

CHAPTER 112—S.F.No. 1724

An act relating to human services; making changes to licensing provisions; modifying data practices, program administration, disaster plans, education programs, conditional license provisions, suspensions, sanctions, and contested case hearings, child care center training, family child care training requirements, vulnerable adults, maltreatment of minors, background studies, disqualifications, reconsiderations, disqualification set-asides, fair hearings, appeals, changing definitions of neglect and physical abuse; amending Minnesota Statutes 2006, sections 13.46, subdivisions 2, 4; 245A.03, subdivision 2; 245A.04, subdivision 11, by adding subdivisions; 245A.06, subdivision 4; 245A.07, subdivisions 2a, 3, by adding a subdivision; 245A.08, subdivision 2a; 245A.10, subdivision 2; 245A.11, subdivision 7; 245A.14, subdivision 8; 245A.144; 245A.1445; 245A.145, subdivision 1; 245A.18, subdivision 2; 245A.65, subdivision 1, by adding a subdivision; 245C.02, by adding a subdivision; 245C.05, subdivision 3; 245C.07; 245C.08; 245C.09, subdivision 1; 245C.11, by adding a subdivision; 245C.13, subdivision 2; 245C.14, subdivision 1; 245C.15, subdivisions 1, 2, 3, 4; 245C.16, subdivision 1; 245C.17, subdivisions 2, 3; 245C.21, subdivisions 2, 3; 245C.22, subdivisions 4, 5; 245C.24, subdivision 3; 245C.27, subdivision 1; 245C.28, subdivision 1; 245C.301; 256B.0919, by adding a subdivision; 256B.092, by adding a subdivision; 270B.14, subdivision 1; 626.556, subdivisions 2, 10e, 10i; 626.557, subdivisions 9c, 9d; 626.5572, subdivision 17; proposing coding for new law in Minnesota Statutes, chapter 245A; repealing Minnesota Statutes 2006, sections 245A.023; 245A.14, subdivisions 7, 9, 9a, 12, 13; 245C.06; Minnesota Rules, parts 9502.0385; 9503.0035.

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

Section 1. Minnesota Statutes 2006, section 13.46, subdivision 2, is amended to read:

Subd. 2. **General.** (a) Unless the data is summary data or a statute specifically provides a different classification, data on individuals collected, maintained, used, or disseminated by the welfare system is private data on individuals, and shall not be disclosed except:

- (1) according to section 13.05;
- (2) according to court order;
- (3) according to a statute specifically authorizing access to the private data;
- (4) to an agent of the welfare system, including a law enforcement person, attorney, or investigator acting for it in the investigation or prosecution of a criminal or civil proceeding relating to the administration of a program;
- (5) to personnel of the welfare system who require the data to verify an individual's identity; determine eligibility, amount of assistance, and the need to provide services to

an individual or family across programs; evaluate the effectiveness of programs; assess parental contribution amounts; and investigate suspected fraud;

(6) to administer federal funds or programs;

(7) between personnel of the welfare system working in the same program;

(8) to the Department of Revenue to assess parental contribution amounts for purposes of section 252.27, subdivision 2a, administer and evaluate tax refund or tax credit programs and to identify individuals who may benefit from these programs. The following information may be disclosed under this paragraph: an individual's and their dependent's names, dates of birth, Social Security numbers, income, addresses, and other data as required, upon request by the Department of Revenue. Disclosures by the commissioner of revenue to the commissioner of human services for the purposes described in this clause are governed by section 270B.14, subdivision 1. Tax refund or tax credit programs include, but are not limited to, the dependent care credit under section 290.067, the Minnesota working family credit under section 290.0671, the property tax refund and rental credit under section 290A.04, and the Minnesota education credit under section 290.0674;

(9) between the Department of Human Services, ~~the Department of Education,~~ ~~and~~ the Department of Employment and Economic Development ~~for the purpose of monitoring,~~ and when applicable, the Department of Education, for the following purposes:

(i) to monitor the eligibility of the data subject for unemployment benefits, for any employment or training program administered, supervised, or certified by that agency; ~~for the purpose of administering;~~

(ii) to administer any rehabilitation program or child care assistance program, whether alone or in conjunction with the welfare system; ~~or;~~

(iii) to monitor and evaluate the Minnesota family investment program by exchanging data on recipients and former recipients of food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L; and

(iv) to analyze public assistance employment services and program utilization, cost, effectiveness, and outcomes as implemented under the authority established in Title II, Sections 201-204 of the Ticket to Work and Work Incentives Improvement Act of 1999. Health records governed by section 144.335 and "protected health information" as defined in Code of Federal Regulations, title 45, section 160.103, and governed by Code of Federal Regulations, title 45, parts 160-164, including health care claims utilization information, must not be exchanged under this clause;

(10) to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the individual or other individuals or persons;

(11) data maintained by residential programs as defined in section 245A.02 may be disclosed to the protection and advocacy system established in this state according to Part C of Public Law 98-527 to protect the legal and human rights of persons with developmental disabilities or other related conditions who live in residential facilities for these persons if the protection and advocacy system receives a complaint by or on behalf of that person and the person does not have a legal guardian or the state or a designee of the state is the legal guardian of the person;

(12) to the county medical examiner or the county coroner for identifying or locating relatives or friends of a deceased person;

(13) data on a child support obligor who makes payments to the public agency may be disclosed to the Minnesota Office of Higher Education to the extent necessary to determine eligibility under section 136A.121, subdivision 2, clause (5);

(14) participant Social Security numbers and names collected by the telephone assistance program may be disclosed to the Department of Revenue to conduct an electronic data match with the property tax refund database to determine eligibility under section 237.70, subdivision 4a;

(15) the current address of a Minnesota family investment program participant may be disclosed to law enforcement officers who provide the name of the participant and notify the agency that:

(i) the participant:

(A) is a fugitive felon fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony under the laws of the jurisdiction from which the individual is fleeing; or

(B) is violating a condition of probation or parole imposed under state or federal law;

(ii) the location or apprehension of the felon is within the law enforcement officer's official duties; and

(iii) the request is made in writing and in the proper exercise of those duties;

(16) the current address of a recipient of general assistance or general assistance medical care may be disclosed to probation officers and corrections agents who are supervising the recipient and to law enforcement officers who are investigating the recipient in connection with a felony level offense;

(17) information obtained from food support applicant or recipient households may be disclosed to local, state, or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act, according to Code of Federal Regulations, title 7, section 272.1(c);

(18) the address, Social Security number, and, if available, photograph of any member of a household receiving food support shall be made available, on request, to a local, state, or federal law enforcement officer if the officer furnishes the agency with the name of the member and notifies the agency that:

(i) the member:

(A) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony in the jurisdiction the member is fleeing;

(B) is violating a condition of probation or parole imposed under state or federal law; or

(C) has information that is necessary for the officer to conduct an official duty related to conduct described in subitem (A) or (B);

(ii) locating or apprehending the member is within the officer's official duties; and

(iii) the request is made in writing and in the proper exercise of the officer's official duty;

(19) the current address of a recipient of Minnesota family investment program, general assistance, general assistance medical care, or food support may be disclosed to law enforcement officers who, in writing, provide the name of the recipient and notify the agency that the recipient is a person required to register under section 243.166, but is not residing at the address at which the recipient is registered under section 243.166;

(20) certain information regarding child support obligors who are in arrears may be made public according to section 518A.74;

(21) data on child support payments made by a child support obligor and data on the distribution of those payments excluding identifying information on obligees may be disclosed to all obligees to whom the obligor owes support, and data on the enforcement actions undertaken by the public authority, the status of those actions, and data on the income of the obligor or obligee may be disclosed to the other party;

(22) data in the work reporting system may be disclosed under section 256.998, subdivision 7;

(23) to the Department of Education for the purpose of matching Department of Education student data with public assistance data to determine students eligible for free and reduced price meals, meal supplements, and free milk according to United States Code, title 42, sections 1758, 1761, 1766, 1766a, 1772, and 1773; to allocate federal and state funds that are distributed based on income of the student's family; and to verify receipt of energy assistance for the telephone assistance plan;

(24) the current address and telephone number of program recipients and emergency contacts may be released to the commissioner of health or a local board of health as defined in section 145A.02, subdivision 2, when the commissioner or local board of health has reason to believe that a program recipient is a disease case, carrier, suspect case, or at risk of illness, and the data are necessary to locate the person;

(25) to other state agencies, statewide systems, and political subdivisions of this state, including the attorney general, and agencies of other states, interstate information networks, federal agencies, and other entities as required by federal regulation or law for the administration of the child support enforcement program;

(26) to personnel of public assistance programs as defined in section 256.741, for access to the child support system database for the purpose of administration, including monitoring and evaluation of those public assistance programs;

(27) to monitor and evaluate the Minnesota family investment program by exchanging data between the Departments of Human Services and Education, on recipients and former recipients of food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(28) to evaluate child support program performance and to identify and prevent fraud in the child support program by exchanging data between the Department of Human Services, Department of Revenue under section 270B.14, subdivision 1, paragraphs (a) and (b), without regard to the limitation of use in paragraph (c), Department of Health, Department of Employment and Economic Development, and other state agencies as is reasonably necessary to perform these functions; or

(29) counties operating child care assistance programs under chapter 119B may disseminate data on program participants, applicants, and providers to the commissioner of education.

(b) Information on persons who have been treated for drug or alcohol abuse may only be disclosed according to the requirements of Code of Federal Regulations, title 42, sections 2.1 to 2.67.

(c) Data provided to law enforcement agencies under paragraph (a), clause (15), (16), (17), or (18), or paragraph (b), are investigative data and are confidential or protected nonpublic while the investigation is active. The data are private after the investigation becomes inactive under section 13.82, subdivision 5, paragraph (a) or (b).

(d) Mental health data shall be treated as provided in subdivisions 7, 8, and 9, but is not subject to the access provisions of subdivision 10, paragraph (b).

For the purposes of this subdivision, a request will be deemed to be made in writing if made through a computer interface system.

