

1 Department of Human Services

2

3 Adopted Permanent Rules Relating to Licensing; Background

4 Studies

5

6 Rules as Adopted

7 9502.0335 LICENSING PROCESS.

8 [For text of subps 1 to 5, see M.R.]

9 Subp. 6. Disqualification factors. An applicant or

10 provider shall not be issued a license or the license shall be

11 revoked, not renewed, or suspended if the applicant, provider,

12 or any other person living in the day care residence or present

13 during the hours children are in care, or working with children:

14 [For text of items A and B, see M.R.]

15 C. Refuses to give written consent for the disclosure

16 of criminal history records as specified in Minnesota Statutes,

17 section 245A.04, subdivision 3.

18 D. Has a disqualification under part 9543.3070.

19 E. Has had a child placed in foster care within the

20 past 12 months and the agency determines the reasons for

21 placement reflect on the ability of the provider to give care.

22 A license may not be denied if the primary reason for the

23 placement was due to a physical illness of the parent, mental

24 retardation of the child, a handicap of the child, or for the

25 temporary care of an infant being relinquished for adoption.

26 F. Has had a child placed in residential treatment

27 within the past 12 months for emotional disturbance or

28 antisocial behavior and the agency determines that the reasons

29 for the placement reflect on the ability of the provider to give

30 care.

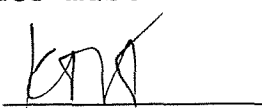
31 Subp. 7. [See Repealer.]

32 [For text of subps 8 to 16, see M.R.]

33 9503.0030 QUALIFICATIONS OF APPLICANT AND STAFF.

34 [For text of subps 1 and 2, see M.R.]

35 Subp. 3. Disqualification factors. A license holder must



1 not be an individual or employ an individual who:

2 A. has mental illness as defined in Minnesota
3 Statutes, section 245.462, subdivision 20, and the behavior has
4 or may have a negative effect on the ability of the person to
5 provide child care or is apparent during the hours children are
6 in care; or

7 B. abuses prescription drugs or uses controlled
8 substances as named in Minnesota Statutes, chapter 152, or
9 alcohol to the extent that the use or abuse impairs or may
10 impair the person's ability to provide child care or is apparent
11 during the hours children are in care.

12 Subp. 4. **Reevaluation of disqualification.** An applicant
13 or license holder that is disqualified from licensure or an
14 employee, volunteer, or contractor of an applicant or license
15 holder who is not permitted to work based on the
16 disqualification factors in subpart 3 may request that the
17 commissioner reevaluate the disqualification decision and remove
18 the disqualification. The request for reevaluation must be made
19 in writing and sent to the commissioner by certified mail.

20 The commissioner's disposition is the final administrative
21 agency action.

22 [For text of subp 5, see M.R.]

23 9525.0235 LICENSURE.

24 [For text of subps 1 to 5, see M.R.]

25 Subp. 6. **Disqualification standards.** In order to become
26 licensed or to remain licensed under parts 9525.0215 to
27 9525.0355, an applicant or license holder must not be an
28 individual, employ or contract with an individual, or use as a
29 volunteer an individual who:

30 A. has mental illness as defined in Minnesota
31 Statutes, section 245.462, subdivision 20, and the behavior has
32 a negative effect on the ability of the individual to provide
33 services to persons; or

34 B. abuses prescription drugs or uses alcohol or
35 controlled substances as named in Minnesota Statutes, chapter

1 152, or alcohol to the extent that the use or abuse impairs the
2 individual's ability to provide services to persons.

3 Subp. 7. **Reevaluation of disqualification.** An applicant
4 or license holder who is disqualified from licensure, or an
5 employee, volunteer, or contractor of an applicant or license
6 holder who is not permitted to work based on the
7 disqualification standards in subpart 6 may request that the
8 commissioner reevaluate the disqualification decision and set
9 aside the disqualification. The request for reevaluation must
10 be in writing and sent to the commissioner by certified mail.

11 A. Within 30 days after the commissioner has received
12 all information necessary to reevaluate a disqualification, the
13 commissioner shall inform the applicant or license holder and
14 the individual involved, in writing, whether the
15 disqualification has been set aside or affirmed, and the reasons
16 for this decision.

17 B. The commissioner's disposition of a request for
18 reevaluation of a disqualification under this part is the final
19 administrative agency action.

20 [For text of subps 8 to 15, see M.R.]

21 9525.1520 LICENSING PROCESS.

22 [For text of subps 1 to 4, see M.R.]

23 Subp. 5. [See Repealer.]

24 Subp. 6. **License denial or suspension.** The commissioner
25 shall not issue a license or shall immediately suspend a license
26 when:

27 A. The service sites owned or leased by the applicant
28 do not comply with the building, fire, and health codes under
29 parts 9525.1500 to 9525.1690 and the deficiencies cited threaten
30 the health, safety, or rights of clients.

31 B. The provider is cited for other deficiencies that
32 immediately threaten the health, safety, or rights of clients.

33 [For text of subps 7 to 14, see M.R.]

34 9525.2020 LICENSURE.

35 [For text of subps 1 and 2, see M.R.]

