~ (15) engage in chosen activities.

26.18 ~~(b) Restriction of a person's rights under paragraph (a), clauses (13) to (15), or~~
 26.19 ~~this paragraph is allowed only if determined necessary to ensure the health, safety, and~~
 26.20 ~~well-being of the person. Any restriction of these rights must be documented in the service~~
 26.21 ~~plan for the person and must include the following information:~~

26.22 ~~(1) the justification for the restriction based on an assessment of the person's~~
 26.23 ~~vulnerability related to exercising the right without restriction;~~

26.24 ~~(2) the objective measures set as conditions for ending the restriction;~~

26.25 ~~(3) a schedule for reviewing the need for the restriction based on the conditions for~~
 26.26 ~~ending the restriction to occur, at a minimum, every three months for persons who do not~~
 26.27 ~~have a legal representative and annually for persons who do have a legal representative~~
 26.28 ~~from the date of initial approval; and~~

26.29 ~~(4) signed and dated approval for the restriction from the person, or the person's~~
 26.30 ~~legal representative, if any. A restriction may be implemented only when the required~~
 26.31 ~~approval has been obtained. Approval may be withdrawn at any time. If approval is~~
 26.32 ~~withdrawn, the right must be immediately and fully restored.~~

26.33 Sec. 20. Minnesota Statutes 2012, section 245B.05, subdivision 1, is amended to read:

26.34 Subdivision 1. **Environment.** The license holder must:

(1) ensure that services are provided in a safe and hazard-free environment when the license holder is the owner, lessor, or tenant of the service site. All other license holders shall inform the consumer or the consumer's legal representative and case manager about any environmental safety concerns in writing;

~~(2) ensure that doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers~~ lock doors only to protect the safety of consumers and not as a substitute for staff supervision or interactions with consumers. ~~If doors are locked or toxic substances or dangerous items normally accessible to persons served by the program are stored in locked cabinets, drawers, or containers, the license holder must justify and document how this determination was made in consultation with the person or the person's legal representative and how access will otherwise be provided to the person and all other affected persons receiving services;~~

(3) follow procedures that minimize the consumer's health risk from communicable diseases; and

(4) maintain equipment, vehicles, supplies, and materials owned or leased by the license holder in good condition.

Sec. 21. Minnesota Statutes 2012, section 245B.05, subdivision 7, is amended to read:

Subd. 7. **Reporting incidents.** (a) The license holder must maintain information about and report incidents under section 245B.02, subdivision 10, clauses (1) to ~~(7)~~ (8), to the consumer's legal representative, other licensed caregiver, if any, and case manager within 24 hours of the occurrence, or within 24 hours of receipt of the information unless the incident has been reported by another license holder. An incident under section 245B.02, subdivision 10, clause (8), must be reported as required under paragraph (c) unless the incident has been reported by another license holder.

(b) When the incident involves more than one consumer, the license holder must not disclose personally identifiable information about any other consumer when making the report to each consumer's legal representative, other licensed caregiver, if any, and case manager unless the license holder has the consent of a consumer or a consumer's legal representative.

(c) Within 24 hours of reporting maltreatment as required under section 626.556 or 626.557, the license holder must inform the consumer's legal representative and case manager of the report unless there is reason to believe that the legal representative or case manager is involved in the suspected maltreatment. The information the license holder must disclose is the nature of the activity or occurrence reported, the agency that receives

28.1 the report, and the telephone number of the Department of Human Services Licensing
28.2 Division.

28.3 (d) Except as provided in paragraph (e), death or serious injury of the consumer
28.4 must also be reported to the Department of Human Services Licensing Division and the
28.5 ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

28.6 (e) When a death or serious injury occurs in a facility certified as an intermediate
28.7 care facility for persons with developmental disabilities, the death or serious injury must
28.8 be reported to the Department of Health, Office of Health Facility Complaints, and the
28.9 ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

28.10 Sec. 22. Minnesota Statutes 2012, section 245B.07, subdivision 5, is amended to read:

28.11 Subd. 5. **Staff orientation.** (a) Within 60 days of hiring staff who provide direct
28.12 service, the license holder must provide 30 hours of staff orientation. Direct care staff
28.13 must complete 15 of the 30 hours orientation before providing any unsupervised direct
28.14 service to a consumer. If the staff person has received orientation training from a license
28.15 holder licensed under this chapter, or provides semi-independent living services only, the
28.16 15-hour requirement may be reduced to eight hours. The total orientation of 30 hours may
28.17 be reduced to 15 hours if the staff person has previously received orientation training from
28.18 a license holder licensed under this chapter.