Sec. 2. Minnesota Statutes 2006, section 13.46, subdivision 4, is amended to read:

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

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

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

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

(b)(1) Except as provided in paragraph (c), the following data on current 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. When a correction order or fine has been issued, a license is suspended, immediately suspended, revoked, denied, or made conditional, or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; and the status of any appeal of these actions.

(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.

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

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the record of informal resolution of a denial, orders of hearings, findings of fact, conclusions of law, specifications of the final order of denial, and the status of any appeal of the denial.

(5) The following data on persons subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home, are public: the nature of any disqualification set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the disqualification; the nature of any disqualification for which a variance was granted under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person subject to a background study under section 245C.03, subdivision 1, has successfully passed a background study.

(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 under sections 626.556 and 626.557 may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

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

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

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

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

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, and data on individuals collected by the commissioner of human services according to maltreatment investigations under sections 626.556 and 626.557, may be shared with the Department of Human Rights, the Department of Health, the Department of Corrections, the Ombudsman for Mental Health and Developmental Disabilities, and the individual's professional regulatory board when there is reason to believe that laws or standards under the jurisdiction of those agencies may have been violated.

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

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

Sec. 3. Minnesota Statutes 2006, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **Exclusion from licensure.** (a) This chapter does not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a child foster care placement made by a local social services agency or a licensed child-placing agency, except as provided in subdivision 2a;

(2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;

(3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, a developmental disability, a functional impairment, or a physical disability;

(4) sheltered workshops or work activity programs that are certified by the commissioner of economic security;

(5) programs operated by a public school for children 33 months or older;

(6) nonresidential programs primarily for children that provide care or supervision for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;

(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for five or more persons whose primary diagnosis is mental illness that do not provide intensive residential treatment;

(9) homes providing programs for persons placed ~~there~~ by a county or a licensed agency for legal adoption, unless the adoption is not completed within two years;

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that are operated or approved by a park and recreation board whose primary purpose is to provide social and recreational activities;

(12) programs operated by a school as defined in section 120A.22, subdivision 4, whose primary purpose is to provide child care to school-age children;

(13) Head Start nonresidential programs which operate for less than 45 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or a developmental disability;

(15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance;

(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;

(21) unrelated individuals who provide out-of-home respite care services to persons with developmental disabilities from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;

(22) respite care services provided as a home and community-based service to a person with a developmental disability, in the person's primary residence;

(23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17;

(24) the placement of a child by a birth parent or legal guardian in a preadoptive home for purposes of adoption as authorized by section 259.47;

(25) settings registered under chapter 144D which provide home care services licensed by the commissioner of health to fewer than seven adults; or

(26) consumer-directed community support service funded under the Medicaid waiver for persons with developmental disabilities when the individual who provided the service is:

(i) the same individual who is the direct payee of these specific waiver funds or paid by a fiscal agent, fiscal intermediary, or employer of record; and

(ii) not otherwise under the control of a residential or nonresidential program that is required to be licensed under this chapter when providing the service.

(b) For purposes of paragraph (a), clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

(c) Nothing in this chapter shall be construed to require licensure for any services provided and funded according to an approved federal waiver plan where licensure is specifically identified as not being a condition for the services and funding.

Sec. 4. Minnesota Statutes 2006, section 245A.04, subdivision 11, is amended to read:

Subd. 11. **Education program; additional requirement.** (a) The education program offered in a residential or nonresidential program, except for child care, foster care, or services for adults, must be approved by the commissioner of education before the commissioner of human services may grant a license to the program.

(b) A residential program licensed by the commissioner of human services under Minnesota Rules, parts ~~9545.0905 to 9545.1125 or 9545.1400 to 9545.1480~~ 2960.0010 to 2960.0710, may serve persons through the age of 19 when:

(1) the admission or continued stay is necessary for a person to complete a secondary school program or its equivalent, or it is necessary to facilitate a transition period after completing the secondary school program or its equivalent for up to four months in order for the resident to obtain other living arrangements;

(2) the facility develops policies, procedures, and plans required under section 245A.65;

(3) the facility documents an assessment of the 18- or 19-year-old person's risk of victimizing children residing in the facility, and develops necessary risk reduction measures, including sleeping arrangements, to minimize any risk of harm to children; and

(4) notwithstanding the license holder's target population age range, whenever persons age 18 or 19 years old are receiving residential services, the age difference among residents may not exceed five years.

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

Sec. 5. Minnesota Statutes 2006, section 245A.04, is amended by adding a subdivision to read:

Subd. 14. **Policies and procedures for program administration required and enforceable.** (a) The license holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under Minnesota Statutes and Minnesota Rules.

(b) The license holder shall:

(1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);

(2) document the provision of this training; and

(3) monitor implementation of policies and procedures by program staff.

(c) The license holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the commissioner.

Sec. 6. Minnesota Statutes 2006, section 245A.04, is amended by adding a subdivision to read:

Subd. 15. **Pandemic planning.** Upon request, the license holder must cooperate with state and local government disaster planning agencies working to prepare for or react to emergencies presented by a pandemic outbreak.

Sec. 7. Minnesota Statutes 2006, section 245A.06, subdivision 4, is amended to read:

Subd. 4. **Notice of conditional license; reconsideration of conditional license.** If a license is made conditional, the license holder must be notified of the order 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 conditional license was ordered and must inform the license holder of the right to request reconsideration of the conditional license by the commissioner. The license holder may request reconsideration of the order of conditional license by notifying the commissioner by certified mail or personal service. The request must be made in writing. If sent by certified mail, the request must be postmarked and sent to the commissioner within ten calendar days after the license holder received the order. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. The license holder may submit with the request for

reconsideration written argument or evidence in support of the request for reconsideration. A timely request for reconsideration shall stay imposition of the terms of the conditional license until the commissioner issues a decision on the request for reconsideration. If the commissioner issues a dual order of conditional license under this section and an order to pay a fine under section 245A.07, subdivision 3, the license holder has a right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The scope of the contested case hearing shall include the fine and the conditional license. In this case, a reconsideration of the conditional license will not be conducted under this section. If the license holder does not appeal the fine, the license holder does not have a right to a contested case hearing and a reconsideration of the conditional license must be conducted under this subdivision.

The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Sec. 8. Minnesota Statutes 2006, section 245A.07, subdivision 2a, is amended to read:

Subd. 2a. **Immediate suspension expedited hearing.** (a) Within five working days of receipt of the license holder's timely appeal, the commissioner shall request assignment of an administrative law judge. The request must include a proposed date, time, and place of a hearing. A hearing must be conducted by an administrative law judge within 30 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. The commissioner shall issue a notice of hearing by certified mail or personal service at least ten working days before the hearing. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings under this subdivision shall be limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses, or if the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

(b) The administrative law judge shall issue findings of fact, conclusions, and a recommendation within ten working days from the date of hearing. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten working days from the close of the record. Within 90 calendar days after a final order affirming an immediate suspension, the commissioner shall make a determination regarding whether a final licensing sanction shall be issued under subdivision 3. The license holder shall continue to be prohibited from operation of the program during this 90-day period.

(c) When the final order under paragraph (b) affirms an immediate suspension, and a final licensing sanction is issued under subdivision 3 and the license holder appeals that sanction, the license holder continues to be prohibited from operation of the program pending a final commissioner's order under section 245A.08, subdivision 5, regarding the final licensing sanction.

Sec. 9. Minnesota Statutes 2006, 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 a license holder fails to comply fully with applicable laws or rules, if a license holder or a controlling individual, an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22, or if 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, ~~or~~ during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or a fine was ordered.

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

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

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

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

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; 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.

(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.

Sec. 10. Minnesota Statutes 2006, section 245A.07, is amended by adding a subdivision to read:

Subd. 6. **Appeal of multiple sanctions.** (a) When the license holder appeals more than one licensing action or sanction that were simultaneously issued by the commissioner, the license holder shall specify the actions or sanctions that are being appealed.

(b) If there are different timelines prescribed in statutes for the licensing actions or sanctions being appealed, the license holder must submit the appeal within the longest of those timelines specified in statutes.

(c) The appeal must be made in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within the prescribed timeline with the first day beginning the day after the license holder receives the certified letter. If a request is made by personal service, it must be received by the commissioner within the prescribed timeline with the first day beginning the day after the license holder receives the certified letter.

(d) When there are different timelines prescribed in statutes for the appeal of licensing actions or sanctions simultaneously issued by the commissioner, the commissioner shall specify in the notice to the license holder the timeline for appeal as specified under paragraph (b).

Sec. 11. Minnesota Statutes 2006, section 245A.08, subdivision 2a, is amended to read:

Subd. 2a. **Consolidated contested case hearings.** (a) When a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3, is based on a disqualification for which reconsideration was requested and which was not set aside under section 245C.22, the scope of the contested case hearing shall include the disqualification and the licensing sanction or denial of a license, unless otherwise specified in this subdivision. When the licensing sanction or denial of a license is based on a determination of maltreatment under section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which was not set aside, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and the licensing sanction or denial of a license, unless otherwise specified in this subdivision. In such cases, a fair hearing under section 256.045 shall not be conducted as provided for in sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. ~~When a fine is based on a determination that the license holder is responsible for maltreatment~~

~~and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, the scope of the contested case hearing shall include the maltreatment determination and fine and reconsideration of the maltreatment determination shall not be conducted as provided for in sections 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 section 626.556, subdivision 10i, and section 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.

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

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

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

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

(2) the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section 245C.03; ~~the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge; and~~

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

~~(f)~~ ~~Notwithstanding section 245C.27, subdivision 1, paragraph (c),~~ (g) When a denial of a license under section 245A.05 or a licensing sanction under section 245A.07 is based on a disqualification for which reconsideration was requested and was not set aside under section 245C.22, and the disqualification was based on a conviction or an admission to any crimes listed in section 245C.15 individual otherwise has no hearing right under section 245C.27, the scope of the administrative law judge's review shall include the denial or sanction and a determination whether the disqualification should be set aside, unless section 245C.24 prohibits the set-aside of the disqualification. In determining whether the disqualification should be set aside, the administrative law judge shall consider the factors under section 245C.22, subdivision 4, to determine whether the individual poses a risk of harm to any person receiving services from the license holder.