1 Subp. 3. **Disqualification standards.** In order to become
2 licensed or to remain licensed under parts 9525.2000 to
3 9525.2140, an applicant or license holder must not be an
4 individual, employ or subcontract with an individual, or use as
5 a volunteer an individual who:

6 A. has mental illness as defined in Minnesota
7 Statutes, section 245.462, subdivision 20, and the mental
8 illness has a negative effect on the ability of the individual
9 to provide service to persons receiving services; or

10 B. abuses prescription drugs or uses alcohol or
11 controlled substances as named in Minnesota Statutes, chapter
12 152, to the extent that the use or abuse impairs the
13 individual's ability to provide services.

14 Subp. 4. **Reevaluation of disqualification.** An applicant
15 or a license holder who is disqualified from licensure, or an
16 employee, volunteer, or subcontractor of an applicant or license
17 holder, who is not permitted to work based on the
18 disqualification standards in subpart 3 may request that the
19 commissioner reevaluate the disqualification decision and set
20 aside the disqualification. The request for reevaluation must
21 be made in writing and sent to the commissioner by certified
22 mail.

23 A. Within 30 days after the commissioner has received
24 all information necessary to reevaluate a disqualification, the
25 commissioner shall inform the applicant or license holder and
26 the individual involved, in writing, whether the
27 disqualification has been set aside or affirmed, and the reasons
28 for this decision.

29 B. The commissioner's disposition of a request for
30 reevaluation of a disqualification under this part is the final
31 administrative agency action.

32 [For text of subps 5 to 9, see M.R.]

33 9530.4270 STAFF QUALIFICATIONS.

34 Subpart 1. **Qualifications applying to all employees**
35 **working directly with clients.** All employees working directly

1 with clients must meet the following qualifications:

2 A. the employee must be 18 years of age or older; and

3 B. program directors, chemical dependency counselor
4 supervisors, and employees who are responsible for the provision
5 of rehabilitative services must document two years of freedom
6 from chemical use problems.

7 [For text of subps 2 to 7, see M.R.]

8 9543.3000 PURPOSE.

9 The purpose of parts 9543.3000 to 9543.3090 is to establish
10 procedures and standards for background studies of individuals
11 affiliated with programs subject to licensure under Minnesota
12 Statutes, chapter 245A, to ~~ensure~~ protect the health, safety,
13 and rights of persons served by those programs. Parts 9543.3000
14 to 9543.3090 are not intended to govern personnel decisions of
15 employers except that personnel decisions may be affected if an
16 individual has a disqualification under part 9543.3070.

17 9543.3010 APPLICABILITY.

18 Parts 9543.3000 to 9543.3090 apply to all residential and
19 nonresidential programs subject to licensure under Minnesota
20 Statutes, chapter 245A, except child foster care, adult foster
21 care, and family day care programs. Parts 9543.3070 and
22 9543.3080 apply to child foster care, adult foster care, and
23 family day care programs.

24 9543.3020 DEFINITIONS.

25 Subpart 1. **Scope.** As used in parts 9543.3000 to
26 9543.3090, the following terms have the meanings given them in
27 this part.

28 Subp. 2. **Background study.** "Background study" means the
29 investigation conducted by the commissioner to determine whether
30 a subject is disqualified from direct contact with persons
31 served by a program.

32 Subp. 3. **Commissioner.** "~~Commissioner~~" means ~~the~~
33 ~~commissioner-of-the-Minnesota-Department-of-Human-Services, or~~
34 ~~the-commissioner's-designated-representative-including-county~~

1 ~~agencies-and-private-agencies~~ has the meaning given in Minnesota
 2 Statutes, section 245A.02, subdivision 5.

3 Subp. 4. Contractor. "Contractor" means any person,
 4 regardless of employer, who is providing program services for
 5 hire under the control of the provider.

6 Subp. 5. County agency. "County agency" has the meaning
 7 given in Minnesota Statutes, section 245A.02, subdivision 6.

8 Subp. 5 ~~6~~. Direct contact. "Direct contact" means
 9 ~~providing-face-to-face-care,-training,-supervision,-counseling,-~~
 10 ~~consultation,-or-medication-assistance-to-persons-served-by-a~~
 11 ~~program.--Direct-contact-includes-direct-access-to-children-in~~
 12 ~~programs-serving-children-and-to-persons-receiving-service-in~~
 13 ~~adult-foster-care-programs-~~

14 Subp. ~~6~~ ~~--Disqualification-or-disqualified-~~
 15 ~~"Disqualification"-or-"disqualified"-means-an-individual~~
 16 ~~identified-in-part-9543.3030-has-committed-an-act-or-has-a~~
 17 ~~characteristic-identified-in-part-9543.3070~~ has the meaning
 18 given in Minnesota Statutes, section 245A.04, subdivision 3,
 19 paragraph (a).

20 Subp. 7. License. "License" has the meaning given in
 21 Minnesota Statutes, section 245A.02, subdivision 8.

22 Subp. 8. ~~Perpetrator.--"Perpetrator"-means-a-person~~
 23 ~~responsible-for-the-care-of-a-child,-as-defined-in-Minnesota~~
 24 ~~Statutes,-section-626.556,-subdivision-2,-paragraph-(b)-or-the~~
 25 ~~caretaker-of-a-vulnerable-adult-as-defined-in-Minnesota~~
 26 ~~Statutes,-section-626.557,-subdivision-2,-paragraph-(c)-who-is~~
 27 ~~identified-as-having-committed-maltreatment-of-a-minor-or-abuse~~
 28 ~~or-neglect-of-a-vulnerable-adult-~~

29 Subp. ~~9~~. Program. "Program" means a residential or
 30 nonresidential program as-defined-in licensed under Minnesota
 31 Statutes, section-245A.02,-subdivision-10,-or-a-residential
 32 program-as-defined-in-Minnesota-Statutes,-section-245A.02,
 33 subdivision-14 chapter 245A.

