

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 1217

(SENATE AUTHORS: HAYDEN, Abeler, Champion, Hoffman and Mathews)

DATE	D-PG	OFFICIAL STATUS
02/14/2019	384	Introduction and first reading
		Referred to Human Services Reform Finance and Policy
03/11/2019	726a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to human services; modifying provisions governing child foster care;
- 1.3 amending Minnesota Statutes 2018, sections 245A.05; 245A.07, subdivision 1;
- 1.4 245A.16, by adding a subdivision; 245C.02, by adding a subdivision; 245C.05,
- 1.5 subdivisions 2c, 2d, 4, 5; 245C.08, subdivision 3; 245C.14, subdivision 1; 245C.15,
- 1.6 by adding a subdivision; 245C.24.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2018, section 245A.05, is amended to read:
- 1.9 **245A.05 DENIAL OF APPLICATION.**
- 1.10 (a) The commissioner may deny a license if an applicant or controlling individual:
- 1.11 (1) fails to submit a substantially complete application after receiving notice from the
- 1.12 commissioner under section 245A.04, subdivision 1;
- 1.13 (2) fails to comply with applicable laws or rules;
- 1.14 (3) knowingly withholds relevant information from or gives false or misleading
- 1.15 information to the commissioner in connection with an application for a license or during
- 1.16 an investigation;
- 1.17 (4) has a disqualification that has not been set aside under section 245C.22 and no
- 1.18 variance has been granted;
- 1.19 (5) has an individual living in the household who received a background study under
- 1.20 section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification that
- 1.21 has not been set aside under section 245C.22, and no variance has been granted;

2.1 (6) is associated with an individual who received a background study under section
 2.2 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to
 2.3 children or vulnerable adults, and who has a disqualification that has not been set aside
 2.4 under section 245C.22, and no variance has been granted; ~~or~~

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

2.6 (8) for family child foster care, has nondisqualifying background study information that
 2.7 reflects on the individual's ability to safely provide care to foster children.

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

2.19 **EFFECTIVE DATE.** This section is effective March 1, 2020.

2.20 Sec. 2. Minnesota Statutes 2018, section 245A.07, subdivision 1, is amended to read:

2.21 Subdivision 1. **Sanctions; appeals; license.** (a) In addition to making a license conditional
 2.22 under section 245A.06, the commissioner may suspend or revoke the license, impose a fine,
 2.23 or secure an injunction against the continuing operation of the program of a license holder
 2.24 who does not comply with applicable law or rule or who has nondisqualifying background
 2.25 study information that reflects on the license holder's ability to safely provide care to foster
 2.26 children. When applying sanctions authorized under this section, the commissioner shall
 2.27 consider the nature, chronicity, or severity of the violation of law or rule and the effect of
 2.28 the violation on the health, safety, or rights of persons served by the program.

2.29 (b) If a license holder appeals the suspension or revocation of a license and the license
 2.30 holder continues to operate the program pending a final order on the appeal, the commissioner
 2.31 shall issue the license holder a temporary provisional license. Unless otherwise specified
 2.32 by the commissioner, variances in effect on the date of the license sanction under appeal
 2.33 continue under the temporary provisional license. If a license holder fails to comply with

3.1 applicable law or rule while operating under a temporary provisional license, the
 3.2 commissioner may impose additional sanctions under this section and section 245A.06, and
 3.3 may terminate any prior variance. If a temporary provisional license is set to expire, a new
 3.4 temporary provisional license shall be issued to the license holder upon payment of any fee
 3.5 required under section 245A.10. The temporary provisional license shall expire on the date
 3.6 the final order is issued. If the license holder prevails on the appeal, a new nonprovisional
 3.7 license shall be issued for the remainder of the current license period.

3.8 (c) If a license holder is under investigation and the license is due to expire before
 3.9 completion of the investigation, the program shall be issued a new license upon completion
 3.10 of the reapplication requirements and payment of any applicable license fee. Upon completion
 3.11 of the investigation, a licensing sanction may be imposed against the new license under this
 3.12 section, section 245A.06, or 245A.08.