~~(g)~~ (h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction under section 245A.07 is based on the termination of a variance under section 245C.30, subdivision 4, the scope of the administrative law judge's review shall include the sanction and a determination whether the disqualification should be set aside, unless section 245C.24 prohibits the set-aside of the disqualification. In determining whether the disqualification should be set aside, the administrative law judge shall consider the factors under section 245C.22, subdivision 4, to determine whether the individual poses a risk of harm to any person receiving services from the license holder.

Sec. 12. Minnesota Statutes 2006, section 245A.10, subdivision 2, is amended to read:

Subd. 2. **County fees for background studies and licensing inspections.** (a) For purposes of family and group family child care licensing under this chapter, a county agency may charge a fee to an applicant or license holder to recover the actual cost of background studies, but in any case not to exceed \$100 annually. A county agency may also charge a fee to an applicant or license holder to recover the actual cost of licensing inspections, but in any case not to exceed \$150 annually.

(b) A county agency may charge a fee to a legal nonlicensed child care provider or applicant for authorization to recover the actual cost of background studies completed under section 119B.125, but in any case not to exceed \$100 annually.

(c) Counties may elect to reduce or waive the fees in paragraph (a) or (b):

- (1) in cases of financial hardship;
- (2) if the county has a shortage of providers in the county's area;
- (3) for new providers; or

(4) for providers who have attained at least 16 hours of training before seeking initial licensure.

(d) Counties may allow providers to pay the applicant fees in paragraph (a) or (b) on an installment basis for up to one year. If the provider is receiving child care assistance payments from the state, the provider may have the fees under paragraph (a) or (b) deducted from the child care assistance payments for up to one year and the state shall reimburse the county for the county fees collected in this manner.

(e) For purposes of adult foster care and child foster care licensing under this chapter, a county agency may charge a fee to a corporate applicant or corporate license holder to recover the actual cost of background studies. A county agency may also charge a fee to a corporate applicant or corporate license holder to recover the actual cost of licensing inspections, not to exceed \$500 annually.

(f) Counties may elect to reduce or waive the fees in paragraph (e) under the following circumstances: (1) in cases of financial hardship; (2) if the county has a shortage of providers in the county's area; or (3) for new providers.

EFFECTIVE DATE. This section is effective August 1, 2008.

Sec. 13. Minnesota Statutes 2006, section 245A.11, subdivision 7, is amended to read:

Subd. 7. **Adult foster care; variance for alternate overnight supervision.** (a) The commissioner may grant a variance under section 245A.04, subdivision 9, to rule parts requiring a caregiver to be present in an adult foster care home during normal sleeping hours to allow for alternative methods of overnight supervision. The commissioner may grant the variance if the local county licensing agency recommends the variance and the county recommendation includes documentation verifying that:

(1) the county has approved the license holder's plan for alternative methods of providing overnight supervision and determined the plan protects the residents' health, safety, and rights;

(2) the license holder has obtained written and signed informed consent from each resident or each resident's legal representative documenting the resident's or legal representative's agreement with the alternative method of overnight supervision; and

(3) the alternative method of providing overnight supervision, which may include the use of technology, is specified for each resident in the resident's: (i) individualized plan of care; (ii) individual service plan under section 256B.092, subdivision 1b, if required; or (iii) individual resident placement agreement under Minnesota Rules, part 9555.5105, subpart 19, if required.

(b) To be eligible for a variance under paragraph (a), the adult foster care license holder must not have had a licensing action under section 245A.06 or 245A.07 during the prior 24 months based on failure to provide adequate supervision, health care services, or resident safety in the adult foster care home.

(c) A license holder requesting a variance under this subdivision to utilize technology as a component of a plan for alternative overnight supervision may request the commissioner's review in the absence of a county recommendation. Upon receipt of such a request from a license holder, the commissioner shall review the variance request with the county.

Sec. 14. Minnesota Statutes 2006, section 245A.14, subdivision 8, is amended to read:

Subd. 8. **Experienced aides; child care centers.** (a) An individual employed as an aide at a child care center may work with children without being directly supervised for an amount of time that does not exceed 25 percent of the child care center's daily hours if:

(1) a teacher is in the facility;

(2) the individual has received within the last three years first aid training within the last three years that meets the requirements under section 245A.40, subdivision 3, and CPR training within the last two years that meets the requirements under section 245A.40, subdivision 4;

(3) the individual is at least 20 years old; and

(4) the individual has at least 4,160 hours of child care experience as a staff member in a licensed child care center or as the license holder of a family day care home, 120 days of which must be in the employment of the current company.

(b) A child care center that uses experienced aides under this subdivision must notify parents or guardians by posting the notification in each classroom that uses experienced aides, identifying which staff member is the experienced aide. Records of experienced aide usage must be kept on-site and given to the commissioner upon request.

(c) A child care center may not use the experienced aide provision for one year following two determined experienced aide violations within a one-year period.

(d) A child care center may use one experienced aide per every four full-time child care classroom staff.

Sec. 15. **[245A.1435] REDUCTION OF RISK OF SUDDEN INFANT DEATH SYNDROME IN LICENSED PROGRAMS.**

When a license holder is placing an infant to sleep, the license holder must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. Licensed child care providers must meet the crib requirements under section 245A.146.

Sec. 16. Minnesota Statutes 2006, section 245A.144, is amended to read:

245A.144 SUDDEN INFANT DEATH AND SHAKEN BABY SYNDROME FOR CHILD FOSTER CARE PROVIDERS.

(a) ~~License holders~~ Licensed child foster care providers that care for infants must document that before staff persons, and caregivers, and helpers assist in the care of infants, they are instructed on the standards in section 245A.1435 and receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome. This section does not apply to emergency relative foster care under section 245A.035. The training on reducing the risk of sudden infant death syndrome and shaken baby syndrome may be provided as:

(1) ~~orientation training to child care center staff under Minnesota Rules, part 9503.0035, subpart 1, and to child foster care providers, who care for infants, under Minnesota Rules, part 2960.3070, subpart 1; or~~

~~(2) initial training to family and group family child care providers under Minnesota Rules, part 9502.0385, subpart 2;~~

~~(3) (2) in-service training to child care center staff under Minnesota Rules, part 9503.0035, subpart 4, and to child foster care providers, who care for infants, under Minnesota Rules, part 2960.3070, subpart 2; or~~

~~(4) ongoing training to family and group family child care providers under Minnesota Rules, part 9502.0385, subpart 3.~~

(b) Training required under this section must be at least one hour in length and must be completed at least once every five years. At a minimum, the training must address the risk factors related to sudden infant death syndrome and shaken baby syndrome, means of reducing the risk of sudden infant death syndrome and shaken baby syndrome ~~in child care~~, and license holder communication with parents regarding reducing the risk of sudden infant death syndrome and shaken baby syndrome.

~~(c) Training for family and group family child care providers must be approved by the county licensing agency according to Minnesota Rules, part 9502.0385.~~

~~(d) (c) Training for child foster care providers must be approved by the county licensing agency and fulfills, in part, training required under Minnesota Rules, part 2960.3070.~~

Sec. 17. **[245A.1444] TRAINING ON RISK OF SUDDEN INFANT DEATH SYNDROME AND SHAKEN BABY SYNDROME BY OTHER PROGRAMS.**

A licensed chemical dependency treatment program that serves clients with infants who sleep at the program and a licensed children's residential facility that serves infants must document that before program staff persons or volunteers assist in the care of infants, they are instructed on the standards in section 245A.1435 and they receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome. The training conducted under this section may be used to fulfill training requirements under Minnesota Rules, parts 2960.0100, subpart 3; and 9530.6490, subpart 4, item B.

This section does not apply to child care centers or family child care programs governed by sections 245A.40 and 245A.50.

Sec. 18. Minnesota Statutes 2006, section 245A.1445, is amended to read:

245A.1445 DANGERS OF SHAKING INFANTS AND YOUNG CHILDREN.

The commissioner shall make available for viewing by all ~~licensed and~~ legal nonlicensed child care providers a video presentation on the dangers associated with shaking infants and young children. ~~The video presentation shall be part of the initial and annual training of licensed child care providers.~~ Legal nonlicensed child care providers may participate at their option in a video presentation session offered under this section. The commissioner shall provide to child care providers and interested individuals, at cost, copies of a video approved by the commissioner of health under section 144.574 on the dangers associated with shaking infants and young children.

Sec. 19. Minnesota Statutes 2006, section 245A.145, subdivision 1, is amended to read:

Subdivision 1. **Policies and procedures.** (a) All licensed child care providers must develop policies and procedures for reporting suspected child maltreatment that fulfill the

requirements in section 626.556 and must develop policies and procedures for reporting complaints about the operation of a child care program. The policies and procedures must include the telephone numbers of the local county child protection agency for reporting suspected maltreatment; the county licensing agency for family and group family child care providers; and the state licensing agency for child care centers ~~for reporting other concerns.~~

(b) The policies and procedures required in paragraph (a) must:

(1) be provided to the parents of all children at the time of enrollment in the child care program; and

(2) be made available upon request.

Sec. 20. Minnesota Statutes 2006, section 245A.18, subdivision 2, is amended to read:

Subd. 2. **Child passenger restraint systems; training requirement.** ~~(a) Family and group family child care, child care centers, child foster care, and other~~ Programs licensed by the Department of Human Services under Minnesota Rules, chapter 2960, that serve a child or children under nine years of age must document training that fulfills the requirements in this subdivision.

(b) Before a license holder, staff person, or caregiver, ~~or helper~~ transports a child or children under age nine in a motor vehicle, the person transporting the child must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles. Training completed under this section may be used to meet initial or ongoing training under ~~the following:~~

~~(1) Minnesota Rules, part 2960.3070, subparts 1 and 2;~~

~~(2) Minnesota Rules, part 9502.0385, subparts 2 and 3, and~~

~~(3) Minnesota Rules, part 9503.0035, subparts 1 and 4.~~

For all providers licensed prior to July 1, 2006, the training required in this subdivision must be obtained by December 31, 2007.

