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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1543

02/21/2019 Authored by Dehn, Zerwas, Moran, Olson and Loeffler
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to human services; modifying background study set aside criteria; amending
1.3 Minnesota Statutes 2018, sections 144.057, subdivision 3; 245C.02, by adding a
1.4 subdivision; 245C.22, subdivisions 4, 5.

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

1.6 Section 1. Minnesota Statutes 2018, section 144.057, subdivision 3, is amended to read:

1.7 Subd. 3. Reconsiderations. The commissioner of health shall review and decide
1.8 reconsideration requests, including the granting of variances, in accordance with the
1.9 procedures and criteria contained in chapter 245C. The commissioner must set aside a
1.10 disqualification for an individual who requests reconsideration and who meets the criteria
1.11 described in section 245C.22, subdivision 4, paragraph (d). The commissioner's decision
1.12 shall be provided to the individual and to the Department of Human Services. The
1.13 commissioner's decision to grant or deny a reconsideration of disqualification is the final
1.14 administrative agency action, except for the provisions under sections 245C.25, 245C.27,
1.15 and 245C.28, subdivision 3.

1.16 Sec. 2. Minnesota Statutes 2018, section 245C.02, is amended by adding a subdivision to
1.17 read:

1.18 Subd. 20. Substance use disorder treatment field. "Substance use disorder treatment
1.19 field" means a program exclusively serving individuals 18 years of age and older and that
1.20 is required to be:

1.21 (1) licensed under chapter 245G; or

2.1 (2) registered under section 157.17 as a board and lodge establishment that predominantly  
2.2 serves individuals being treated for or recovering from a substance use disorder.

2.3 Sec. 3. Minnesota Statutes 2018, section 245C.22, subdivision 4, is amended to read:

2.4 Subd. 4. **Risk of harm; set aside.** (a) The commissioner may set aside the disqualification  
2.5 if the commissioner finds that the individual has submitted sufficient information to  
2.6 demonstrate that the individual does not pose a risk of harm to any person served by the  
2.7 applicant, license holder, or other entities as provided in this chapter.

2.8 (b) In determining whether the individual has met the burden of proof by demonstrating  
2.9 the individual does not pose a risk of harm, the commissioner shall consider:

2.10 (1) the nature, severity, and consequences of the event or events that led to the  
2.11 disqualification;

2.12 (2) whether there is more than one disqualifying event;

2.13 (3) the age and vulnerability of the victim at the time of the event;

2.14 (4) the harm suffered by the victim;

2.15 (5) vulnerability of persons served by the program;

2.16 (6) the similarity between the victim and persons served by the program;

2.17 (7) the time elapsed without a repeat of the same or similar event;

2.18 (8) documentation of successful completion by the individual studied of training or  
2.19 rehabilitation pertinent to the event; and

2.20 (9) any other information relevant to reconsideration.

2.21 (c) If the individual requested reconsideration on the basis that the information relied  
2.22 upon to disqualify the individual was incorrect or inaccurate and the commissioner determines  
2.23 that the information relied upon to disqualify the individual is correct, the commissioner  
2.24 must also determine if the individual poses a risk of harm to persons receiving services in  
2.25 accordance with paragraph (b).

2.26 (d) For an individual seeking employment in the substance use disorder treatment field,  
2.27 the commissioner shall set aside the disqualification if the following criteria are met:

2.28 (1) the individual is not disqualified for a crime of violence as listed under section  
2.29 624.712, subdivision 5, except that the following crimes are prohibitory offenses: crimes  
2.30 listed under section 152.021, subdivision 2 or 2a; 152.022, subdivision 2; 152.023,  
2.31 subdivision 2; 152.024; or 152.025;

- 3.1 (2) the individual is not disqualified under section 245C.15, subdivision 1;
- 3.2 (3) the individual is not disqualified under section 245C.15, subdivision 4, paragraph
- 3.3 (b);
- 3.4 (4) the individual provided documentation of successful completion of treatment, at least
- 3.5 one year prior to the date of the request for reconsideration, at a program licensed under
- 3.6 chapter 245G;
- 3.7 (5) the individual provided documentation demonstrating abstinence from controlled
- 3.8 substances, as defined in section 152.01, subdivision 4, for the period of one year prior to
- 3.9 the date of the request for reconsideration; and
- 3.10 (6) the individual is seeking employment in the substance use disorder treatment field.

3.11 Sec. 4. Minnesota Statutes 2018, section 245C.22, subdivision 5, is amended to read:

3.12 Subd. 5. **Scope of set-aside.** (a) If the commissioner sets aside a disqualification under

3.13 this section, the disqualified individual remains disqualified, but may hold a license and

3.14 have direct contact with or access to persons receiving services. Except as provided in

3.15 paragraph (b), the commissioner's set-aside of a disqualification is limited solely to the

3.16 licensed program, applicant, or agency specified in the set aside notice under section 245C.23.

3.17 For personal care provider organizations, the commissioner's set-aside may further be limited

3.18 to a specific individual who is receiving services. For new background studies required

3.19 under section 245C.04, subdivision 1, paragraph (h), if an individual's disqualification was

3.20 previously set aside for the license holder's program and the new background study results

3.21 in no new information that indicates the individual may pose a risk of harm to persons

3.22 receiving services from the license holder, the previous set-aside shall remain in effect.

3.23 (b) If the commissioner has previously set aside an individual's disqualification for one

3.24 or more programs or agencies, and the individual is the subject of a subsequent background

3.25 study for a different program or agency, the commissioner shall determine whether the

3.26 disqualification is set aside for the program or agency that initiated the subsequent

3.27 background study. A notice of a set-aside under paragraph (c) shall be issued within 15

3.28 working days if all of the following criteria are met:

3.29 (1) the subsequent background study was initiated in connection with a program licensed

3.30 or regulated under the same provisions of law and rule for at least one program for which

3.31 the individual's disqualification was previously set aside by the commissioner;

3.32 (2) the individual is not disqualified for an offense specified in section 245C.15,

3.33 subdivision 1 or 2;

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

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

4.4 (c) Notwithstanding paragraph (b), clause (2), for an individual who is employed in the  
4.5 substance use disorder field, if the commissioner has previously set aside an individual's  
4.6 disqualification for one or more programs or agencies in the substance use disorder treatment  
4.7 field, and the individual is the subject of a subsequent background study for a different  
4.8 program or agency in the substance use disorder treatment field, the commissioner shall set  
4.9 aside the disqualification for the program or agency in the substance use disorder treatment  
4.10 field that initiated the subsequent background study when the criteria under paragraph (b),  
4.11 clauses (1), (3), and (4), are met and the individual is not disqualified for an offense specified  
4.12 in section 254C.15, subdivision 1. A notice of a set-aside under paragraph (d) shall be issued  
4.13 within 15 working days.

4.14 ~~(e)~~ (d) When a disqualification is set aside under paragraph (b), the notice of background  
4.15 study results issued under section 245C.17, in addition to the requirements under section  
4.16 245C.17, shall state that the disqualification is set aside for the program or agency that  
4.17 initiated the subsequent background study. The notice must inform the individual that the  
4.18 individual may request reconsideration of the disqualification under section 245C.21 on the  
4.19 basis that the information used to disqualify the individual is incorrect.