3.13 (d) Failure to reapply or closure of a license by the license holder prior to the completion
 3.14 of any investigation shall not preclude the commissioner from issuing a licensing sanction
 3.15 under this section, section 245A.06, or 245A.08 at the conclusion of the investigation.

3.16 **EFFECTIVE DATE.** This section is effective March 1, 2020.

3.17 Sec. 3. Minnesota Statutes 2018, section 245A.16, is amended by adding a subdivision to
 3.18 read:

3.19 **Subd. 9. Licensed family child foster care.** (a) Before recommending to deny a license
 3.20 under section 245A.05 or revoke a license under section 245A.07 for nondisqualifying
 3.21 background study information received under section 245C.05, subdivision 4, paragraph
 3.22 (a), clause (3), for licensed family child foster care a county agency or private agency that
 3.23 has been designated or licensed by the commissioner must review the following:

3.24 (1) the type of crime;

3.25 (2) the number of crimes;

3.26 (3) the nature of the offenses;

3.27 (4) the age of the individual at the time of conviction;

3.28 (5) the length of time that has elapsed since the last conviction;

3.29 (6) the relationship of the crime and the capacity to care for a child;

3.30 (7) evidence of rehabilitation;

4.1 (8) information or knowledge from community members regarding the individual's
4.2 capacity to provide foster care;

4.3 (9) a statement from the study subject;

4.4 (10) a statement from the license holder; and

4.5 (11) other aggravating and mitigating factors.

4.6 (b) The county or private licensing agency must send a summary of the review completed
4.7 according to paragraph (a), on a form developed by the commissioner, to the commissioner
4.8 and include any recommendation for licensing action.

4.9 **EFFECTIVE DATE.** This section is effective March 1, 2020.

4.10 Sec. 4. Minnesota Statutes 2018, section 245C.02, is amended by adding a subdivision to
4.11 read:

4.12 Subd. 12a. **Licensed family child foster care.** "Licensed family child foster care"
4.13 includes providers who have submitted an application for family child foster care licensure
4.14 under section 245A.04, subdivision 1. Licensed family child foster care does not include
4.15 foster residence settings that meet the licensing requirements of Minnesota Rules, parts
4.16 2960.3200 to 2960.3230.

4.17 **EFFECTIVE DATE.** This section is effective March 1, 2020.

4.18 Sec. 5. Minnesota Statutes 2018, section 245C.05, subdivision 2c, is amended to read:

4.19 Subd. 2c. **Privacy notice to background study subject.** (a) Prior to initiating each
4.20 background study, the entity initiating the study must provide the commissioner's privacy
4.21 notice to the background study subject required under section 13.04, subdivision 2. The
4.22 notice must be available through the commissioner's electronic NETStudy and NETStudy
4.23 2.0 systems and shall include the information in paragraphs (b) and (c).

4.24 (b) The background study subject shall be informed that any previous background studies
4.25 that received a set-aside will be reviewed, and without further contact with the background
4.26 study subject, the commissioner may notify the agency that initiated the subsequent
4.27 background study:

4.28 (1) that the individual has a disqualification that has been set aside for the program or
4.29 agency that initiated the study;

4.30 (2) the reason for the disqualification; and

5.1 (3) that information about the decision to set aside the disqualification will be available
5.2 to the license holder upon request without the consent of the background study subject.