28.19 (b) The 30 hours of orientation must combine supervised on-the-job training with
28.20 ~~review coverage of and instruction on~~ the following material:

28.21 (1) review of the consumer's service plans and risk management plan to achieve an
28.22 understanding of the consumer as a unique individual ~~and staff responsibilities related to~~
28.23 ~~implementation of those plans;~~

28.24 (2) review and instruction on ~~implementation of~~ the license holder's policies and
28.25 procedures, including their location and access;

28.26 (3) ~~staff responsibilities related to~~ emergency procedures;

28.27 (4) explanation of specific job functions, including implementing objectives from
28.28 the consumer's individual service plan;

28.29 (5) explanation of responsibilities related to section 245A.65; sections 626.556
28.30 and 626.557, governing maltreatment reporting and service planning for children and
28.31 vulnerable adults; and section 245.825, governing use of aversive and deprivation
28.32 procedures;

28.33 (6) medication administration as it applies to the individual consumer, from a
28.34 training curriculum developed by a health services professional described in section
28.35 245B.05, subdivision 5, and when the consumer meets the criteria of having overriding

29.1 health care needs, then medication administration taught by a health services professional.
 29.2 Staff may administer medications only after they demonstrate the ability, as defined in the
 29.3 license holder's medication administration policy and procedures. Once a consumer with
 29.4 overriding health care needs is admitted, staff will be provided with remedial training as
 29.5 deemed necessary by the license holder and the health professional to meet the needs of
 29.6 that consumer.

29.7 For purposes of this section, overriding health care needs means a health care
 29.8 condition that affects the service options available to the consumer because the condition
 29.9 requires:

29.10 (i) specialized or intensive medical or nursing supervision; and

29.11 (ii) nonmedical service providers to adapt their services to accommodate the health
 29.12 and safety needs of the consumer;

29.13 ~~(7) consumer rights and staff responsibilities related to protecting and ensuring~~
 29.14 ~~the exercise of the consumer rights; and~~

29.15 (8) other topics necessary as determined by the consumer's individual service plan or
 29.16 other areas identified by the license holder.

29.17 (c) The license holder must document each employee's orientation received.

29.18 Sec. 23. Minnesota Statutes 2012, section 245B.07, subdivision 9, is amended to read:

29.19 Subd. 9. **Availability of current written policies and procedures.** The license
 29.20 holder shall:

29.21 (1) review and update, as needed, the written policies and procedures in this chapter;

29.22 (2) inform consumers or the consumer's legal representatives of the written policies
 29.23 and procedures in this chapter upon service initiation. ~~Copies of policies and procedures~~
 29.24 ~~affecting a consumer's rights under section 245D.04 must be provided upon service~~
 29.25 ~~initiation. Copies of all other policies and procedures must be available to consumers~~
 29.26 ~~or the consumer's legal representatives, case managers, the county where services are~~
 29.27 ~~located, and the commissioner upon request;~~

29.28 (3) provide all consumers or the consumers' legal representatives and case managers
 29.29 a copy of ~~the revised policies and procedures~~ and explanation of the revisions to policies
 29.30 and procedures that affect consumers' service-related or protection-related rights under
 29.31 section 245B.04 ~~and maltreatment reporting policies and procedures~~. Unless there is
 29.32 reasonable cause, the license holder must provide this notice at least 30 days before
 29.33 implementing the revised policy and procedure. The license holder must document the
 29.34 reason for not providing the notice at least 30 days before implementing the revisions;

(4) annually notify all consumers or the consumers' legal representatives and case managers of any revised policies and procedures under this chapter, other than those in clause (3). Upon request, the license holder must provide the consumer or consumer's legal representative and case manager copies of the revised policies and procedures;

(5) before implementing revisions to policies and procedures under this chapter, inform all employees of the revisions and provide training on implementation of the revised policies and procedures; and

(6) document and maintain relevant information related to the policies and procedures in this chapter.

Sec. 24. Minnesota Statutes 2012, section 245B.07, subdivision 10, is amended to read:

Subd. 10. **Consumer funds.** (a) The license holder must ensure that consumers retain the use and availability of personal funds or property unless restrictions are justified in the consumer's individual service plan.

(b) The license holder must ensure separation of consumer funds from funds of the license holder, the program, or program staff.