34 Subp. ~~10~~ 9. Provider. "Provider" means an applicant as
 35 defined in Minnesota Statutes, section 245A.02, subdivision 3,
 36 or license holder as defined in Minnesota Statutes, section

1 245A.02, subdivision 9.

2 Subp. 10. Serious injury. "Serious injury" means any harm
3 suffered by a person which reasonably requires the care of a
4 physician whether or not the care of a physician was sought.
5 For the purpose of parts 9543.3000 to 9543.3090, the following
6 are deemed to be serious injuries:

- 7 A. bruises, bites, skin laceration, or tissue damage;
- 8 B. fractures;
- 9 C. dislocations;
- 10 D. evidence of internal injuries;
- 11 E. head injuries with loss of consciousness;
- 12 F. extensive second-degree or third-degree burns and
13 other burns for which complications are present;
- 14 G. extensive second-degree or third-degree frostbite,
15 and others for which complications are present;
- 16 H. irreversible mobility or avulsion of teeth;
- 17 I. injuries to the eyeball;
- 18 J. ingestion of foreign substances and objects that
19 are harmful;
- 20 K. near drowning; and
- 21 L. heat exhaustion or sunstroke.

22 Subp. 11. Subject. "Subject" means an individual
23 identified in part 9543.3030 ~~who~~ on whom a background study is
24 ~~required to-have-a-background-study.~~

25 9543.3030 INDIVIDUALS WHO MUST BE STUDIED.

26 A background study must be conducted of the following
27 persons:

- 28 A. individuals who are ~~applicants-for-licensure-or~~
29 ~~license-holders~~ providers of programs licensed by the
30 commissioner;
- 31 B. individuals over age 13 living in the household
32 where a program is operated;
- 33 C. current employees or contractors ~~of-a-provider~~ who
34 have direct contact with persons being served by the
35 program; and

1 D. ~~individuals who, even if employed or under~~
 2 ~~contract with an individual or entity other than the provider,~~
 3 ~~under the direction of the provider have direct contact with~~
 4 ~~persons served by the provider's program; and~~

5 E. volunteers who provide program services to persons
 6 served if:

7 (1) the volunteer has direct contact with persons
 8 served; and

9 (2) the volunteer is not directly supervised.

10 "Directly supervised" means being an individual listed in item
 11 A or C is within sight or hearing of an a volunteer to the
 12 extent that the individual who has passed a background study and
 13 who listed in item A or C is capable at all times of intervening
 14 to protect the health and safety of the persons being served by
 15 the program who have direct contact with the volunteer.

16 9543.3040 RESPONSIBILITIES OF PROVIDER.

17 Subpart 1. **General.** A provider must require every
 18 individual identified in part 9543.3030 to complete the
 19 background information form prescribed by the commissioner.

20 Subp. 2. **Form submission.** A provider must submit each
 21 completed background study forms form to the commissioner:

22 A. before initial licensure and with every license
 23 renewal application; and

24 B. before a subject first has direct contact with
 25 persons served by the provider's program.

26 Subp. 3. **Direct contact prohibited.** A provider must
 27 ensure that a subject who is disqualified by the commissioner
 28 does not have direct contact with persons receiving services
 29 from the program unless the conditions in item A or B are met.

30 A. The provider has:

31 (1) received notice from the commissioner that
 32 the subject may be in direct contact pending reconsideration;

33 (2) obtained documentation that the subject will
 34 submit or has submitted a timely request for reconsideration;

35 and

1 (3) documented compliance with requirements in
2 the commissioner's notice.

3 B. The provider has received notice from the
4 commissioner that the subject's disqualification has been set
5 aside.

6 Subp. 4. **Employment termination.** Termination of a subject
7 in good faith reliance on a notice of disqualification issued by
8 the commissioner does not subject the provider to civil
9 liability.

10 Subp. 5. **Record retention.** The subject's personnel file
11 must contain ~~a-current~~ the most recent notice issued by the
12 commissioner under part 9543.3060, subpart 5. ~~A~~ If the current
13 notice demonstrates is more than 12 months old, the subject's
14 personnel file must also include documentation that the provider
15 has made a timely application for a background study has-been
16 completed-within-at-least-12-months as required by Minnesota
17 Statutes, section 245A.04.

18 9543.3050 RESPONSIBILITIES OF SUBJECT.

19 A subject must provide to the provider the information
20 necessary to ensure an accurate background study, including:

21 A. the subject's first, middle, and last name and all
22 other names by which the individual has been known;

23 B. current home address, city, county, and state of
24 residence;

25 C. counties of residence for the past five years;

26 D. date of birth;

27 E. sex; and

28 F. driver's license number or state identification
29 number; ~~and~~

30 ~~G. whether the subject has prior convictions for~~
31 ~~crimes listed in part 9543.3070 or substantiated reports of~~
32 ~~abuse or neglect of vulnerable adults or maltreatment of~~
33 ~~children.~~

34 9543.3060 RESPONSIBILITIES OF COMMISSIONER.