5.3 (c) The background study subject must also be informed that:

5.4 (1) the subject's fingerprints collected for purposes of completing the background study
5.5 under this chapter must not be retained by the Department of Public Safety, Bureau of
5.6 Criminal Apprehension, or by the commissioner. ~~The Federal Bureau of Investigation will~~
5.7 ~~only retain fingerprints of subjects with a criminal history;~~

5.8 (2) effective upon implementation of NETStudy 2.0, the subject's photographic image
5.9 will be retained by the commissioner, and if the subject has provided the subject's Social
5.10 Security number for purposes of the background study, the photographic image will be
5.11 available to prospective employers and agencies initiating background studies under this
5.12 chapter to verify the identity of the subject of the background study;

5.13 (3) the commissioner's authorized fingerprint collection vendor shall, for purposes of
5.14 verifying the identity of the background study subject, be able to view the identifying
5.15 information entered into NETStudy 2.0 by the entity that initiated the background study,
5.16 but shall not retain the subject's fingerprints, photograph, or information from NETStudy
5.17 2.0. The authorized fingerprint collection vendor shall retain no more than the subject's
5.18 name and the date and time the subject's fingerprints were recorded and sent, only as
5.19 necessary for auditing and billing activities;

5.20 (4) the commissioner shall provide the subject notice, as required in section 245C.17,
5.21 subdivision 1, paragraph (a), when an entity initiates a background study on the individual;

5.22 (5) the subject may request in writing a report listing the entities that initiated a
5.23 background study on the individual as provided in section 245C.17, subdivision 1, paragraph
5.24 (b);

5.25 (6) the subject may request in writing that information used to complete the individual's
5.26 background study in NETStudy 2.0 be destroyed if the requirements of section 245C.051,
5.27 paragraph (a), are met; and

5.28 (7) notwithstanding clause (6), the commissioner shall destroy:

5.29 (i) the subject's photograph after a period of two years when the requirements of section
5.30 245C.051, paragraph (c), are met; and

5.31 (ii) any data collected on a subject under this chapter after a period of two years following
5.32 the individual's death as provided in section 245C.051, paragraph (d).

6.1 Sec. 6. Minnesota Statutes 2018, section 245C.05, subdivision 2d, is amended to read:

6.2 Subd. 2d. **Fingerprint data notification.** The commissioner of human services shall
6.3 notify all background study subjects under this chapter that the Department of Human
6.4 Services, Department of Public Safety, and the Bureau of Criminal Apprehension do not
6.5 retain fingerprint data after a background study is completed, ~~and that the Federal Bureau~~
6.6 ~~of Investigation only retains the fingerprints of subjects who have a criminal history.~~

6.7 Sec. 7. Minnesota Statutes 2018, section 245C.05, subdivision 4, is amended to read:

6.8 Subd. 4. **Electronic transmission.** (a) For background studies conducted by the
6.9 Department of Human Services, the commissioner shall implement a secure system for the
6.10 electronic transmission of:

6.11 (1) background study information to the commissioner;

6.12 (2) background study results to the license holder;

6.13 (3) background study results and relevant underlying investigative information to county
6.14 and private agencies for background studies conducted by the commissioner for child foster
6.15 care, including a summary of nondisqualifying results, except as prohibited by law; and

6.16 (4) background study results to county agencies for background studies conducted by
6.17 the commissioner for adult foster care and family adult day services and, upon
6.18 implementation of NETStudy 2.0, family child care and legal nonlicensed child care
6.19 authorized under chapter 119B.

6.20 (b) Unless the commissioner has granted a hardship variance under paragraph (c), a
6.21 license holder or an applicant must use the electronic transmission system known as
6.22 NETStudy or NETStudy 2.0 to submit all requests for background studies to the
6.23 commissioner as required by this chapter.

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

6.27 (d) Section 245C.08, subdivision 3, paragraph (c), applies to results transmitted under
6.28 this subdivision.

6.29 **EFFECTIVE DATE.** This section is effective March 1, 2020.

7.1 Sec. 8. Minnesota Statutes 2018, section 245C.05, subdivision 5, is amended to read:

7.2 Subd. 5. **Fingerprints and photograph.** (a) Notwithstanding paragraph (b), for
7.3 background studies conducted by the commissioner for child foster care, adoptions, or a
7.4 transfer of permanent legal and physical custody of a child, the subject of the background
7.5 study, who is 18 years of age or older, shall provide the commissioner with a set of
7.6 classifiable fingerprints obtained from an authorized agency for a national criminal history
7.7 record check.