(c) Whenever the license holder assists a consumer with the safekeeping of funds or other property, the license holder must have written authorization to do so by the consumer or the consumer's legal representative, and the case manager. In addition, the license holder must:

(1) document receipt and disbursement of the consumer's funds or the property;

(2) annually survey, document, and implement the preferences of the consumer, consumer's legal representative, and the case manager for frequency of receiving a statement that itemizes receipts and disbursements of consumer funds or other property; and

(3) return to the consumer upon the consumer's request, funds and property in the license holder's possession subject to restrictions in the consumer's individual service plan, as soon as possible, but no later than three working days after the date of the request.

(d) License holders and program staff must not:

(1) borrow money from a consumer;

(2) purchase personal items from a consumer;

(3) sell merchandise or personal services to a consumer;

(4) require a consumer to purchase items for which the license holder is eligible for reimbursement; or

(5) use consumer funds in a manner that would violate section 256B.04, or any rules promulgated under that section; ~~or~~.

31.1 ~~(6) accept powers-of-attorney from a person receiving services from the license~~
31.2 ~~holder for any purpose, and may not accept an appointment as guardian or conservator of~~
31.3 ~~a person receiving services from the license holder. This does not apply to license holders~~
31.4 ~~that are Minnesota counties or other units of government.~~

31.5 Sec. 25. **REPEALER.**

31.6 Minnesota Statutes 2012, sections 245B.02, subdivision 8a; and 245B.07,
31.7 subdivision 7a, are repealed.

31.8 **ARTICLE 3**

31.9 **FINANCIAL FRAUD AND ABUSE INVESTIGATION**

31.10 Section 1. Minnesota Statutes 2012, section 168.012, subdivision 1, is amended to read:

31.11 Subdivision 1. **Vehicles exempt from tax, fees, or plate display.** (a) The following
31.12 vehicles are exempt from the provisions of this chapter requiring payment of tax and
31.13 registration fees, except as provided in subdivision 1c:

31.14 (1) vehicles owned and used solely in the transaction of official business by the
31.15 federal government, the state, or any political subdivision;

31.16 (2) vehicles owned and used exclusively by educational institutions and used solely
31.17 in the transportation of pupils to and from those institutions;

31.18 (3) vehicles used solely in driver education programs at nonpublic high schools;

31.19 (4) vehicles owned by nonprofit charities and used exclusively to transport disabled
31.20 persons for charitable, religious, or educational purposes;

31.21 (5) vehicles owned by nonprofit charities and used exclusively for disaster response
31.22 and related activities;

31.23 (6) vehicles owned by ambulance services licensed under section 144E.10 that
31.24 are equipped and specifically intended for emergency response or providing ambulance
31.25 services; and

31.26 (7) vehicles owned by a commercial driving school licensed under section 171.34,
31.27 or an employee of a commercial driving school licensed under section 171.34, and the
31.28 vehicle is used exclusively for driver education and training.

31.29 (b) Provided the general appearance of the vehicle is unmistakable, the following
31.30 vehicles are not required to register or display number plates:

31.31 (1) vehicles owned by the federal government;

31.32 (2) fire apparatuses, including fire-suppression support vehicles, owned or leased by
31.33 the state or a political subdivision;

31.34 (3) police patrols owned or leased by the state or a political subdivision; and

32.1 (4) ambulances owned or leased by the state or a political subdivision.

32.2 (c) Unmarked vehicles used in general police work, liquor investigations, or arson
32.3 investigations, and passenger automobiles, pickup trucks, and buses owned or operated by
32.4 the Department of Corrections or by conservation officers of the Division of Enforcement
32.5 and Field Service of the Department of Natural Resources, must be registered and must
32.6 display appropriate license number plates, furnished by the registrar at cost. Original and
32.7 renewal applications for these license plates authorized for use in general police work and
32.8 for use by the Department of Corrections or by conservation officers must be accompanied
32.9 by a certification signed by the appropriate chief of police if issued to a police vehicle,
32.10 the appropriate sheriff if issued to a sheriff's vehicle, the commissioner of corrections if
32.11 issued to a Department of Corrections vehicle, or the appropriate officer in charge if
32.12 issued to a vehicle of any other law enforcement agency. The certification must be on a
32.13 form prescribed by the commissioner and state that the vehicle will be used exclusively
32.14 for a purpose authorized by this section.