35 Subpart 1. **Negative licensing action.** In addition to

1 other sanctions available to the commissioner under Minnesota
 2 Statutes, chapter 245A, the commissioner has reasonable cause to
 3 deny a license or to immediately suspend, suspend, or revoke a
 4 license if a provider:

5 A. fails or refuses to cooperate with the
 6 commissioner in conducting background studies as required in
 7 parts 9543.3000 to 9543.3090; or

8 B. permits a subject who has been disqualified by the
 9 commissioner to be in direct contact with persons served by the
 10 program.

11 Subp. 2. **Review of records.** In conducting the background
 12 study, the commissioner shall review:

13 A. conviction records of the Minnesota Bureau of
 14 Criminal Apprehension in which the last date of discharge from
 15 the criminal justice system is less than 15 years;

16 B. records of substantiated abuse or neglect of
 17 vulnerable adults and maltreatment of minors in licensed
 18 programs that are dated within seven years;

19 ~~C. juvenile-court-records-on-a-subject-identified-in~~
 20 ~~part-9543.3030, item B, that relate to delinquency proceedings~~
 21 ~~within the five years preceding application or preceding the~~
 22 ~~subject's 18th birthday, whichever period is longer, and~~

23 ~~B.~~ any other information, including arrest and
 24 investigative information from the Minnesota Bureau of Criminal
 25 Apprehension, county attorneys, county sheriffs, courts, county
 26 agencies, local police, and the national record repository, and
 27 criminal records of other states, if and juvenile court records
 28 on a subject identified in part 9543.3030, item B, that relate
 29 to delinquency proceedings within the five years preceding
 30 application or preceding the subject's 18th birthday, whichever
 31 period is longer, provided that the commissioner has reasonable
 32 cause to believe that the information is pertinent to
 33 disqualification of a subject. "Reasonable cause to believe"
 34 means that information or circumstances exist which provide the
 35 commissioner with articulable suspicion that further pertinent
 36 information may exist concerning a subject.

1 Subp. 3. Determination of disqualification. The
 2 commissioner shall evaluate the results of the study and any
 3 other information available to the commissioner and shall
 4 determine whether a subject is disqualified under part 9543.3070.

5 Subp. 4. Notice by commissioner to subject. Within 15
 6 working days, the commissioner shall notify the subject in
 7 writing of the results of the background study or that
 8 additional time is needed to complete the study. If the study
 9 indicates a subject is disqualified, the notice shall state:

10 A. the reason for disqualification and either:

11 (1) have attached a copy of the records relied
 12 upon by the commissioner; or

13 (2) state how to obtain the records relied upon
 14 by the commissioner;

15 B. the procedures for requesting the commissioner to
 16 reconsider the disqualification; and

17 C. the factors to be considered by the commissioner
 18 under part 9543.3080 in the decision whether to set aside the
 19 disqualification.

20 Subp. 5. Notice by commissioner to provider. Within 15
 21 working days, the commissioner shall notify the provider in
 22 ~~writing-of-the-results-of-the-subject's-background-study-~~ that:

23 A. ~~if-a~~ the subject is not disqualified, ~~the-notice~~
 24 ~~shall-inform-the-provider-that:~~

25 ~~(1);~~

26 B. more time is needed to complete the study; or

27 C. the study indicates the subject is
 28 disqualified; and

29 ~~(2)~~ (1) the subject has 30 days from receipt of
 30 the notice to request reconsideration of the disqualification
 31 and that the commissioner's decision will be issued within 15
 32 working days after receipt of a request; and

33 ~~(3)~~ (2) the provider may ~~request-a-variance-to~~
 34 ~~part-9543.30407-subpart-3--A-variance-request-must-meet-the~~
 35 ~~requirements-of-Minnesota-Statutes7-section-245A.047-subdivision~~
 36 ~~97-and-rules-governing-the-program-~~

1 B- continue the subject in direct contact pending
2 reconsideration if:

3 (a) the subject submits a timely request for
4 reconsideration; and

5 (b) the provider takes actions specified by
6 the commissioner to reduce the risk of harm to persons receiving
7 services.

8 If the commissioner determines a subject who is
9 disqualified presents a risk of imminent danger to persons
10 receiving services from the program, the commissioner will
11 notify the provider to immediately ensure the subject does not
12 have direct contact with persons receiving services from the
13 program.

14 Subp. 6. Disclosure of information; conditions. The
15 commissioner shall not disclose the nature of the
16 disqualification to the provider unless:

17 ~~(1)~~ A. the subject consents to disclosure in writing;
18 or

19 ~~(2)~~ B. other law authorizes disclosure to the
20 provider.

21 ~~Subp. 6-~~ 7. Record retention. The commissioner shall
22 maintain records of each study. The commissioner shall make the
23 information in the records available only to the commissioner or
24 the commissioner's designees for background study purposes.
25 When the subject reaches age 23, the commissioner shall destroy
26 juvenile court records obtained pursuant to the study.

27 9543.3070 DISQUALIFICATION STANDARDS.

28 ~~Subpart 1. General prohibitions--A subject who has a~~
29 ~~disqualification under subparts 2 to 5 must not have direct~~
30 ~~contact with persons served by a program.~~

31 ~~Subp.-2-~~ Disqualifications. Except as provided in subpart
32 4- Items A to D disqualify an individual from programs serving
33 children or adults.