(c) Training required under this section must be at least one hour in length, completed at orientation or initial training, and repeated at least once every five years. At a minimum, the training must address the proper use of child restraint systems based on the child's size, weight, and age, and the proper installation of a car seat or booster seat in the motor vehicle used by the license holder to transport the child or children.

(d) Training under paragraph (c) must be provided by individuals who are certified and approved by the Department of Public Safety, Office of Traffic Safety. License holders may obtain a list of certified and approved trainers through the Department of Public Safety Web site or by contacting the agency.

(e) Child care providers that only transport school age children as defined in section 245A.02, subdivision 16, in school buses as defined in section 169.01, subdivision 6, clauses (1) to (4), are exempt from this subdivision.

Sec. 21. **[245A.40] CHILD CARE CENTER TRAINING REQUIREMENTS.**

Subdivision 1. **Orientation.** The child care center license holder must ensure that every staff person and volunteer is given orientation training and successfully completes the training before starting assigned duties. The orientation training in this subdivision

applies to volunteers who will have direct contact with or access to children and who are not under the direct supervision of a staff person. Completion of the orientation must be documented in the individual's personnel record. The orientation training must include information about:

(1) the center's philosophy, child care program, and procedures for maintaining health and safety and handling emergencies and accidents;

(2) specific job responsibilities;

(3) the behavior guidance standards in Minnesota Rules, part 9503.0055; and

(4) the reporting responsibilities in section 626.556, and Minnesota Rules, part 9503.0130.

Subd. 2. **Child growth and development training.** (a) For purposes of child care centers, the director and all staff hired after July 1, 2006, shall complete and document at least two hours of child growth and development training within the first year of employment. For purposes of this subdivision, "child growth and development training" means training in understanding how children acquire language and develop physically, cognitively, emotionally, and socially. Training completed under this subdivision may be used to meet the orientation training requirements under subdivision 1 and the in-service training requirements under subdivision 7.

(b) Notwithstanding paragraph (a), individuals are exempt from this requirement if they:

(1) have taken a three-credit college course on early childhood development within the past five years;

(2) have received a baccalaureate or master's degree in early childhood education or school-age child care within the past five years;

(3) are licensed in Minnesota as a prekindergarten teacher, an early childhood educator, a kindergarten to sixth grade teacher with a prekindergarten specialty, an early childhood special education teacher, or an elementary teacher with a kindergarten endorsement; or

(4) have received a baccalaureate degree with a Montessori certificate within the past five years.

Subd. 3. **First aid.** All teachers and assistant teachers in a child care center governed by Minnesota Rules, parts 9503.0005 to 9503.0170, and at least one staff person during field trips and when transporting children in care, must satisfactorily complete first aid training within 90 days of the start of work, unless the training has been completed within the previous three years. The first aid training must be repeated at least every three years, documented in the person's personnel record and indicated on the center's staffing chart, and provided by an individual approved as a first aid instructor. This training may be less than eight hours.

Subd. 4. **Cardiopulmonary resuscitation.** (a) When children are present in a child care center governed by Minnesota Rules, parts 9503.0005 to 9503.0170, at least one staff person must be present in the center who has been trained in cardiopulmonary resuscitation (CPR) and in the treatment of obstructed airways. The CPR training must have been provided by an individual approved to provide CPR instruction, must be repeated at least once every three years, and must be documented in the staff person's records.

(b) Cardiopulmonary resuscitation training may be provided for less than four hours.

(c) Persons qualified to provide cardiopulmonary resuscitation training shall include individuals approved as cardiopulmonary resuscitation instructors.

Subd. 5. Sudden infant death syndrome and shaken baby syndrome training.

(a) License holders must document that before staff persons care for infants, they are instructed on the standards in section 245A.1435 and receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome. The training in this subdivision may be provided as orientation training under subdivision 1 and in-service training under subdivision 7.

(b) Training required under this subdivision must be at least one hour in length and must be completed at least once every five years. At a minimum, the training must address the risk factors related to sudden infant death syndrome and shaken baby syndrome, means of reducing the risk of sudden infant death syndrome and shaken baby syndrome in child care, and license holder communication with parents regarding reducing the risk of sudden infant death syndrome and shaken baby syndrome.

(c) The commissioner shall make available for viewing a video presentation on the dangers associated with shaking infants and young children. The video presentation must be part of the orientation and annual in-service training of licensed child care centers. The commissioner shall provide to child care providers and interested individuals, at cost, copies of a video approved by the commissioner of health under section 144.574 on the dangers associated with shaking infants and young children.

Subd. 6. Child passenger restraint systems; training requirement. (a) A license holder must comply with all seat belt and child passenger restraint system requirements under section 169.685.

(b) Child care centers that serve a child or children under nine years of age must document training that fulfills the requirements in this subdivision.

(1) Before a license holder transports a child or children under age nine in a motor vehicle, the person placing the child or children in a passenger restraint must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles. Training completed under this subdivision may be used to meet orientation training under subdivision 1 and in-service training under subdivision 7.

(2) Training required under this subdivision must be at least one hour in length, completed at orientation, and repeated at least once every five years. At a minimum, the training must address the proper use of child restraint systems based on the child's size, weight, and age, and the proper installation of a car seat or booster seat in the motor vehicle used by the license holder to transport the child or children.

(3) Training required under this subdivision must be provided by individuals who are certified and approved by the Department of Public Safety, Office of Traffic Safety. License holders may obtain a list of certified and approved trainers through the Department of Public Safety Web site or by contacting the agency.

(4) Child care providers that only transport school-age children as defined in section 245A.02, subdivision 16, in child care buses as defined in section 169.448, subdivision 1, paragraph (e), are exempt from this subdivision.

Subd. 7. **In-service.** (a) A license holder must ensure that an annual in-service training plan is developed and carried out and that it meets the requirements in clauses (1) to (7). The in-service training plan must:

(1) be consistent with the center's child care program plan;

(2) meet the training needs of individual staff persons as specified in each staff person's annual evaluation report;

(3) provide training, at least one-fourth of which is by a resource not affiliated with the license holder;

(4) include Minnesota Rules, parts 9503.0005 to 9503.0170, relevant to the staff person's position and must occur within two weeks of initial employment;

(5) provide that at least one-half of the annual in-service training completed by a staff person each year pertains to the age of children for which the person is providing care;

(6) provide that no more than four hours of each annual in-service training requirement relate to administration, finances, and records training for a teacher, assistant teacher, or aide; and

(7) provide that the remainder of the in-service training requirement be met by participation in training in child growth and development; learning environment and curriculum; assessment and planning for individual needs; interactions with children; families and communities; health, safety, and nutrition; and program planning and evaluation.

(b) For purposes of this subdivision, the following terms have the meanings given them.

(1) "Child growth and development training" has the meaning given it in subdivision 2, paragraph (a).

(2) "Learning environment and curriculum" means training in establishing an environment that provides learning experiences to meet each child's needs, capabilities, and interests, including early childhood education methods or theory, recreation, sports, promoting creativity in the arts, arts and crafts methods or theory, and early childhood special education methods or theory.

(3) "Assessment and planning for individual needs" means training in observing and assessing what children know and can do in order to provide curriculum and instruction that addresses their developmental and learning needs, including children with special needs.

(4) "Interactions with children" means training in establishing supportive relationships with children and guiding them as individuals and as part of a group, including child study techniques and behavior guidance.

(5) "Families and communities" means training in working collaboratively with families, agencies, and organizations to meet children's needs and to encourage the community's involvement, including family studies and parent involvement.

(6) "Health, safety, and nutrition" means training in establishing and maintaining an environment that ensures children's health, safety, and nourishment, including first aid, cardiopulmonary resuscitation, child nutrition, and child abuse and neglect prevention.

(7) "Program planning and evaluation" means training in establishing, implementing, evaluating, and enhancing program operations.

(c) The director and all program staff persons must annually complete a number of hours of in-service training equal to at least two percent of the hours for which the director or program staff person is annually paid, unless one of the following is applicable.

(1) A teacher at a child care center must complete one percent of working hours of in-service training annually if the teacher:

(i) possesses a baccalaureate or master's degree in early childhood education or school-age care;

(ii) is licensed in Minnesota as a prekindergarten teacher, an early childhood educator, a kindergarten to sixth grade teacher with a prekindergarten specialty, an early childhood special education teacher, or an elementary teacher with a kindergarten endorsement; or

(iii) possesses a baccalaureate degree with a Montessori certificate.

(2) A teacher or assistant teacher at a child care center must complete one and one-half percent of working hours of in-service training annually if the individual is:

(i) a registered nurse or licensed practical nurse with experience working with infants;

(ii) possesses a Montessori certificate, a technical college certificate in early childhood development, or a child development associate certificate; or

(iii) possesses an associate of arts degree in early childhood education, a baccalaureate degree in child development, or a technical college diploma in early childhood development.

(d) The number of required training hours may be prorated for individuals not employed full time or for an entire year.

(e) The annual in-service training must be completed within the calendar year for which it was required. In-service training completed by staff persons is transferable upon a staff person's change in employment to another child care program.

(f) The license holder must ensure that, when a staff person completes in-service training, the training is documented in the staff person's personnel record. The documentation must include the date training was completed, the goal of the training and topics covered, trainer's name and organizational affiliation, trainer's signed statement that training was successfully completed, and the director's approval of the training.

Subd. 8. Cultural dynamics and disabilities training for child care providers.

(a) The training required of licensed child care center staff must include training in the cultural dynamics of early childhood development and child care. The cultural dynamics and disabilities training and skills development of child care providers must be designed to achieve outcomes for providers of child care that include, but are not limited to:

(1) an understanding and support of the importance of culture and differences in ability in children's identity development;

(2) understanding the importance of awareness of cultural differences and similarities in working with children and their families;

(3) understanding and support of the needs of families and children with differences in ability;

(4) developing skills to help children develop unbiased attitudes about cultural differences and differences in ability;

(5) developing skills in culturally appropriate caregiving; and

(6) developing skills in appropriate caregiving for children of different abilities.