32.15 (d) Unmarked vehicles used by the Departments of Revenue and Labor and Industry,
32.16 fraud unit, in conducting seizures or criminal investigations must be registered and must
32.17 display passenger vehicle classification license number plates, furnished at cost by the
32.18 registrar. Original and renewal applications for these passenger vehicle license plates
32.19 must be accompanied by a certification signed by the commissioner of revenue or the
32.20 commissioner of labor and industry. The certification must be on a form prescribed by
32.21 the commissioner and state that the vehicles will be used exclusively for the purposes
32.22 authorized by this section.

32.23 (e) Unmarked vehicles used by the Division of Disease Prevention and Control of the
32.24 Department of Health must be registered and must display passenger vehicle classification
32.25 license number plates. These plates must be furnished at cost by the registrar. Original
32.26 and renewal applications for these passenger vehicle license plates must be accompanied
32.27 by a certification signed by the commissioner of health. The certification must be on a
32.28 form prescribed by the commissioner and state that the vehicles will be used exclusively
32.29 for the official duties of the Division of Disease Prevention and Control.

32.30 (f) Unmarked vehicles used by staff of the Gambling Control Board in gambling
32.31 investigations and reviews must be registered and must display passenger vehicle
32.32 classification license number plates. These plates must be furnished at cost by the
32.33 registrar. Original and renewal applications for these passenger vehicle license plates must
32.34 be accompanied by a certification signed by the board chair. The certification must be on a
32.35 form prescribed by the commissioner and state that the vehicles will be used exclusively
32.36 for the official duties of the Gambling Control Board.

(g) Unmarked vehicles used in general investigation, surveillance, supervision, and monitoring by the ~~staff of the Department of Human Services~~ Services' Office of Special Investigations and the executive director of Investigations' staff; the Minnesota sex offender ~~program~~ program's executive director and the executive director's staff; and the Office of Inspector General's staff, including, but not limited to, county fraud prevention investigators, must be registered and must display passenger vehicle classification license number plates, furnished by the registrar at cost. Original and renewal applications for passenger vehicle license plates must be accompanied by a certification signed by the commissioner of human services. The certification must be on a form prescribed by the commissioner and state that the vehicles must be used exclusively for the official duties of the ~~Office of Special Investigations and~~ Investigations' staff; the ~~executive director of the Minnesota sex offender program~~ program's executive director and the executive director's staff; and the Office of the Inspector General's staff, including, but not limited to, contract and county fraud prevention investigators.

(h) Each state hospital and institution for persons who are mentally ill and developmentally disabled may have one vehicle without the required identification on the sides of the vehicle. The vehicle must be registered and must display passenger vehicle classification license number plates. These plates must be furnished at cost by the registrar. Original and renewal applications for these passenger vehicle license plates must be accompanied by a certification signed by the hospital administrator. The certification must be on a form prescribed by the commissioner and state that the vehicles will be used exclusively for the official duties of the state hospital or institution.

(i) Each county social service agency may have vehicles used for child and vulnerable adult protective services without the required identification on the sides of the vehicle. The vehicles must be registered and must display passenger vehicle classification license number plates. These plates must be furnished at cost by the registrar. Original and renewal applications for these passenger vehicle license plates must be accompanied by a certification signed by the agency administrator. The certification must be on a form prescribed by the commissioner and state that the vehicles will be used exclusively for the official duties of the social service agency.

(j) All other motor vehicles must be registered and display tax-exempt number plates, furnished by the registrar at cost, except as provided in subdivision 1c. All vehicles required to display tax-exempt number plates must have the name of the state department or political subdivision, nonpublic high school operating a driver education program, licensed commercial driving school, or other qualifying organization or entity, plainly displayed on both sides of the vehicle. This identification must be in a color

giving contrast with that of the part of the vehicle on which it is placed and must endure throughout the term of the registration. The identification must not be on a removable plate or placard and must be kept clean and visible at all times; except that a removable plate or placard may be utilized on vehicles leased or loaned to a political subdivision or to a nonpublic high school driver education program.

Sec. 2. Minnesota Statutes 2012, section 256.01, subdivision 18d, is amended to read:

Subd. 18d. **Data sharing with the Department of Human Services; multiple identification cards.** (a) The commissioner of public safety shall, on a monthly basis, provide the commissioner of human services with the first, middle, and last name, ~~and~~ the address, date of birth, ~~and~~ driver's license or state identification card number, and all photographs or electronically produced images of all applicants and holders whose drivers' licenses and state identification cards have been canceled under section 171.14, paragraph (a), clause (2) or (3), by the commissioner of public safety. After the initial data report has been provided by the commissioner of public safety to the commissioner of human services under this paragraph, subsequent reports shall only include cancellations that occurred after the end date of the cancellations represented in the previous data report.