34 A. The subject has been convicted of a crime or
35 anticipatory crime against persons; or a crime or anticipatory

1 crime reasonably related to the provision of services or an
 2 ~~anticipatory crime as defined in Minnesota Statutes, sections~~
 3 ~~609.17 and 609.175, including but not limited to:~~
 4 ~~(1) homicide, aiding suicide, or arson under~~
 5 ~~Minnesota Statutes, sections 609.185 to 609.215, and 609.561 to~~
 6 ~~609.563;~~
 7 ~~(2) crimes against persons and unborn children~~
 8 ~~under Minnesota Statutes, sections 609.221 to 609.224, 609.23 to~~
 9 ~~609.2691, and 609.228;~~
 10 ~~(3) sex crimes under Minnesota Statutes, sections~~
 11 ~~609.293, 609.294, 609.321 to 609.324, 609.33, 609.342 to~~
 12 ~~609.3451, and 609.352;~~
 13 ~~(4) crimes against the family under Minnesota~~
 14 ~~Statutes, sections 609.355 to 609.365, and 609.377 to 609.378;~~
 15 ~~(5) public misconduct under Minnesota Statutes,~~
 16 ~~sections 609.746, 609.79, and 609.795;~~
 17 ~~(6) obscenity involving children under Minnesota~~
 18 ~~Statutes, sections 617.23 to 617.247, and 617.293; and~~
 19 ~~(7) prohibited drugs under Minnesota Statutes,~~
 20 ~~chapter 152. The following offenses have been deemed to be~~
 21 ~~crimes against persons or reasonably related to the provision of~~
 22 ~~services or both:~~
 23 ~~(1) Minnesota Statutes, section 609.17~~
 24 ~~(Attempts);~~
 25 ~~(2) Minnesota Statutes, section 609.175~~
 26 ~~(Conspiracy);~~
 27 ~~(3) Minnesota Statutes, section 609.185 (Murder~~
 28 ~~in the first degree);~~
 29 ~~(4) Minnesota Statutes, section 609.19 (Murder in~~
 30 ~~the second degree);~~
 31 ~~(5) Minnesota Statutes, section 609.195 (Murder~~
 32 ~~in the third degree);~~
 33 ~~(6) Minnesota Statutes, section 609.20~~
 34 ~~(Manslaughter in the first degree);~~
 35 ~~(7) Minnesota Statutes, section 609.205~~
 36 ~~(Manslaughter in the second degree);~~

- 1 (8) Minnesota Statutes, section 609.21 (Criminal
2 vehicular homicide and injury);
- 3 (9) Minnesota Statutes, section 609.215
4 (Suicide);
- 5 (10) Minnesota Statutes, section 609.221 (Assault
6 in the first degree);
- 7 (11) Minnesota Statutes, section 609.222 (Assault
8 in the second degree);
- 9 (12) Minnesota Statutes, section 609.223 (Assault
10 in the third degree);
- 11 (13) Minnesota Statutes, section 609.2231
12 (Assault in the fourth degree);
- 13 (14) Minnesota Statutes, section 609.224 (Assault
14 in the fifth degree);
- 15 (15) Minnesota Statutes, section 609.228 (Great
16 bodily harm caused by distribution of drugs);
- 17 (16) Minnesota Statutes, section 609.23
18 (Mistreatment of persons confined);
- 19 (17) Minnesota Statutes, section 609.231
20 (Mistreatment of residents or patients);
- 21 (18) Minnesota Statutes, section 609.235 (Use of
22 drugs to injure or facilitate crime);
- 23 (19) Minnesota Statutes, section 609.24 (Simple
24 robbery);
- 25 (20) Minnesota Statutes, section 609.245
26 (Aggravated robbery);
- 27 (21) Minnesota Statutes, section 609.25
28 (Kidnapping);
- 29 (22) Minnesota Statutes, section 609.255 (False
30 imprisonment);
- 31 (23) Minnesota Statutes, section 609.265
32 (Abduction);
- 33 (24) Minnesota Statutes, section 609.2661 (Murder
34 of an unborn child in the first degree);
- 35 (25) Minnesota Statutes, section 609.2662 (Murder
36 of an unborn child in the second degree);

- 1 (26) Minnesota Statutes, section 609.2663 (Murder
2 of an unborn child in the third degree);
- 3 (27) Minnesota Statutes, section 609.2664
4 (Manslaughter of an unborn child in the first degree);
- 5 (28) Minnesota Statutes, section 609.2665
6 (Manslaughter of an unborn child in the second degree);
- 7 (29) Minnesota Statutes, section 609.267 (Assault
8 of an unborn child in the first degree);
- 9 (30) Minnesota Statutes, section 609.2671
10 (Assault of an unborn child in the second degree);
- 11 (31) Minnesota Statutes, section 609.2672
12 (Assault of an unborn child in the third degree);
- 13 (32) Minnesota Statutes, section 609.268 (Injury
14 or death of an unborn child in the commission of a crime);
- 15 (33) Minnesota Statutes, section 609.322
16 (Solicitation, inducement, and promotion of prostitution);
- 17 (34) Minnesota Statutes, section 609.323
18 (Receiving profit derived from prostitution);
- 19 (35) Minnesota Statutes, section 609.3232
20 (Protective order authorized; procedures; penalties);
- 21 (36) Minnesota Statutes, section 609.324,
22 subdivisions 1 and 1a (Other prohibited acts);
- 23 (37) Minnesota Statutes, section 609.33
24 (Disorderly house);
- 25 (38) Minnesota Statutes, section 609.342
26 (Criminal sexual conduct in the first degree);
- 27 (39) Minnesota Statutes, section 609.343
28 (Criminal sexual conduct in the second degree);
- 29 (40) Minnesota Statutes, section 609.344
30 (Criminal sexual conduct in the third degree);
- 31 (41) Minnesota Statutes, section 609.345
32 (Criminal sexual conduct in the fourth degree);
- 33 (42) Minnesota Statutes, section 609.3451
34 (Criminal sexual conduct in the fifth degree);
- 35 (43) Minnesota Statutes, section 609.352
36 (Solicitation of children to engage in sexual conduct);