7.8 (b) For background studies initiated on or after the implementation of NETStudy 2.0,
7.9 except as provided under subdivision 5a, every subject of a background study must provide
7.10 the commissioner with a set of the background study subject's classifiable fingerprints and
7.11 photograph. The photograph and fingerprints must be recorded at the same time by the
7.12 commissioner's authorized fingerprint collection vendor and sent to the commissioner
7.13 through the commissioner's secure data system described in section 245C.32, subdivision
7.14 1a, paragraph (b).

7.15 (c) The fingerprints shall be submitted by the commissioner to the Bureau of Criminal
7.16 Apprehension and, when specifically required by law, submitted to the Federal Bureau of
7.17 Investigation for a national criminal history record check.

7.18 (d) The fingerprints must not be retained by the Department of Public Safety, Bureau
7.19 of Criminal Apprehension, or the commissioner. ~~The Federal Bureau of Investigation will~~
7.20 ~~only retain fingerprints of subjects with a criminal history.~~

7.21 (e) The commissioner's authorized fingerprint collection vendor shall, for purposes of
7.22 verifying the identity of the background study subject, be able to view the identifying
7.23 information entered into NETStudy 2.0 by the entity that initiated the background study,
7.24 but shall not retain the subject's fingerprints, photograph, or information from NETStudy
7.25 2.0. The authorized fingerprint collection vendor shall retain no more than the name and
7.26 date and time the subject's fingerprints were recorded and sent, only as necessary for auditing
7.27 and billing activities.

7.28 (f) For any background study conducted under this chapter, the subject shall provide the
7.29 commissioner with a set of classifiable fingerprints when the commissioner has reasonable
7.30 cause to require a national criminal history record check as defined in section 245C.02,
7.31 subdivision 15a.

8.1 Sec. 9. Minnesota Statutes 2018, section 245C.08, subdivision 3, is amended to read:

8.2 Subd. 3. **Arrest and investigative information.** (a) For any background study completed
8.3 under this section, if the commissioner has reasonable cause to believe the information is
8.4 pertinent to the disqualification of an individual, the commissioner also may review arrest
8.5 and investigative information from:

8.6 (1) the Bureau of Criminal Apprehension;

8.7 (2) the ~~commissioner~~ commissioners of health and human services;

8.8 (3) a county attorney;

8.9 (4) a county sheriff;

8.10 (5) a county agency;

8.11 (6) a local chief of police;

8.12 (7) other states;

8.13 (8) the courts;

8.14 (9) the Federal Bureau of Investigation;

8.15 (10) the National Criminal Records Repository; and

8.16 (11) criminal records from other states.

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

8.22 (c) If the commissioner conducts a national criminal history record check when required
8.23 by law and uses the information from the national criminal history record check to make a
8.24 disqualification determination, the data obtained is private data and cannot be shared with
8.25 county agencies, private agencies, or prospective employers of the background study subject.

8.26 (d) If the commissioner conducts a national criminal history record check when required
8.27 by law and uses the information from the national criminal history record check to make a
8.28 disqualification determination, the license holder or entity that submitted the study is not
8.29 required to obtain a copy of the background study subject's disqualification letter under
8.30 section 245C.17, subdivision 3.

9.1 **EFFECTIVE DATE.** This section is effective for background studies requested on or
9.2 after October 1, 2019.

9.3 Sec. 10. Minnesota Statutes 2018, section 245C.14, subdivision 1, is amended to read:

9.4 Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall
9.5 disqualify an individual who is the subject of a background study from any position allowing
9.6 direct contact with persons receiving services from the license holder or entity identified in
9.7 section 245C.03, upon receipt of information showing, or when a background study
9.8 completed under this chapter shows any of the following:

9.9 (1) a conviction of, admission to, or Alford plea to one or more crimes listed in section
9.10 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor,
9.11 or misdemeanor level crime;

9.12 (2) a preponderance of the evidence indicates the individual has committed an act or
9.13 acts that meet the definition of any of the crimes listed in section 245C.15, regardless of
9.14 whether the preponderance of the evidence is for a felony, gross misdemeanor, or
9.15 misdemeanor level crime; or

9.16 (3) an investigation results in an administrative determination listed under section
9.17 245C.15, subdivision 4, paragraph (b).