(b) The commissioner of human services shall compare the information provided under paragraph (a) with the commissioner's data regarding recipients of all public assistance programs managed by the Department of Human Services to determine whether any individual with multiple identification cards issued by the Department of Public Safety has illegally or improperly enrolled in any public assistance program managed by the Department of Human Services.

(c) If the commissioner of human services determines that an applicant or recipient has illegally or improperly enrolled in any public assistance program, the commissioner shall provide all due process protections to the individual before terminating the individual from the program according to applicable statute and notifying the county attorney.

EFFECTIVE DATE. This section is effective July 1, 2013.

Sec. 3. Minnesota Statutes 2012, section 268.19, subdivision 1, is amended to read:

Subdivision 1. **Use of data.** (a) Except as provided by this section, data gathered from any person under the administration of the Minnesota Unemployment Insurance Law are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except according to a district court order or section 13.05. A subpoena is not considered a district court order. These data

35.1 may be disseminated to and used by the following agencies without the consent of the
35.2 subject of the data:

35.3 (1) state and federal agencies specifically authorized access to the data by state
35.4 or federal law;

35.5 (2) any agency of any other state or any federal agency charged with the
35.6 administration of an unemployment insurance program;

35.7 (3) any agency responsible for the maintenance of a system of public employment
35.8 offices for the purpose of assisting individuals in obtaining employment;

35.9 (4) the public authority responsible for child support in Minnesota or any other
35.10 state in accordance with section 256.978;

35.11 (5) human rights agencies within Minnesota that have enforcement powers;

35.12 (6) the Department of Revenue to the extent necessary for its duties under Minnesota
35.13 laws;

35.14 (7) public and private agencies responsible for administering publicly financed
35.15 assistance programs for the purpose of monitoring the eligibility of the program's recipients;

35.16 (8) the Department of Labor and Industry and the Division of Insurance Fraud
35.17 Prevention in the Department of Commerce for uses consistent with the administration of
35.18 their duties under Minnesota law;

35.19 (9) the Department of Human Services and the Office of Inspector General and its
35.20 agents within the Department of Human Services, including county fraud investigators,
35.21 for investigations related to recipient or provider fraud and employees of providers when
35.22 the provider is suspected of committing public assistance fraud;

35.23 ~~(9)~~ (10) local and state welfare agencies for monitoring the eligibility of the data
35.24 subject for assistance programs, or for any employment or training program administered
35.25 by those agencies, whether alone, in combination with another welfare agency, or in
35.26 conjunction with the department or to monitor and evaluate the statewide Minnesota
35.27 family investment program by providing data on recipients and former recipients of food
35.28 stamps or food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care
35.29 assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

35.30 ~~(10)~~ (11) local and state welfare agencies for the purpose of identifying employment,
35.31 wages, and other information to assist in the collection of an overpayment debt in an
35.32 assistance program;

35.33 ~~(11)~~ (12) local, state, and federal law enforcement agencies for the purpose of
35.34 ascertaining the last known address and employment location of an individual who is the
35.35 subject of a criminal investigation;

(12) (13) the United States Immigration and Customs Enforcement has access to data on specific individuals and specific employers provided the specific individual or specific employer is the subject of an investigation by that agency;

(13) (14) the Department of Health for the purposes of epidemiologic investigations;

(14) (15) the Department of Corrections for the purpose of preincarceration and postincarceration employment tracking of committed offenders for the purpose of case planning; and

(15) (16) the state auditor to the extent necessary to conduct audits of job opportunity building zones as required under section 469.3201.

(b) Data on individuals and employers that are collected, maintained, or used by the department in an investigation under section 268.182 are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and must not be disclosed except under statute or district court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

(c) Data gathered by the department in the administration of the Minnesota unemployment insurance program must not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2012, section 471.346, is amended to read:

471.346 PUBLICLY OWNED AND LEASED VEHICLES IDENTIFIED.

All motor vehicles owned or leased by a statutory or home rule charter city, county, town, school district, metropolitan or regional agency, or other political subdivision, except for unmarked vehicles used in general police and fire work and arson investigations, and Department of Human Services investigations including county fraud prevention investigations, shall have the name of the political subdivision plainly displayed on both sides of the vehicle in letters not less than 2-1/2 inches high and one-half inch wide. The identification must be in a color that contrasts with the color of the part of the vehicle on which it is placed and must remain on and be clean and visible throughout the period of which the vehicle is owned or leased by the political subdivision. The identification must not be on a removable plate or placard except on leased vehicles but the plate or placard must not be removed from a leased vehicle at any time during the term of the lease.