- 1 (44) Minnesota Statutes, section 609.365
2 (Incest);
- 3 (45) Minnesota Statutes, section 609.377
4 (Malicious punishment of a child);
- 5 (46) Minnesota Statutes, section 609.378 (Neglect
6 or endangerment of a child);
- 7 (47) Minnesota Statutes, section 609.561 (Arson
8 in the first degree);
- 9 (48) Minnesota Statutes, section 609.562 (Arson
10 in the second degree);
- 11 (49) Minnesota Statutes, section 609.563 (Arson
12 in the third degree);
- 13 (50) Minnesota Statutes, section 609.713
14 (Terroristic threats);
- 15 (51) Minnesota Statutes, section 609.746
16 (Interference with privacy);
- 17 (52) Minnesota Statutes, section 609.79 (Obscene
18 or harassing phone calls);
- 19 (53) Minnesota Statutes, section 609.795 (Letter,
20 telegram, or package; opening; harassment);
- 21 (54) Minnesota Statutes, section 617.23 (Indecent
22 exposure);
- 23 (55) Minnesota Statutes, section 617.241 (Obscene
24 materials and performances);
- 25 (56) Minnesota Statutes, section 617.243
26 (Indecent literature, distribution);
- 27 (57) Minnesota Statutes, section 617.246 (Use of
28 minors in sexual performance);
- 29 (58) Minnesota Statutes, section 617.247
30 (Possession of pictorial representations of minors);
- 31 (59) Minnesota Statutes, section 617.293 (Harmful
32 materials; dissemination and display to minors); and
- 33 (60) felony convictions under Minnesota Statutes,
34 chapter 152 (Prohibited drugs).

35 B. The subject has admitted to~~7-or-has-been-arrested~~
36 ~~and-is-awaiting-trial-for~~7, or a preponderance of the evidence

1 indicates the individual has committed an act that meets the
2 definition of a crime listed in item A.

3 C. The subject is identified as the perpetrator in a
4 determination that maltreatment of minors has occurred and a
5 preponderance of evidence indicates:

6 (1) an act that meets the definition of
7 maltreatment in Minnesota Statutes, section 626.556, subdivision
8 10e, paragraph (a), occurred;

9 (2) the subject committed the maltreatment; and

10 (3) the maltreatment was serious or recurring.

11 D. The subject is identified as the perpetrator in a
12 substantiated report of abuse or neglect of vulnerable adults
13 and a preponderance of evidence indicates:

14 (1) an act that meets the definition of abuse or
15 neglect in Minnesota Statutes, section 626.557, subdivision 2,
16 occurred;

17 (2) the subject committed the abuse or neglect;

18 (3) the abuse or neglect was serious or
19 recurring; and

20 (4) the subject is not the victim of the abuse or
21 neglect.

22 For purposes of this item "serious maltreatment, abuse, and
23 neglect" is defined as a serious injury as set forth in part
24 9543.3020, subpart 10, whether intended or suffered as the
25 result of neglect; sexual abuse; neglect or abuse which results
26 in illness or harm which reasonably requires the attention of a
27 physician; or death.

28 Subp. 3. 2. Terminated parental rights. A subject who has
29 had parental rights terminated under Minnesota Statutes, section
30 260.221, paragraph (b), is disqualified from programs serving
31 children.

32 ~~Subp. 4. -- Disqualification from programs providing chemical~~
33 ~~abuse or dependency services to adults. -- Items A and B apply to~~
34 ~~persons providing chemical abuse or dependency services to~~
35 ~~adults.~~

36 ~~A. -- A subject is disqualified from direct contact with~~

1 ~~persons-served-in-a-Category-1-detoxification-program-if-the~~
2 ~~subject-has-a-disqualification-under-subpart-2,-items-A-to-D,-or~~
3 ~~subpart-5-~~

4 ~~B.--A-subject-affiliated-with-any-other-program~~
5 ~~providing-chemical-abuse-or-dependency-services-to-adults-must~~
6 ~~not-have-had-a-felony-conviction-or-have-been-incarcerated-as-a~~
7 ~~result-of-a-felony-conviction-in-the-last-three-years-~~

8 Subp. 5: 3. Residential programs. A subject in a
9 residential program must not have a conviction for, must not
10 have admitted to, or ~~have-been-arrested-and-be-awaiting-trial~~
11 ~~for-theft-and-related-crimes,-including-but-not-limited-to~~
12 ~~crimes-defined-in-Minnesota-Statutes,-sections-609.52-to~~
13 ~~609.523,-609.582,-and-609.625-to-609.635~~ a preponderance of the
14 evidence must not indicate that the individual has committed an
15 act of theft or related crimes. The following offenses have
16 been deemed to be acts of theft or related crimes:

- 17 A. Minnesota Statutes, section 609.52 (Theft);
- 18 B. Minnesota Statutes, section 609.521 (Possession of
19 shoplifting gear);
- 20 C. Minnesota Statutes, section 609.582 (Burglary);
- 21 D. Minnesota Statutes, section 609.625 (Aggravated
22 forgery);
- 23 E. Minnesota Statutes, section 609.63 (Forgery);
- 24 F. Minnesota Statutes, section 609.631 (Check
25 forgery; offering a forged check); and
- 26 G. Minnesota Statutes, section 609.635 (Obtaining
27 signature by false pretense).