(b) Curriculum for cultural dynamics and disability training shall be approved by the commissioner.

(c) The commissioner shall amend current rules relating to the training of the licensed child care center staff to require cultural dynamics training. Timelines established in the rule amendments for complying with the cultural dynamics training requirements must be based on the commissioner's determination that curriculum materials and trainers are available statewide.

(d) For programs caring for children with special needs, the license holder shall ensure that any additional staff training required by the child's individual child care program plan required under Minnesota Rules, part 9503.0065, subpart 3, is provided.

Sec. 22. **[245A.50] FAMILY CHILD CARE TRAINING REQUIREMENTS.**

Subdivision 1. **Initial training.** (a) License holders, caregivers, and substitutes must comply with the training requirements in this section.

(b) Helpers who assist with care on a regular basis must complete six hours of training within one year after the date of initial employment.

Subd. 2. **Child growth and development training.** (a) For purposes of family and group family child care, the license holder and each adult caregiver who provides care in the licensed setting for more than 30 days in any 12-month period shall complete and document at least two hours of child growth and development training within the first year of licensure. For purposes of this subdivision, "child growth and development training" means training in understanding how children acquire language and develop physically, cognitively, emotionally, and socially.

(b) Notwithstanding paragraph (a), individuals are exempt from this requirement if they:

(1) have taken a three-credit course on early childhood development within the past five years;

(2) have received a baccalaureate or masters degree in early childhood education or school age child care within the past five years;

(3) are licensed in Minnesota as a prekindergarten teacher, an early childhood educator, a kindergarten to grade 6 teacher with a prekindergarten specialty, an early childhood special education teacher, or an elementary teacher with a kindergarten endorsement; or

(4) have received a baccalaureate degree with a Montessori certificate within the past five years.

Subd. 3. **First aid.** (a) When children are present in a family child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at least one staff person

must be present in the home who has been trained in first aid. The first aid training must have been provided by an individual approved to provide first aid instruction. First aid training may be less than eight hours and persons qualified to provide first aid training includes individuals approved as first aid instructors.

(b) A family child care provider is exempt from the first aid training requirements under this subdivision related to any substitute caregiver who provides less than 30 hours of care during any 12-month period.

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

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

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

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

Subd. 5. **Sudden infant death syndrome and shaken baby syndrome training.** (a) License holders must document that before staff persons, caregivers, and helpers assist in the care of infants, they are instructed on the standards in section 245A.1435 and receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome. The training in this subdivision may be provided as initial training under subdivision 1 or ongoing training under subdivision 7.

(b) Training required under this subdivision must be at least one hour in length and must be completed at least once every five years. At a minimum, the training must address the risk factors related to sudden infant death syndrome and shaken baby syndrome, means of reducing the risk of sudden infant death syndrome and shaken baby syndrome in child care, and license holder communication with parents regarding reducing the risk of sudden infant death syndrome and shaken baby syndrome.

(c) Training for family and group family child care providers must be approved by the county licensing agency.

(d) The commissioner shall make available for viewing by all licensed child care providers a video presentation on the dangers associated with shaking infants and young children. The video presentation shall be part of the initial and ongoing training of licensed child care providers. The commissioner shall provide to child care providers and interested individuals, at cost, copies of a video approved by the commissioner of health under section 144.574 on the dangers associated with shaking infants and young children.

Subd. 6. **Child passenger restraint systems; training requirement.** (a) A license holder must comply with all seat belt and child passenger restraint system requirements under section 169.685.

(b) Family and group family child care programs licensed by the Department of Human Services that serve a child or children under nine years of age must document training that fulfills the requirements in this subdivision.

(1) Before a license holder, staff person, caregiver, or helper transports a child or children under age nine in a motor vehicle, the person placing the child or children in a passenger restraint must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles. Training completed under this subdivision may be used to meet initial training under subdivision 1, or ongoing training under subdivision 7.

(2) Training required under this subdivision must be at least one hour in length, completed at initial training, and repeated at least once every five years. At a minimum, the training must address the proper use of child restraint systems based on the child's size, weight, and age, and the proper installation of a car seat or booster seat in the motor vehicle used by the license holder to transport the child or children.

(3) Training under this subdivision must be provided by individuals who are certified and approved by the Department of Public Safety, Office of Traffic Safety. License holders may obtain a list of certified and approved trainers through the Department of Public Safety Web site or by contacting the agency.

(c) Child care providers that only transport school age children as defined in section 245A.02, subdivision 19, paragraph (f), in child care buses as defined in section 169.448, subdivision 1, paragraph (e), are exempt from this subdivision.

Subd. 7. **Training requirements for family and group family child care.** For purposes of family and group family child care, the license holder and each primary caregiver must complete eight hours of training each year. For purposes of this subdivision, a primary caregiver is an adult caregiver who provides services in the licensed setting for more than 30 days in any 12-month period. Ongoing training subjects must be selected from the following areas:

(1) "child growth and development training" has the meaning given in subdivision 2, paragraph (a);

(2) "learning environment and curriculum" includes training in establishing an environment and providing activities that provide learning experiences to meet each child's needs, capabilities, and interests;

(3) "assessment and planning for individual needs" includes training in observing and assessing what children know and can do in order to provide curriculum and instruction that addresses their developmental and learning needs, including children with special needs and bilingual children or children for whom English is not their primary language;

(4) "interactions with children" includes training in establishing supportive relationships with children, guiding them as individuals and as part of a group;

(5) "families and communities" includes training in working collaboratively with families and agencies or organizations to meet children's needs and to encourage the community's involvement;

(6) "health, safety, and nutrition" includes training in establishing and maintaining an environment that ensures children's health, safety, and nourishment, including child abuse,

maltreatment, prevention, and reporting; home and fire safety; child injury prevention; communicable disease prevention and control; First Aid; and CPR; and

(7) "program planning and evaluation" includes training in establishing, implementing, evaluating, and enhancing program operations.

Subd. 8. **Other required training requirements.** (a) The training required of family and group family child care providers and staff must include training in the cultural dynamics of early childhood development and child care. The cultural dynamics and disabilities training and skills development of child care providers must be designed to achieve outcomes for providers of child care that include, but are not limited to:

(1) an understanding and support of the importance of culture and differences in ability in children's identity development;

(2) understanding the importance of awareness of cultural differences and similarities in working with children and their families;

(3) understanding and support of the needs of families and children with differences in ability;

(4) developing skills to help children develop unbiased attitudes about cultural differences and differences in ability;

(5) developing skills in culturally appropriate caregiving; and

(6) developing skills in appropriate caregiving for children of different abilities.

The commissioner shall approve the curriculum for cultural dynamics and disability training.

(b) The provider must meet the training requirement in section 245A.14, subdivision 11, paragraph (a), clause (4), to be eligible to allow a child cared for at the family child care or group family child care home to use the swimming pool located at the home.

Sec. 23. Minnesota Statutes 2006, section 245A.65, subdivision 1, is amended to read:

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

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

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

(2) identify the primary and secondary person or position to whom internal reports may be made and the primary and secondary person or position responsible for forwarding internal reports to the common entry point as defined in section 626.5572, subdivision 5. The secondary person must be involved when there is reason to believe that the primary person was involved in the alleged or suspected maltreatment.

(b) The license holder shall:

(1) establish and maintain policies and procedures to ensure that an internal review is completed and that corrective action is taken as necessary to protect the health and safety of vulnerable adults when the facility has reason to know that an internal or external report of alleged or suspected maltreatment has been made. The review must include an evaluation of whether related policies and procedures were followed, whether the policies and procedures were adequate, whether there is a need for additional staff training, whether the reported event is similar to past events with the vulnerable adults or the services involved, and whether there is a need for any further corrective action to be taken by the facility license holder to protect the health and safety of vulnerable adults. Based on the results of this review, the license holder must develop, document, and implement a corrective action plan designed to correct current lapses and prevent future lapses in performance by individuals or the license holder, if any.

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

(3) document and make internal reviews accessible to the commissioner upon the commissioner's request. The documentation provided to the commissioner by the license holder may consist of a completed checklist that verifies completion of each of the requirements of the review.

(c) The license holder shall provide an orientation to the internal and external reporting procedures to all persons receiving services. The orientation shall include the telephone number for the license holder's common entry point as defined in section 626.5572, subdivision 5. If applicable, the person's legal representative must be notified of the orientation. The program shall provide this orientation for each new person within 24 hours of admission, or for persons who would benefit more from a later orientation, the orientation may take place within 72 hours.

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

Sec. 24. Minnesota Statutes 2006, section 245A.65, is amended by adding a subdivision to read:

Subd. 1a. **Determination of vulnerable adult status.** (a) A license holder that provides services to adults who are excluded from the definition of vulnerable adult under section 626.5572, subdivision 21, clause (2), must determine whether the person is a vulnerable adult under section 626.5572, subdivision 21, clause (4). This determination must be made within 24 hours of:

(1) admission to the licensed program; and

(2) any incident that:

(i) was reported under section 626.557; or

(ii) would have been required to be reported under section 626.557, if one or more of the adults involved in the incident had been vulnerable adults.

(b) Upon determining that a person receiving services is a vulnerable adult under section 626.5572, subdivision 21, clause (4), all requirements relative to vulnerable adults under section 626.557 and chapter 245A must be met by the license holder.

Sec. 25. **[245A.66] REQUIREMENTS; MALTREATMENT OF MINORS.**

Except for family child care settings and foster care for children in the license holder's residence, license holders serving children shall:

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

(i) related policies and procedures were followed;

(ii) the policies and procedures were adequate;

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

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

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

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

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

(3) document that the internal review has been completed and provide documentation showing the review was completed to the commissioner upon the commissioner's request. The documentation provided to the commissioner by the license holder may consist of a completed checklist that verifies completion of each of the requirements of the review.

Sec. 26. Minnesota Statutes 2006, section 245C.02, is amended by adding a subdivision to read:

Subd. 9a. **Conviction.** "Conviction" has the meaning given in section 609.02, subdivision 5.