37.1 **ARTICLE 4**

37.2 **CHEMICAL AND MENTAL HEALTH**

37.3 Section 1. Minnesota Statutes 2012, section 254B.05, subdivision 5, is amended to read:

37.4 Subd. 5. **Rate requirements.** (a) The commissioner shall establish rates for
37.5 chemical dependency services and service enhancements funded under this chapter.

37.6 (b) Eligible chemical dependency treatment services include:

37.7 (1) outpatient treatment services that are licensed according to Minnesota Rules,
37.8 parts 9530.6405 to 9530.6480, or applicable tribal license;

37.9 (2) medication-assisted therapy services that are licensed according to Minnesota
37.10 Rules, parts 9530.6405 to 9530.6480 and 9530.6500, or applicable tribal license;

37.11 (3) medication-assisted therapy plus enhanced treatment services that meet the
37.12 requirements of clause (2) and provide nine hours of clinical services each week;

37.13 (4) high, medium, and low intensity residential treatment services that are licensed
37.14 according to Minnesota Rules, parts 9530.6405 to 9530.6480 and 9530.6505, or applicable
37.15 tribal license which provide, respectively, 30, 15, and five hours of clinical services each
37.16 week;

37.17 (5) hospital-based treatment services that are licensed according to Minnesota Rules,
37.18 parts 9530.6405 to 9530.6480, or applicable tribal license and licensed as a hospital under
37.19 sections 144.50 to 144.56;

37.20 (6) adolescent treatment programs that are licensed as outpatient treatment programs
37.21 according to Minnesota Rules, parts 9530.6405 to 9530.6485, or as residential treatment
37.22 programs according to Minnesota Rules, ~~chapter 2960~~ parts 2960.0010 to 2960.0220, and
37.23 2960.0430 to 2960.0490, or applicable tribal license; and

37.24 (7) room and board facilities that meet the requirements of section 254B.05,
37.25 subdivision 1a.

37.26 (c) The commissioner shall establish higher rates for programs that meet the
37.27 requirements of paragraph (b) and the following additional requirements:

37.28 (1) programs that serve parents with their children if the program:

37.29 (i) provides on-site child care during hours of treatment activity that meets the
37.30 additional licensing requirement requirements in Minnesota Rules, part 9530.6490, ~~and~~
37.31 ~~provides child care that meets the requirements of~~ or section 245A.03, subdivision 2;
37.32 ~~during hours of treatment activity; or~~

37.33 (ii) arranges for off-site child care during hours of treatment activity at a facility that
37.34 is licensed under chapter 245A as:

37.35 (A) a child care center under Minnesota Rules, chapter 9503; or

- 38.1 (B) a family child care home under Minnesota Rules, chapter 9502;
38.2 (2) programs serving special populations if the program meets the requirements in
38.3 Minnesota Rules, part 9530.6605, subpart 13;
38.4 (3) programs that offer medical services delivered by appropriately credentialed
38.5 health care staff in an amount equal to two hours per client per week if the medical
38.6 needs of the client and the nature and provision of any medical services provided are
38.7 documented in the client file; and
38.8 (4) programs that offer services to individuals with co-occurring mental health and
38.9 chemical dependency problems if:
38.10 (i) the program meets the co-occurring requirements in Minnesota Rules, part
38.11 9530.6495;
38.12 (ii) 25 percent of the counseling staff are licensed mental health professionals, as
38.13 defined in section 245.462, subdivision 18, clauses (1) to (6), or are students or licensing
38.14 candidates under the supervision of a licensed alcohol and drug counselor supervisor and
38.15 licensed mental health professional, except that no more than 50 percent of the mental
38.16 health staff may be students or licensing candidates with time documented to be directly
38.17 related to provisions of co-occurring services;
38.18 (iii) clients scoring positive on a standardized mental health screen receive a mental
38.19 health diagnostic assessment within ten days of admission;
38.20 (iv) the program has standards for multidisciplinary case review that include a
38.21 monthly review for each client that, at a minimum, includes a licensed mental health
38.22 professional and licensed alcohol and drug counselor, and their involvement in the review
38.23 is documented;
38.24 (v) family education is offered that addresses mental health and substance abuse
38.25 disorders and the interaction between the two; and
38.26 (vi) co-occurring counseling staff will receive eight hours of co-occurring disorder
38.27 training annually.
38.28 (d) In order to be eligible for a higher rate under paragraph (c), clause (1), a program
38.29 that provides arrangements for off-site child care must maintain current documentation at
38.30 the chemical dependency facility of the child care provider's current licensure to provide
38.31 child care services. Programs that provide child care according to paragraph (c), clause
38.32 (1), must be deemed in compliance with the licensing requirements in Minnesota Rules,
38.33 part 9530.6490.
38.34 (e) Adolescent residential programs that meet the requirements of Minnesota Rules,
38.35 parts ~~2960.0580 to 2960.0700~~ 2960.0430 to 2960.0490 and 2960.0580 to 2960.0690, are
38.36 exempt from the requirements in paragraph (c), clause (4), items (i) to (iv).