28 9543.3080 RECONSIDERATION OF DISQUALIFICATION.

29 Subpart 1: Application for reconsideration. Within 30
30 days after receiving notice of disqualification, a subject may
31 request the commissioner in writing to reconsider the
32 disqualification. The subject must submit information showing:

- 33 A. the information the commissioner relied upon is
34 incorrect; or
- 35 B. the subject does not pose a risk of harm to any

1 person served by the program.

2 Subp. 2. **Extension.** The subject may request additional
3 time, not to exceed 30 days, to obtain the information in
4 subpart 1 upon showing the information cannot be obtained within
5 30 days.

6 Subp. 3. **Decision by commissioner.** The commissioner shall
7 set aside the disqualification if the commissioner determines
8 that:

9 A. the information relied upon in making the
10 determination of disqualification is incorrect; or

11 B. the subject does not pose a risk of harm to
12 persons served by the program. In making this determination the
13 commissioner shall consider at least:

14 (1) the nature and severity of the disqualifying
15 event;

16 (2) the consequences of the disqualifying event;

17 (3) the number of disqualifying factors or
18 events;

19 (4) the relation between the disqualification and
20 the health, safety, and rights of persons served by the program,
21 including factors such as:

22 (a) the age and vulnerability of victims at
23 the time of the incident;

24 (b) the harm suffered by a victim; and

25 (c) the similarity between a victim and
26 persons served by the program;

27 (5) ~~whether the disqualifying-event-is-isolated~~
28 time elapsed without a repeat of the same or similar events-have
29 occurred event;

30 (6) documentation of successful completion of
31 training or rehabilitation pertinent to the incident; and

32 (7) any other information relevant to the
33 reconsideration decision.

34 Subp. 4. **Notice of commissioner's decision.** Within 15
35 working days after receipt of a request for reconsideration, the
36 commissioner shall notify the subject and the provider in

1 writing:

2 A. whether the disqualification has been set aside;
3 or

4 B. if a time extension has been granted under subpart
5 2, that the commissioner's decision will be issued within 15
6 working days after the extension date.

7 Subp. 5. Finality of decision. Except as provided in
8 subpart 6, the commissioner's decision on a reconsideration
9 request is the final administrative agency action and is not
10 subject to review.

11 Subp. 6. Employees of public employers. A subject who is
12 an employee of a public employer as defined by Minnesota
13 Statutes, section 179A.03, subdivision 15, may appeal the
14 commissioner's decision not to set aside a disqualification in a
15 contested case proceeding under Minnesota Statutes, chapter 14.

16 9543.3090 APPLICABILITY AND IMPLEMENTATION OF RULES.

17 Parts 9543.3000 to 9543.3090 shall be implemented and shall
18 apply to programs according to items A to C.

19 A. After the effective date of parts 9543.3000 to
20 9543.3090, applicants for initial licensure of a program must
21 submit all required background study forms at the time of
22 application.

23 B. Providers of programs licensed on the effective
24 date of parts 9543.3000 to 9543.3090 must submit all required
25 background study forms at the time of license renewal except
26 that subjects who first become affiliated with the program after
27 the effective date must have a background study according to
28 part 9543.3040.

29 C. Notwithstanding part 9543.3040, subpart 3, a
30 subject affiliated with a program on the effective date who is
31 disqualified as a result of the subject's initial background
32 study may continue in direct contact until the commissioner
33 issues a decision on reconsideration of the disqualification.

34 9545.0090 PERSONAL QUALITIES OF FOSTER FAMILY HOME APPLICANTS.

35 FFH applicants shall be kind, mature, and responsible

1 people with a genuine liking for children. They shall possess
2 consistent and healthy methods of handling the lifestyle unique
3 to their own families. Evaluation of applicants shall consider
4 cultural differences.

5 Reason: Children who must live apart from their own homes
6 are uniquely in need of stable, understanding families. Many
7 children needing placement are emotionally, mentally, or
8 physically handicapped. These children need extra understanding
9 and parenting to cope with their problems.

10 A. Satisfactory compliance: An FFH license shall not
11 be issued or renewed where any person (except foster children)
12 living in the household has any of the following characteristics:

13 (1) a disqualification under part 9543.3070;

14 (2) chemical dependency, unless the individual(s)
15 identified as chemically dependent has been chemically free for
16 at least 12 months; or

17 (3) residence of the family's own children in
18 foster care, correctional facility, or residential treatment for
19 emotional disturbance within the previous 12 months if, in the
20 judgment of the agency, the functioning of the family has been
21 impaired.