9.18 (b) No individual who is disqualified following a background study under section
9.19 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact with
9.20 persons served by a program or entity identified in section 245C.03, unless the commissioner
9.21 has provided written notice under section 245C.17 stating that:

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

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

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

9.28 (c) Notwithstanding paragraph (a), for the purposes of a background study affiliated
9.29 with a licensed family child foster care provider, the commissioner shall disqualify an
9.30 individual who is the subject of a background study from any position allowing direct contact
9.31 with persons receiving services from the license holder or entity identified in section 245C.03,

10.1 upon receipt of information showing, or when a background study completed under this
10.2 chapter is disqualifying under section 245C.15, subdivision 6.

10.3 **EFFECTIVE DATE.** This section is effective March 1, 2020.

10.4 Sec. 11. Minnesota Statutes 2018, section 245C.15, is amended by adding a subdivision
10.5 to read:

10.6 Subd. 6. **Licensed family child foster care disqualifications.** (a) Notwithstanding
10.7 subdivisions 1 to 5, for a background study affiliated with a licensed family child foster
10.8 care, regardless of how much time has passed, an individual is disqualified under section
10.9 245C.14 if the individual: committed an act that resulted in a felony-level conviction for:
10.10 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder
10.11 in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in
10.12 the second degree); 609.2112 (criminal vehicular homicide); 609.223, subdivision 2 (assault
10.13 in the third degree, past pattern of child abuse); 609.223, subdivision 3 (assault in the third
10.14 degree, victim under four); a felony offense under sections 609.2242 and 609.2243 (domestic
10.15 assault), spousal abuse, child abuse or neglect, or a crime against children; 609.2247
10.16 (domestic assault by strangulation); 609.25 (kidnapping); 609.255 (false imprisonment);
10.17 609.265 (abduction); 609.2661 (murder of an unborn child in the first degree); 609.2662
10.18 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in
10.19 the third degree); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665
10.20 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child
10.21 in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268
10.22 (injury or death of an unborn child in the commission of a crime); 609.324, subdivision 1
10.23 (other prohibited acts; engaging in, hiring, or agreeing to hire minor to engage in prostitution);
10.24 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in
10.25 the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal
10.26 sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree);
10.27 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage
10.28 in sexual conduct); 609.377 (malicious punishment of a child); 609.378 (neglect or
10.29 endangerment of a child); 617.246 (use of minors in sexual performance prohibited); or
10.30 617.247 (possession of pictorial representations of minors).

10.31 (b) Notwithstanding subdivisions 1 to 5, for the purposes of a background study affiliated
10.32 with a licensed family foster care license, an individual is disqualified under section 245C.14,
10.33 regardless of how much time has passed, if the individual committed an action under
10.34 paragraph (d) that resulted in death or involved sexual abuse.

11.1 (c) Notwithstanding subdivisions 1 to 5, for a background study affiliated with a licensed
11.2 family child foster care license, an individual is disqualified under section 245C.14 if:

11.3 (1) less than five years have passed since the termination of parental rights under section
11.4 260C.301, subdivision 1, paragraph (b); or