Sec. 27. Minnesota Statutes 2006, section 245C.05, subdivision 3, is amended to read:

Subd. 3. **Additional information from individual studied.** (a) For purposes of completing the background study, the commissioner may request ~~additional information of the individual, such as~~ the individual's Social Security number or race. The individual is not required to provide this information to the commissioner.

(b) The commissioner may also require additional information if the commissioner determines the information is necessary to complete the background study. Failure to

provide the required information may result in a disqualification pursuant to section 245C.09.

Sec. 28. Minnesota Statutes 2006, section 245C.07, is amended to read:

245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.

(a) When a license holder, applicant, or other entity owns multiple facilities programs or services that are licensed by the Department of Human Services, Department of Health, or Department of Corrections, only one background study is required for an individual who provides direct contact services in one or more of the licensed facilities programs or services if:

(1) the license holder designates one individual with one address and telephone number as the person to receive sensitive background study information for the multiple licensed programs or services that depend on the same background study; and

(2) the individual designated to receive the sensitive background study information is capable of determining, upon request of the department, whether a background study subject is providing direct contact services in one or more of the license holder's programs or services and, if so, at which location or locations.

(b) When a background study is being initiated by a licensed facility program or service or a foster care provider that is also registered under chapter 144D, a study subject affiliated with multiple licensed facilities programs or services may attach to the background study form a cover letter indicating the additional facilities' names of the programs or services, addresses, and background study identification numbers.

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

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

Sec. 29. Minnesota Statutes 2006, section 245C.08, is amended to read:

245C.08 BACKGROUND STUDY; ~~INFORMATION~~ COMMISSIONER REVIEWS.

Subdivision 1. **Background studies conducted by commissioner of human services.** (a) For a background study conducted by the commissioner, the commissioner shall review:

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

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

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and

(4) information from the Bureau of Criminal Apprehension.

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

Subd. 2. **Background studies conducted by a county or private agency.** (a) For a background study conducted by a county or private agency for child foster care, adult foster care, and family child care homes, the commissioner shall review:

(1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and

(3) information from the Bureau of Criminal Apprehension; ~~and~~

~~(4) arrest and investigative records maintained by the Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, the National Criminal Records Repository, and criminal records from other states.~~

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county or private agency may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

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

(1) the Bureau of Criminal Apprehension;

(2) the commissioner of health;

(3) a county attorney;

(4) a county sheriff;

(5) a county agency;

(6) a local chief of police;

(7) other states;

(8) the courts; ~~or~~

(9) the Federal Bureau of Investigation; ~~and~~

(10) the National Criminal Records Repository; and

(11) criminal records from other states.

(b) The commissioner is not required to conduct more than one review of a subject's records from the Federal Bureau of Investigation if a review of the subject's criminal history with the Federal Bureau of Investigation has already been completed by the

commissioner and there has been no break in the subject's affiliation with the license holder who initiated the background study.

Subd. 4. **Juvenile court records.** (a) The commissioner shall review records from the juvenile courts for an individual studied under section 245C.03, subdivision 1, clauses (2) and (5).

(b) For individuals studied under section 245C.03, subdivision 1, clauses (1), (3), (4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner shall review records from the juvenile courts when the commissioner has reasonable cause.

(c) The juvenile courts shall help with the study by giving the commissioner existing juvenile court records on individuals described in section 245C.03, subdivision 1, clauses (2), (5), and (6), relating to delinquency proceedings held within either the five years immediately preceding the background study or the five years immediately preceding the individual's 18th birthday, whichever time period is longer.

(d) For purposes of this chapter, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.

~~(e) The commissioner shall destroy juvenile court records obtained under this subdivision when the subject of the records reaches age 23. Juvenile courts shall provide orders of involuntary and voluntary termination of parental rights under section 260C.301 to the commissioner upon request for purposes of conducting a background study under this chapter.~~

Sec. 30. Minnesota Statutes 2006, section 245C.09, subdivision 1, is amended to read:

Subdivision 1. **Disqualification; licensing action.** An applicant's, license holder's, or other entity's failure or refusal to cooperate with the commissioner, including failure to provide additional information required under section 245C.05, is reasonable cause to disqualify a subject, deny a license application, or immediately suspend or revoke a license or registration.

Sec. 31. Minnesota Statutes 2006, section 245C.11, is amended by adding a subdivision to read:

Subd. 4. **Background study.** A county agency may accept a background study completed by the commissioner under this chapter in place of the background study required under section 245A.16, subdivision 3, for educational programs that train individuals by providing direct contact services in licensed programs.

Sec. 32. Minnesota Statutes 2006, section 245C.13, subdivision 2, is amended to read:

Subd. 2. **Direct contact pending completion of background study.** The subject of a background study may not perform any activity requiring a background study under paragraph (b) until the commissioner has issued one of the notices under paragraph (a).

(a) Notices from the commissioner required prior to activity under paragraph (b) include:

(1) a notice of the study results under section 245C.17 stating that:

(i) the individual is not disqualified; or

(ii) more time is needed to complete the study but the individual is not required to be removed from direct contact or access to people receiving services prior to completion of the study as provided under section ~~245A.17~~ 245C.17, subdivision 1, paragraph (b) or (c);

(2) a notice that a disqualification has been set aside under section 245C.23; or

(3) a notice that a variance has been granted related to the individual under section 245C.30.

(b) Activities prohibited prior to receipt of notice under paragraph (a) include:

(1) being issued a license;

(2) living in the household where the licensed program will be provided;

(3) providing direct contact services to persons served by a program unless the subject is under continuous direct supervision; or

(4) having access to persons receiving services if the background study was completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a), clause (2), (5), or (6), unless the subject is under continuous direct supervision.

Sec. 33. Minnesota Statutes 2006, section 245C.14, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

Sec. 34. Minnesota Statutes 2006, section 245C.15, subdivision 1, is amended to read:

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of the level of the offense, the individual has committed any of the following offenses: sections 243.166 (violation of predatory offender registration law); 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of prostitution); a felony offense under 609.324, subdivision 1 (other prohibited acts); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level harassment; stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure involving a minor); 617.246 (use of minors in sexual performance prohibited); or 617.247 (possession of pictorial representations of minors). An individual also is disqualified under section 245C.14 regardless of how much time has passed since the involuntary termination of the individual's parental rights under section 260C.301.

(b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes, permanently disqualifies the individual under section 245C.14.

(c) An individual's offense in any other state or country, where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies the individual under section 245C.14.

(d) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

(e) If the individual studied commits one of the offenses listed in paragraph (a) that is specified as a felony-level only offense, but the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual is disqualified, but the disqualification look-back period for the offense is the period applicable to gross misdemeanor or misdemeanor offenses.

Sec. 35. Minnesota Statutes 2006, section 245C.15, subdivision 2, is amended to read:

Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275 (attempt to coerce); ~~repeat offenses under 609.3451 (criminal sexual conduct in the fifth degree)~~; 609.466 (medical assistance fraud); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); ~~repeat offenses under 617.23 (indecent exposure; penalties), not involving a minor~~; repeat offenses under 617.241 (obscene materials and performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level conviction involving alcohol or drug use.

(b) An individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) For foster care and family child care an individual is disqualified under section 245C.14 if less than 15 years has passed since the individual's voluntary termination of the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or 260C.301, subdivision 3.

(d) An individual is disqualified under section 245C.14 if less than 15 years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of the offenses listed in paragraph (a).

(e) If the individual studied ~~is convicted~~ commits one of one of the felonies offenses listed in paragraph (a), but the sentence or level of offense is a gross misdemeanor or misdemeanor ~~disposition~~, the individual is disqualified but the disqualification lookback

period for the ~~conviction~~ offense is the period applicable to the gross misdemeanor or misdemeanor disposition.

(f) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Sec. 36. Minnesota Statutes 2006, section 245C.15, subdivision 3, is amended to read:

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); ~~609.3451 (criminal sexual conduct in the fifth degree);~~ 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); ~~repeat offenses under~~ 617.23 (indecent exposure), not involving a minor; 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

(b) An individual is disqualified under section 245C.14 if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section 245C.14 if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

(d) If the ~~defendant is convicted of one of the gross misdemeanors~~ individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the ~~conviction~~ offense is the period applicable to misdemeanors.

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Sec. 37. Minnesota Statutes 2006, section 245C.15, subdivision 4, is amended to read:

Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective order authorized; procedures; penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure, ~~penalties~~), not involving a minor; 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01 (Domestic Abuse Act).

(b) An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's:

(1) failure to make required reports under section 626.556, subdivision 3, or 626.557, subdivision 3, for incidents in which: (i) the final disposition under section 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or

(2) substantiated serious or recurring maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state, the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

(c) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any

of the offenses listed in paragraphs (a) and (b), as each of these offenses is defined in Minnesota Statutes.

(d) An individual is disqualified under section 245C.14 if less than seven years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraphs (a) and (b).

(e) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

(f) An individual is disqualified under section 245C.14 if less than seven years has passed since the individual was disqualified under section 256.98, subdivision 8.

Sec. 38. Minnesota Statutes 2006, section 245C.16, subdivision 1, is amended to read:

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

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

- (1) the recency of the disqualifying characteristic;
- (2) the recency of discharge from probation for the crimes;
- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic;

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

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

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

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

(d) 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. 39. Minnesota Statutes 2006, section 245C.17, subdivision 2, is amended to read:

Subd. 2. **Disqualification notice sent to subject.** (a) If the information in the study indicates the individual is disqualified from direct contact with, or from access to, persons served by the program, the commissioner shall disclose to the individual studied:

- (1) the information causing disqualification;
- (2) instructions on how to request a reconsideration of the disqualification;
- (3) an explanation of any restrictions on the commissioner's discretion to set aside the disqualification under section 245C.24, when applicable to the individual;
- (4) a statement indicating that if the individual's disqualification is set aside or the facility is granted a variance under section 245C.30, the individual's identity and the reason for the individual's disqualification will become public data under section 245C.22, subdivision 7, when applicable to the individual; and
- (5) the commissioner's determination of the individual's immediate risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual poses an imminent risk of harm to persons served by the program where the individual will have direct contact with, or access to, people receiving services, the commissioner's notice must include an explanation of the basis of this determination.