22 B. Satisfactory compliance: In order to protect
23 children in foster care and assure them the maximum
24 opportunities for growth and development, each family caring for
25 children shall be evaluated on the following essential elements:

26 (1) have established and are comfortable with
27 their own identity to the degree that meeting their own needs
28 does not interfere with their meeting the needs of foster
29 children;

30 (2) have optimism, a sense of humor, resiliency,
31 and ability to enjoy life;

32 (3) be in touch with their own feelings, be able
33 to express these feelings, and have a capacity to look at
34 themselves realistically as to the kinds of children they can
35 accept and work with;

36 (4) have health and vigor to meet the needs of

1 children placed with them;

2 (5) have meaningful extended family,
3 neighborhood, cultural, and community ties;

4 (6) have the ability to deal with anger, sorrow,
5 frustration, conflict, and other emotions in a manner which will
6 build positive interpersonal relationships rather than in a way
7 that could be emotionally or physically destructive to other
8 persons;

9 (7) have the ability to give positive guidance,
10 care, and training to a child according to the child's stage of
11 growth, special abilities, and limitations;

12 (8) have the ability to use discipline in a
13 constructive rather than destructive way;

14 (9) understand, accept, and seek to nurture
15 cultural, spiritual, racial, and affectional ties of the child;

16 (10) have the ability and flexibility to accept a
17 child in placement who has special needs, treat a foster child
18 as a member of their family, recognizing that a foster child has
19 other family ties;

20 (11) have the ability to accept the foster
21 child's own family and maintain an understanding relationship
22 with them;

23 (12) have the ability to work with the agency and
24 other community resources;

25 (13) have a capacity and willingness to involve
26 themselves in ongoing educational opportunities, as well as
27 other learning experiences;

28 (14) be able to constructively resolve problems
29 when difficulties arise;

30 (15) be comfortable in relating to professional
31 treatment personnel of all kinds, including the ability to
32 discuss differences of viewpoint, and to be an advocate for the
33 foster child when indicated; and

34 (16) have an ability to openly discuss their
35 attitudes about persons with differing life styles and
36 philosophies and a capacity to accept people who are different

1 from themselves.

2 9555.6125 LICENSING STUDY.

3 [For text of subps 1 to 3, see M.R.]

4 Subp. 4. Qualifications. Operators, caregivers, and
5 household members must meet the qualifications in items A to G.

6 A. Operators and caregivers must be adults.

7 B. Household members and caregivers must be free of
8 reportable communicable disease as named in parts 4605.7000 to
9 4605.7800. With the exception of caregivers providing less than
10 30 days of care per year, the household member and caregiver
11 must provide the commissioner with a physician's statement
12 showing the absence of reportable communicable disease and any
13 physical condition that would prevent the caregiver from being
14 able to provide foster care to a resident. The physician's
15 report must be based on an examination of the individual within
16 the 12 months before application for licensure. Caregivers
17 shall provide the commissioner with a physician's report at
18 least once every five years after initial licensure.

19 C. Operators, caregivers, and household members must
20 agree to disclose the arrest, conviction, and criminal history
21 information specified in subpart 3.

22 D. Operators, caregivers, and household members must
23 not have a disqualification under part 9543.3070.

24 E. Operators and caregivers must not have a diagnosis
25 of mental retardation or a related condition and be receiving
26 services under parts 9525.0015 to 9525.0145.

27 F. Caregivers and household members must not have a
28 mental illness or condition as diagnosed by a psychiatrist or
29 licensed psychologist that has documented behaviors that the
30 commissioner determines would jeopardize the health, rights, or
31 safety of residents. Past history of a mental illness or
32 condition may be considered. "Mental illness" means an organic
33 disorder of the brain or a clinically significant disorder of
34 thought, mood, perception, orientation, memory, or behavior that
35 is listed in the clinical manual of the International

1 Classification of Diseases (ICD-9-CM), Ninth Revision (1980),
2 code range 290.0 to 302.99 or 306.0 to 316.0 or the
3 corresponding code in the American Psychiatric Association's
4 Diagnostic and Statistical Manual of Mental Disorders (DSM-III),
5 Third Edition (1980), Axes I, II, or III, and that seriously
6 limits a person's functional capacities relative to primary
7 aspects of daily living such as personal relations, living
8 arrangements, work, and recreation. These publications are
9 incorporated by reference and are not subject to frequent
10 change. They are available in the State Law Library, Ford
11 Building, 117 University Avenue, Saint Paul, Minnesota 55155.

12 G. Caregivers and household members must not abuse
13 prescription drugs or use controlled substances as named in
14 Minnesota Statutes, chapter 152, or alcohol, to the extent that
15 the use or abuse has or may have a negative effect on the
16 health, rights, or safety of residents.

17 Subp. 5. **Evaluation for cause.** The commissioner may
18 require, before licensure or at any time during the licensed
19 term of the adult foster home, a physical, mental health,
20 chemical dependency, or criminal history evaluation of the
21 operator, caregiver, or household member if the commissioner has
22 reasonable cause to believe that any of the qualifications or
23 requirements in subpart 4, items A to G have not been met or
24 that the operator or any caregiver cannot care for a resident.
25 Evaluations must be conducted by a professional qualified by
26 license, certification, education, or training to perform the
27 specific evaluation.

28 [For text of subps 6 to 13, see M.R.]

29 9555.9620 LICENSING PROCESS.

30 [For text of subps 1 to 6, see M.R.]

31 Subp. 7. **License denial or suspension.** The commissioner
32 shall not issue a license or shall suspend a license when the
33 center does not comply with the building, fire, and health codes
34 specified in parts 9555.9600 to 9555.9730 and the deficiencies
35 cited threaten the health, safety, or rights of participants.

1 [For text of subps 8 to 13, see M.R.]

2 REPEALER. Minnesota Rules, parts 9502.0335, subpart 7; and
3 9525.1520, subpart 5, are repealed.

4

5 EFFECTIVE DATE. Parts 9543.3000 to 9543.3090 and the
6 repealer are effective March 29, 1991.