11.5 (2) less than five years have passed since committing an act that resulted in a felony-level
11.6 conviction for: 152.021 (controlled substance crime in the first degree); 152.022 (controlled
11.7 substance crime in the second degree); 152.023 (controlled substance crime in the third
11.8 degree); 152.024 (controlled substance crime in the fourth degree); 152.025 (controlled
11.9 substance crime in the fifth degree); 152.0261 (importing controlled substances across state
11.10 borders); 152.0262, subdivision 1, paragraph (b) (possession of substance with intent to
11.11 manufacture methamphetamine); 152.027, subdivision 6, paragraph (c) (sale or possession
11.12 of synthetic cannabinoids); 152.096 (conspiracies prohibited); 152.097 (simulated controlled
11.13 substances); 152.136 (anhydrous ammonia; prohibited conduct; criminal penalties; civil
11.14 liabilities); 152.137 (methamphetamine-related crimes involving children or vulnerable
11.15 adults); 169A.24 (felony first-degree driving while impaired); 609.2113 (criminal vehicular
11.16 operation; bodily harm); 609.2114 (criminal vehicular operation; unborn child); 609.221
11.17 (assault in the first degree); 609.222 (assault in the second degree); 609.223, subdivision 1
11.18 (assault in the third degree); 609.2231, subdivision 1, paragraph (c) (assault in the fourth
11.19 degree, secure treatment personnel); 609.224, subdivision 4 (felony assault in the fifth
11.20 degree); 609.228 (great bodily harm caused by distribution of drugs); 609.2325 (criminal
11.21 abuse of a vulnerable adult); 609.235 (use of drugs to injure or facilitate a crime); 609.66,
11.22 subdivision 1e (felony drive-by shooting); 609.687 (adulteration); or 609.855, subdivision
11.23 5 (shooting at or in a public transit vehicle or facility).

11.24 (d) Notwithstanding subdivisions 1 to 5, except as provided in paragraph (a), for a
11.25 background study affiliated with a licensed family child foster care license, an individual
11.26 is disqualified under section 245C.14 if less than five years have passed since:

11.27 (1) a determination or disposition of the individual's failure to make required reports
11.28 under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which the
11.29 final disposition under section 626.556 or 626.557 was substantiated maltreatment and the
11.30 maltreatment was recurring or serious;

11.31 (2) a determination or disposition of the individual's substantiated serious or recurring
11.32 maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557,
11.33 or serious or recurring maltreatment in any other state, the elements of which are substantially

12.1 similar to the elements of maltreatment under section 626.556 or 626.557 and meet the
12.2 definition of serious maltreatment or recurring maltreatment; or
12.3 (3) the termination of the individual's parental rights under section 260C.301, subdivision
12.4 1, paragraph (a).

12.5 **EFFECTIVE DATE.** This section is effective March 1, 2020.

12.6 Sec. 12. Minnesota Statutes 2018, section 245C.24, is amended to read:

12.7 **245C.24 DISQUALIFICATION; BAR TO SET ASIDE A DISQUALIFICATION;**
12.8 **REQUEST FOR VARIANCE.**

12.9 Subdivision 1. **Minimum disqualification periods.** The disqualification periods under
12.10 subdivisions 3 ~~and 4~~ to 5 are the minimum applicable disqualification periods. The
12.11 commissioner may determine that an individual should continue to be disqualified from
12.12 licensure because the individual continues to pose a risk of harm to persons served by that
12.13 individual, even after the minimum disqualification period has passed.

12.14 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in
12.15 ~~paragraph~~ paragraphs (b), to (d), the commissioner may not set aside the disqualification
12.16 of any individual disqualified pursuant to this chapter, regardless of how much time has
12.17 passed, if the individual was disqualified for a crime or conduct listed in section 245C.15,
12.18 subdivision 1.

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

12.27 (c) When a licensed foster care provider adopts an individual who had received foster
12.28 care services from the provider for over six months, and the adopted individual is required
12.29 to receive a background study under section 245C.03, subdivision 1, paragraph (a), clause
12.30 (2) or (6), the commissioner may grant a variance to the license holder under section 245C.30
12.31 to permit the adopted individual with a permanent disqualification to remain affiliated with
12.32 the license holder under the conditions of the variance when the variance is recommended

13.1 by the county of responsibility for each of the remaining individuals in placement in the
 13.2 home and the licensing agency for the home.