39.1 **ARTICLE 5**

39.2 **BACKGROUND STUDIES**

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

39.4 **245C.04 WHEN BACKGROUND STUDY MUST OCCUR.**

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

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

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

39.14 (1) registered under chapter 144D; or

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

39.18 (3) the following conditions are met:

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

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

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

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

39.32 (e) The commissioner of human services shall conduct a background study of an
39.33 individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2)
39.34 to (6), who is newly affiliated with a child foster care license holder. The county or
39.35 private agency shall collect and forward to the commissioner the information required

under section 245C.05, subdivisions 1 and 5. The background study conducted by the commissioner of human services under this paragraph must include a review of the information required under section 245C.08, subdivisions 1, 3, and 4.

(f) From January 1, 2010, to December 31, 2012, unless otherwise specified in paragraph (c), the commissioner shall conduct a study of an individual required to be studied under section 245C.03 at the time of reapplication for an adult foster care or family adult day services license: (1) the county shall collect and forward to the commissioner the information required under section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted by the commissioner for all family adult day services and for adult foster care when the adult foster care license holder resides in the adult foster care or family adult day services residence; (2) the license holder shall collect and forward to the commissioner the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for adult foster care when the license holder does not reside in the adult foster care residence; and (3) the background study conducted by the commissioner under this paragraph must include a review of the information required under section 245C.08, subdivision 1, paragraph (a), clauses (1) to (5), and subdivisions 3 and 4.

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

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

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

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

41.5 (2) a program that discontinued providing licensed direct contact services for ~~90~~ 120
41.6 or more consecutive days begins to provide direct contact licensed services again.

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

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

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

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

41.23 Subd. 3. **Personal care provider organizations.** (a) The commissioner shall
41.24 conduct a background study of an individual required to be studied under section 245C.03,
41.25 subdivision 2, at least upon application for initial enrollment under sections 256B.0651 to
41.26 256B.0656 and 256B.0659.

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

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

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

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

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

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

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

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

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

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

Subd. 7. **New study required with legal name change.** For a background study completed on an individual required to be studied under section 245C.03, the license

43.1 holder or other entity that initiated the background study must initiate a new background
43.2 study using the electronic system known as NETStudy when an individual who is affiliated
43.3 with the license holder or other entity undergoes a legal name change.

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

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

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

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

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

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

43.23 (1) information related to names of substantiated perpetrators of maltreatment of
43.24 vulnerable adults that has been received by the commissioner as required under section
43.25 626.557, subdivision 9c, paragraph (j);

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

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

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

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

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

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

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

44.7 (b) Notwithstanding expungement by a court, the commissioner may consider
44.8 information obtained under paragraph (a), clauses (3) and (4), unless the commissioner
44.9 received notice of the petition for expungement and the court order for expungement is
44.10 directed specifically to the commissioner.

44.11 (c) When the commissioner has reasonable cause to believe that the identity of
44.12 a background study subject is uncertain, the commissioner may require the subject to
44.13 provide a set of classifiable fingerprints for purposes of completing a fingerprint-based
44.14 record check with the Bureau of Criminal Apprehension.

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

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

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

44.23 (1) the recency of the disqualifying characteristic;

44.24 (2) the recency of discharge from probation for the crimes;

44.25 (3) the number of disqualifying characteristics;

44.26 (4) the intrusiveness or violence of the disqualifying characteristic;

44.27 (5) the vulnerability of the victim involved in the disqualifying characteristic;

44.28 (6) the similarity of the victim to the persons served by the program where the
44.29 individual studied will have direct contact;

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

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

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

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

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

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

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

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

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

Subdivision 1. **Time frame; response to disqualification reconsideration requests.** (a) The commissioner shall respond in writing or by electronic transmission to all reconsideration requests for which the basis for the request is that the information the

commissioner relied upon to disqualify is incorrect or inaccurate within 30 working days of receipt of a complete request and all required relevant information.