(c) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to provide have direct contact services with, or access to, people receiving services, as provided under subdivision 3.

Sec. 40. Minnesota Statutes 2006, section 245C.17, subdivision 3, is amended to read:

Subd. 3. **Disqualification notification.** (a) The commissioner shall notify an applicant, license holder, or other entity as provided in this chapter who is not the subject of the study:

- (1) that the commissioner has found information that disqualifies the individual studied from being in a position allowing direct contact with, or ~~from~~ access to, ~~persons~~ people served by the program; and
- (2) the commissioner's determination of the individual's risk of harm under section 245C.16.

(b) If the commissioner determines under section 245C.16 that an individual studied poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact with, or access to, people served by the program, the commissioner shall order the license holder to immediately remove the individual studied from any position allowing direct contact with, or access to, people served by the program.

(c) If the commissioner determines under section 245C.16 that an individual studied poses a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from any position allowing direct contact with, or access to, people receiving services; or

(2) before allowing the disqualified individual to ~~provide~~ be in a position allowing direct contact with, or access to, people receiving services, the applicant, license holder, or other entity, as provided in this chapter, must:

(i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for disqualification;

(ii) ensure that the individual studied is under continuous, direct supervision when ~~providing~~ in a position allowing direct contact with, or access to, people receiving services during the period in which the individual may request a reconsideration of the disqualification under section 245C.21; and

(iii) ensure that the disqualified individual requests reconsideration within 30 days of receipt of the notice of disqualification.

(d) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from any position allowing direct contact with, or access to, people receiving services; or

(2) before allowing the disqualified individual to ~~provide~~ be in any position allowing direct contact with, or access to, people receiving services, the applicant, license holder, or other entity as provided in this chapter must:

(i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for disqualification; and

(ii) ensure that the disqualified individual requests reconsideration within 15 days of receipt of the notice of disqualification.

(e) The commissioner shall not notify the applicant, license holder, or other entity as provided in this chapter of the information contained in the subject's background study unless:

(1) the basis for the disqualification is failure to cooperate with the background study or substantiated maltreatment under section 626.556 or 626.557;

(2) the Data Practices Act under chapter 13 provides for release of the information; or

(3) the individual studied authorizes the release of the information.

Sec. 41. Minnesota Statutes 2006, section 245C.21, subdivision 2, is amended to read:

Subd. 2. **Time frame for requesting reconsideration.** (a) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the disqualified individual must submit the request for a reconsideration within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification. Upon showing that the information under

subdivision 3 cannot be obtained within 30 days, the disqualified individual may request additional time, not to exceed 30 days, to obtain the information.

(b) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (3), the disqualified individual must submit the request for reconsideration within 15 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 15 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 15 calendar days after the individual's receipt of the notice of disqualification.

(c) An individual who was determined to have maltreated a child under section 626.556 or a vulnerable adult under section 626.557, and who is disqualified on the basis of serious or recurring maltreatment, may request a reconsideration of both the maltreatment and the disqualification determinations. The request must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification.

(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, 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 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 section 626.556, subdivision 10i, and section 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. 42. Minnesota Statutes 2006, section 245C.21, subdivision 3, is amended to read:

Subd. 3. **Information Disqualified individuals must provide when requesting reconsideration; information for reconsideration.** (a) The disqualified individual requesting reconsideration must submit information showing that:

(1) the information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect;

(2) for maltreatment, the information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect; or

(3) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter, by addressing the information required under section 245C.22, subdivision 4.

(b) In order to determine the individual's risk of harm, the commissioner may require additional information from the disqualified individual as part of the reconsideration process. If the individual fails to provide the required information, the commissioner may deny the individual's request.

Sec. 43. Minnesota Statutes 2006, section 245C.22, subdivision 4, is amended to read:

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

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

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

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

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

(4) the harm suffered by the victim;

(5) vulnerability of persons served by the program;

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

~~(6)~~ (7) the time elapsed without a repeat of the same or similar event;

~~(7)~~ (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and

~~(8)~~ (9) any other information relevant to reconsideration.

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

Sec. 44. Minnesota Statutes 2006, section 245C.22, subdivision 5, is amended to read:

Subd. 5. **Scope of set aside.** If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. The commissioner's set aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23, unless otherwise specified in the

notice. For personal care provider organizations, the commissioner's set-aside may further be limited to a specific individual who is receiving services.

Sec. 45. Minnesota Statutes 2006, section 245C.24, subdivision 3, is amended to read:

Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if: (1) less than ten years has passed since the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based on a preponderance of evidence determination under section ~~245A.14~~ 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section ~~245A.14~~ 245C.14, subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the individual committed the act or admitted to committing the act, whichever is later; and (3) the individual has committed a violation of any of the following offenses: sections 609.165 (felon ineligible to possess firearm); criminal vehicular homicide under 609.21 (criminal vehicular homicide and injury); 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor harassment; stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree); 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under 609.377 (malicious punishment of a child); ~~or~~ 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

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

(c) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the discharge of the sentence imposed for an offense in

any other state or country, the elements of which are substantially similar to the elements of any of the offenses listed in paragraph (a).

Sec. 46. Minnesota Statutes 2006, section 245C.27, subdivision 1, is amended to read:

Subdivision 1. **Fair hearing when disqualification is not set aside.** (a) If the commissioner does not set aside a disqualification of an individual under section 245C.22 who is disqualified on the basis of a preponderance of evidence that the individual committed an act or acts that meet the definition of any of the crimes listed in section 245C.15; for a determination under section 626.556 or 626.557 of substantiated maltreatment that was serious or recurring under section 245C.15; or for failure to make required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request a fair hearing under section 256.045, unless the disqualification is deemed conclusive under section 245C.29.

(b) The fair hearing is the only administrative appeal of the final agency determination for purposes of appeal by the disqualified individual. The disqualified individual does not have the right to challenge the accuracy and completeness of data under section 13.04.

(c) Except as provided under paragraph (e), if the individual was disqualified based on a conviction or admission to any crimes listed in section 245C.15, subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision 8, the reconsideration decision under section 245C.22 is the final agency determination for purposes of appeal by the disqualified individual and is not subject to a hearing under section 256.045. If the individual was disqualified based on a judicial determination, that determination is treated the same as a conviction for purposes of appeal.

(d) This subdivision does not apply to a public employee's appeal of a disqualification under section 245C.28, subdivision 3.

(e) Notwithstanding paragraph (c), if the commissioner does not set aside a disqualification of an individual who was disqualified based on both a preponderance of evidence and a conviction or admission, the individual may request a fair hearing under section 256.045, unless the disqualifications are deemed conclusive under section 245C.29. The scope of the hearing conducted under section 256.045 with regard to the disqualification based on a conviction or admission shall be limited solely to whether the individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case, the reconsideration decision under section 245C.22 is not the final agency decision for purposes of appeal by the disqualified individual.

Sec. 47. Minnesota Statutes 2006, section 245C.28, subdivision 1, is amended to read:

Subdivision 1. **License holder.** (a) If a maltreatment determination or a disqualification for which reconsideration was requested and which was not set aside is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder must submit the appeal under section 245A.05 or 245A.07, subdivision 3.

~~(b) The license holder must submit the appeal in accordance with section 245A.05 or 245A.07, subdivision 3.~~ As provided under section 245A.08, subdivision 2a, if the denial

of a license or licensing sanction is based on a disqualification for which reconsideration was requested and was not set-aside, the scope of the consolidated contested case hearing must include:

(1) the disqualification, to the extent the license holder otherwise has a hearing right on the disqualification under this chapter; and

(2) the licensing sanction or denial of a license.

(c) 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 in accordance with sections 245A.07, subdivision 3, and 626.556, subdivision 10i, or 626.557, subdivision 9d. 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 section 626.556, subdivision 10i, and section 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. 48. Minnesota Statutes 2006, section 245C.301, is amended to read:

245C.301 NOTIFICATION OF SET-ASIDE OR VARIANCE.

(a) Except as provided under ~~paragraph~~ paragraphs (b) and (c), if required by the commissioner, family child care providers and child care centers must provide a written notification to parents considering enrollment of a child or parents of a child attending the family child care or child care center if the program employs or has living in the home any individual who is the subject of either a set-aside or variance.

(b) Notwithstanding paragraph (a), family child care license holders are not required to disclose that the program has an individual living in the home who is the subject of a set-aside or variance if:

(1) the household member resides in the residence where the family child care is provided;

(2) the subject of the set-aside or variance is under the age of 18 years; and

(3) the set-aside or variance relates to a disqualification under section 245C.15, subdivision 4, for a misdemeanor-level theft crime as defined in section 609.52.

(c) The notice specified in paragraph (a) is not required when the period of disqualification in section 245C.15, subdivisions 2 to 4, has been exceeded.

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

Sec. 49. Minnesota Statutes 2006, section 256B.0919, is amended by adding a subdivision to read:

Subd. 4. **County certification; licensed providers; related individual; developmentally disabled.** (a) Notwithstanding any provision to the contrary, a county may certify an adult foster care license holder to provide foster care services to an individual with a developmental disability, who is related to the provider, if the following conditions are met:

(1) the individual is 18 years of age or older;

(2) the individual's service plan meets the standards of section 256B.092 and specifies any special conditions necessary to prevent a conflict of interest for the provider;

(3) the provider is not the legal guardian or conservator of the related individual;

(4) the provider maintains a license under Minnesota Rules, parts 9555.5105 to 9555.6265, to serve unrelated foster care recipients;

(5) the provider maintains a license under chapter 245B; and

(6) the county certifies the provider meets the adult foster care provider standards established in Minnesota Rules, parts 9555.5105 to 9555.6265, for services provided to the related individual.

(b) The county shall complete an annual certification review to ensure compliance with paragraph (a), clauses (1) to (6).