13.3 (d) For an individual 18 years of age or older affiliated with a licensed family child foster
 13.4 care program, the commissioner must not set aside the disqualification of any individual
 13.5 disqualified pursuant to this chapter, regardless of how much time has passed, if the individual
 13.6 was disqualified for a crime or conduct listed in section 245C.15, subdivision 6, paragraph
 13.7 (a). This paragraph does not apply to an individual younger than 18 years of age at the time
 13.8 the background study is submitted.

13.9 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set
 13.10 aside the disqualification of an individual in connection with a license to provide family
 13.11 child care for children, ~~foster care for children in the provider's home,~~ or foster care or day
 13.12 care services for adults in the provider's home if: (1) less than ten years has passed since
 13.13 the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based
 13.14 on a preponderance of evidence determination under section 245C.14, subdivision 1,
 13.15 paragraph (a), clause (2), or an admission under section 245C.14, subdivision 1, paragraph
 13.16 (a), clause (1), and less than ten years has passed since the individual committed the act or
 13.17 admitted to committing the act, whichever is later; and (3) the individual has committed a
 13.18 violation of any of the following offenses: sections 609.165 (felon ineligible to possess
 13.19 firearm); criminal vehicular homicide or criminal vehicular operation causing death under
 13.20 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.215 (aiding
 13.21 suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault
 13.22 in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713
 13.23 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple
 13.24 robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot);
 13.25 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a
 13.26 witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous
 13.27 weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns);
 13.28 609.749, subdivision 2 (gross misdemeanor stalking); 152.021 or 152.022 (controlled
 13.29 substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or
 13.30 subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024,
 13.31 subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree);
 13.32 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable
 13.33 adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or
 13.34 patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a
 13.35 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure

14.1 to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in
14.2 the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first,
14.3 second, or third degree); 609.268 (injury or death of an unborn child in the commission of
14.4 a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or
14.5 displaying harmful material to minors); a felony-level conviction involving alcohol or drug
14.6 use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a
14.7 gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross
14.8 misdemeanor offense under 609.377 (malicious punishment of a child); 609.72, subdivision
14.9 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess
14.10 firearms); or Minnesota Statutes 2012, section 609.21.

14.11 (b) The commissioner may not set aside the disqualification of an individual if less than
14.12 ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to
14.13 commit any of the offenses listed in paragraph (a) as each of these offenses is defined in
14.14 Minnesota Statutes.

14.15 (c) The commissioner may not set aside the disqualification of an individual if less than
14.16 ten years have passed since the discharge of the sentence imposed for an offense in any
14.17 other state or country, the elements of which are substantially similar to the elements of any
14.18 of the offenses listed in paragraph (a).

14.19 Subd. 4. **Seven-year bar to set aside disqualification.** The commissioner may not set
14.20 aside the disqualification of an individual in connection with a license to provide family
14.21 child care for children, ~~foster care for children in the provider's home~~, or foster care or day
14.22 care services for adults in the provider's home if within seven years preceding the study:

14.23 (1) the individual committed an act that constitutes maltreatment of a child under section
14.24 626.556, subdivision 10e, and the maltreatment resulted in substantial bodily harm as defined
14.25 in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by
14.26 competent psychological or psychiatric evidence; or

14.27 (2) the individual was determined under section 626.557 to be the perpetrator of a
14.28 substantiated incident of maltreatment of a vulnerable adult that resulted in substantial
14.29 bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional
14.30 harm as supported by competent psychological or psychiatric evidence.

14.31 Subd. 5. **Five-year bar to set aside disqualification.** The commissioner must not set
14.32 aside the disqualification of an individual 18 years of age or older in connection with a
14.33 license for foster care for children in the provider's home if within five years preceding the
14.34 study the individual is convicted of a felony in section 245C.15, subdivision 6, paragraph

- 15.1 (c). This paragraph does not apply to an individual younger than 18 years of age at the time
15.2 the background study is submitted.
- 15.3 **EFFECTIVE DATE.** This section is effective March 1, 2020.