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

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

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

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

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

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

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

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

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

(c) If the commissioner does not set aside the disqualification under section 245C.22, and the license holder was not previously ordered under section 245C.17 to immediately

remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous direct supervision when providing direct contact services, the commissioner shall order the individual to remain under continuous direct supervision pending the outcome of a hearing under sections 245C.27 and 256.045, or 245C.28 and chapter 14.

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

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

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

Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as otherwise provided in ~~paragraph (b)~~ this subdivision, the commissioner may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how 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~~ who received a 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) The commissioner shall consider granting a set aside under section 245C.22 or a variance under section 245C.30 to an individual who is now 21 years of age or older and

who was disqualified for a crime or conduct listed under section 245C.15, subdivision 1, occurring while the individual was under the age of 18. This paragraph does not apply to individuals who were convicted of the disqualifying crime following certification under section 260B.125.

Sec. 9. Minnesota Statutes 2012, 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 timely 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 timely 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.

Sec. 10. Minnesota Statutes 2012, 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, and specifically Minnesota Rules, parts 1400.8505 to 1400.8612, 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, as well as all the factors set forth in section 245C.22, in order to determine whether the individual ~~poses~~ has met the burden of demonstrating that the individual does not pose 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) An individual may not request a contested case hearing under this section if a contested case hearing has previously been held regarding the individual's disqualification on the same basis.

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

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

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

~~(2) a preponderance of the evidence shows 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 to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, is conclusive if:~~ A disqualification is conclusive for purposes of current and future background studies if:

~~(i) (1) the commissioner has issued a final order in an appeal of that determination~~ the disqualification under section 245A.08, subdivision 5, 245C.28, subdivision 3, 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 individual was incorrect; or

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

(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 unless the commissioner is barred from setting aside the disqualification under 245C.24. Subsequent determinations~~ The commissioner's decision regarding the risk of harm shall be made according to section 245C.22 and are not subject to another the final agency decision and is not subject to a hearing under this chapter, section 256.045 or chapter 14, or section 256.045.

Sec. 12. Minnesota Statutes 2012, 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

52.1 referee shall consider all of the characteristics that cause the individual to be disqualified,
52.2 including those characteristics that were not subject to review under paragraph (a), in
52.3 order to determine whether the individual poses a risk of harm. A decision to set aside
52.4 a disqualification that is the subject of the hearing constitutes a determination that the
52.5 individual does not pose a risk of harm and that the individual may provide direct contact
52.6 services in the individual program specified in the set aside. ~~If a determination that the~~
52.7 ~~information relied upon to disqualify an individual was correct and is conclusive under~~
52.8 ~~section 245C.29, and the individual is subsequently disqualified under section 245C.14,~~
52.9 ~~the individual has a right to again request reconsideration on the risk of harm under section~~
52.10 ~~245C.21. Subsequent determinations regarding risk of harm are not subject to another~~
52.11 ~~hearing under this section.~~

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

52.15 ~~(e)~~ (d) The state human services referee shall recommend an order to the
52.16 commissioner of health, education, or human services, as applicable, who shall issue a
52.17 final order. The commissioner shall affirm, reverse, or modify the final disposition. Any
52.18 order of the commissioner issued in accordance with this subdivision is conclusive upon
52.19 the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing
52.20 appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to
52.21 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided
52.22 under section 245C.29.

APPENDIX
Article locations in 13-2468

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APPENDIX
Repealed Minnesota Statutes: 13-2468

245B.02 DEFINITIONS.

Subd. 8a. **Emergency.** "Emergency" means any fires, severe weather, natural disasters, power failures, or any event that affects the ordinary daily operation of the program, including, but not limited to, events that threaten the immediate health and safety of a person receiving services and that require calling 911, emergency evacuation, moving to an emergency shelter, or temporary closure or relocation of the program to another facility or service site.

245B.07 MANAGEMENT STANDARDS.

Subd. 7a. **Subcontractors.** If the license holder uses a subcontractor to perform services licensed under this chapter on the license holder's behalf, the license holder must ensure that the subcontractor meets and maintains compliance with all requirements under this chapter that apply to the services to be provided.