(c) Notwithstanding section 256I.04, subdivision 2a, clause (2), the adult foster care provider certified by the county under this subdivision may be reimbursed for room and board costs through the group residential housing program.

Sec. 50. Minnesota Statutes 2006, section 256B.092, is amended by adding a subdivision to read:

Subd. 4d. **Medicaid reimbursement; licensed provider; related individuals.** The commissioner shall seek a federal amendment to the home and community-based services waiver for individuals with developmental disabilities, to allow Medicaid reimbursement for the provision of supported living services to a related individual when the following conditions have been met:

(1) the individual is 18 years of age or older;

(2) the provider is certified initially and annually thereafter, by the county, as meeting the provider standards established in chapter 245B and the federal waiver plan;

(3) the provider has been certified by the county as meeting the adult foster care provider standards established in Minnesota Rules, parts 9555.5105 to 9555.6265;

(4) the provider is not the legal guardian or conservator of the related individual; and

(5) the individual's service plan meets the standards of section 256B.092 and specifies any special conditions necessary to prevent a conflict of interest for the provider.

Sec. 51. Minnesota Statutes 2006, section 270B.14, subdivision 1, is amended to read:

Subdivision 1. **Disclosure to commissioner of human services.** (a) On the request of the commissioner of human services, the commissioner shall disclose return information regarding taxes imposed by chapter 290, and claims for refunds under chapter 290A, to the extent provided in paragraph (b) and for the purposes set forth in paragraph (c).

(b) Data that may be disclosed are limited to data relating to the identity, whereabouts, employment, income, and property of a person owing or alleged to be owing an obligation of child support.

(c) The commissioner of human services may request data only for the purposes of carrying out the child support enforcement program and to assist in the location of parents who have, or appear to have, deserted their children. Data received may be used only as set forth in section 256.978.

(d) The commissioner shall provide the records and information necessary to administer the supplemental housing allowance to the commissioner of human services.

(e) At the request of the commissioner of human services, the commissioner of revenue shall electronically match the Social Security numbers and names of participants in the telephone assistance plan operated under sections 237.69 to 237.711, with those of property tax refund filers, and determine whether each participant's household income is within the eligibility standards for the telephone assistance plan.

(f) The commissioner may provide records and information collected under sections 295.50 to 295.59 to the commissioner of human services for purposes of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, Public Law 102-234. Upon the written agreement by the United States Department of Health and Human Services to maintain the confidentiality of the data, the commissioner may provide records and information collected under sections 295.50 to 295.59 to the Centers for Medicare and Medicaid Services section of the United States Department of Health and Human Services for purposes of meeting federal reporting requirements.

(g) The commissioner may provide records and information to the commissioner of human services as necessary to administer the early refund of refundable tax credits.

(h) The commissioner may disclose information to the commissioner of human services necessary to verify income for eligibility and premium payment under the MinnesotaCare program, under section 256L.05, subdivision 2.

(i) The commissioner may disclose information to the commissioner of human services necessary to verify whether applicants or recipients for the Minnesota family investment program, general assistance, food support, and Minnesota supplemental aid program have claimed refundable tax credits under chapter 290 and the property tax refund under chapter 290A, and the amounts of the credits.

(j) The commissioner may disclose information to the commissioner of human services necessary to verify income for purposes of calculating parental contribution amounts under section 252.27, subdivision 2a.

Sec. 52. Minnesota Statutes 2006, section 626.556, subdivision 2, is amended to read:

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

(1) egregious harm as defined in section 260C.007, subdivision 14;

(2) sexual abuse as defined in paragraph (d);

(3) abandonment under section 260C.301, subdivision 2;

(4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

- (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- (7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;
- (8) solicitation, inducement, and promotion of prostitution under section 609.322;
- (9) criminal sexual conduct under sections 609.342 to 609.3451;
- (10) solicitation of children to engage in sexual conduct under section 609.352;
- (11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;
- (12) use of a minor in sexual performance under section 617.246; or
- (13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

(7) striking a child under age one on the face or head;

(8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;

(9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or

(10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means:

(1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

(2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or

(3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

(1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;

(2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

(3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or

(4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section 260C.201, subdivision 11, paragraph (d), clause (1), or a similar law of another jurisdiction.

(o) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

(p) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

(1) is not likely to occur and could not have been prevented by exercise of due care; and

(2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence of event.

Sec. 53. Minnesota Statutes 2006, section 626.556, subdivision 10e, is amended to read:

Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family assessment or the investigation within 45 days of the receipt of a report. The conclusion of the assessment or investigation may be extended to permit the completion of a criminal investigation or the receipt of expert information requested within 45 days of the receipt of the report.

(b) After conducting a family assessment, the local welfare agency shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent maltreatment.

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed.

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph (i). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of education.

(f) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

- (1) physical abuse as defined in subdivision 2, paragraph (g);
- (2) neglect as defined in subdivision 2, paragraph (f);
- (3) sexual abuse as defined in subdivision 2, paragraph (d);
- (4) mental injury as defined in subdivision 2, paragraph (m); or
- (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

(g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(i) When determining whether the facility or individual is the responsible party, or whether both the facility and the individual are responsible for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(j) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Sec. 54. Minnesota Statutes 2006, section 626.556, subdivision 10i, is amended to read:

Subd. 10i. ~~Administrative reconsideration of final determination of maltreatment and disqualification based on serious or recurring maltreatment; review panel.~~ (a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. For reports involving maltreatment of a child in a facility, an interested person acting on behalf of the child may request a review by the Child Maltreatment Review Panel under section 256.022 if the investigating agency denies the request or fails to act upon the request or if the interested person contests a reconsidered determination. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the investigating agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered determination. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) Effective January 1, 2002, if an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or the disqualification is not set aside under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) Effective January 1, 2002, if a maltreatment determination or a disqualification based on serious or recurring maltreatment 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. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination and disqualification shall not be conducted under ~~paragraph (b)~~. ~~When a fine is based on a determination that the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, reconsideration of the maltreatment determination shall not be conducted under this section.~~ section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination as provided under this subdivision, and reconsideration of a disqualification as provided under section 245C.22, shall also 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 or 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 section 626.556, subdivision 10i, and section 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.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, "interested person acting on behalf of the child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

Sec. 55. Minnesota Statutes 2006, section 626.557, subdivision 9c, is amended to read:

Subd. 9c. **Lead agency; notifications, dispositions, and determinations.** (a) Upon request of the reporter, the lead agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) Upon conclusion of every investigation it conducts, the lead agency shall make a final disposition as defined in section 626.5572, subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment or whether both the facility and the individual are responsible for substantiated maltreatment, the lead agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(d) The lead agency shall complete its final disposition within 60 calendar days. If the lead agency is unable to complete its final disposition within 60 calendar days, the lead agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable adult's legal guardian, when known, if the lead agency knows them to be aware of the investigation and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the

notification will not endanger the vulnerable adult or hamper the investigation. A lead agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(e) Within ten calendar days of completing the final disposition, the lead agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons: (1) the vulnerable adult, or the vulnerable adult's legal guardian, if known unless the lead agency knows that the notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult; (3) the alleged perpetrator, if known; (4) the facility; and (5) the ombudsman for older Minnesotans, or the ombudsman for mental health and developmental disabilities, as appropriate.

(f) The lead agency shall notify the vulnerable adult who is the subject of the report or the vulnerable adult's legal guardian, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal or review rights under this section or section 256.021.

(g) The lead agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing boards. These reports must include the names of substantiated perpetrators. The lead agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

(h) In order to avoid duplication, licensing boards shall consider the findings of the lead agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

(i) The lead agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Sec. 56. Minnesota Statutes 2006, section 626.557, subdivision 9d, is amended to read:

Subd. 9d. ~~Administrative reconsideration of final disposition of maltreatment and disqualification based on serious or recurring maltreatment; review panel.~~
(a) Except as provided under paragraph (e), any individual or facility which a lead agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead agency's determination, who contests the lead agency's final disposition of an allegation of maltreatment, may request the lead agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead agency within 15 calendar days after receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's legal guardian. If mailed, the request for reconsideration must be postmarked and sent to the lead agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An

individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the lead agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section 256.021 if the lead agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and requested reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied or if the disqualification is not set aside under sections 245C.21 to 245C.27, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment 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. As provided for

under section 245A.08, the scope of the contested case hearing ~~shall~~ must include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing ~~shall~~ must not be conducted under paragraph (b). ~~When a fine is based on a determination that the license holder is responsible for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, reconsideration of the maltreatment determination shall not be conducted under this section.~~ section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination under this subdivision, 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 or 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 section 626.556, subdivision 10i, and section 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.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

(1) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

(2) For purposes of any background studies under chapter 245C, when a determination of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under

chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section 245C.31.

Sec. 57. Minnesota Statutes 2006, section 626.5572, subdivision 17, is amended to read:

Subd. 17. **Neglect.** "Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or

(5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:

(i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;

(ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;

(iii) the error is not part of a pattern of errors by the individual;

(iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;

(v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and

(vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

(e) If the findings of an investigation by a lead agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

Sec. 58. **BACKGROUND STUDY REVIEW.**

(a) The Collateral Consequences Committee described in Laws 2006, chapter 260, article 1, section 45, or successor entity, shall review the background study provisions contained in Minnesota Statutes, chapter 245C, as well as set-aside and variance policies. The committee shall recommend changes in these laws to recodify and simplify them, and recommend appropriate substantive changes to them consistent with good public policy and public safety.

(b) By February 1, 2008, the committee shall report its findings and recommendations to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over human services and criminal justice policy.

Sec. 59. **REPEALER.**

(a) Minnesota Statutes 2006, sections 245A.023; 245A.14, subdivisions 7, 9, 9a, 12, and 13; and 245C.06, are repealed.

(b) Minnesota Rules, parts 9502.0385; and 9503.0035, are repealed.

Presented to the governor May 21, 2007

Signed by the governor May 24, 2007, 5:03 p.m.