

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-SEVENTH LEGISLATURE**      **S.F. No. 1305**

(SENATE AUTHORS: NEWMAN)

DATE	D-PG	OFFICIAL STATUS
04/26/2011	1410	Introduction and first reading Referred to Health and Human Services
05/04/2011	1723a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety

A bill for an act

1.1 relating to human services; making changes to human services licensing  
1.2 provisions; changing data practices provisions; amending the Maltreatment of  
1.3 Vulnerable Adults Act; amending the Human Services Background Studies Act;  
1.4 amending Minnesota Statutes 2010, sections 13.46, subdivision 4; 245A.02,  
1.5 by adding subdivisions; 245A.04, subdivisions 1, 5, 7, 11; 245A.05; 245A.07,  
1.6 subdivision 3; 245A.08, subdivision 2a; 245A.10, subdivision 5; 245A.14, by  
1.7 adding a subdivision; 245A.22, subdivision 2; 245C.03, subdivision 1; 245C.04,  
1.8 subdivision 1; 245C.05, subdivisions 4, 6, 7; 245C.07; 245C.08, subdivisions  
1.9 1, 2, 3; 245C.14, subdivision 2; 245C.15; 245C.22, subdivision 5; 245C.28,  
1.10 subdivisions 1, 3; 245C.29, subdivision 2; 256.045, subdivision 3b; 626.557,  
1.11 subdivisions 9c, 12b; 626.5572, subdivisions 8, 11, by adding a subdivision.  
1.12

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

**ARTICLE 1**

**DATA PRACTICES**

1.16 Section 1. Minnesota Statutes 2010, section 13.46, subdivision 4, is amended to read:

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

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

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

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

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2.1 (b)(1)(i) Except as provided in paragraph (c), the following data on applicants,  
2.2 license holders, and former licensees are public: name, address, telephone number of  
2.3 licensees, date of receipt of a completed application, dates of licensure, licensed capacity,  
2.4 type of client preferred, variances granted, record of training and education in child care  
2.5 and child development, type of dwelling, name and relationship of other family members,  
2.6 previous license history, class of license, the existence and status of complaints, and the  
2.7 number of serious injuries to or deaths of individuals in the licensed program as reported  
2.8 to the commissioner of human services, the local social services agency, or any other  
2.9 county welfare agency. For purposes of this clause, a serious injury is one that is treated  
2.10 by a physician.

2.11 (ii) When a correction order, an order to forfeit a fine, an order of license suspension,  
2.12 an order of temporary immediate suspension, an order of license revocation, an order  
2.13 of license denial, or an order of conditional license has been issued, or a complaint is  
2.14 resolved, the following data on current and former licensees and applicants are public: the  
2.15 substance and investigative findings of the licensing or maltreatment complaint, licensing  
2.16 violation, or substantiated maltreatment; the record of informal resolution of a licensing  
2.17 violation; orders of hearing; findings of fact; conclusions of law; specifications of the final  
2.18 correction order, fine, suspension, temporary immediate suspension, revocation, denial, or  
2.19 conditional license contained in the record of licensing action; whether a fine has been  
2.20 paid; and the status of any appeal of these actions. ~~If a licensing sanction under section  
2.21 245A.07, or a license denial under section 245A.05, is based on a determination that the  
2.22 license holder or applicant is responsible for maltreatment or is disqualified under chapter  
2.23 245C, the identity of the license holder or applicant as the individual responsible for  
2.24 maltreatment or as the disqualified individual is public data at the time of the issuance of  
2.25 the licensing sanction or denial.~~

2.26 (iii) When a license denial under section 245A.05 or a sanction under section  
2.27 245A.07 is based on a determination that the license holder or applicant is responsible for  
2.28 maltreatment under section 626.556 or 626.557, the identity of the applicant or license  
2.29 holder as the individual responsible for maltreatment is public data at the time of the  
2.30 issuance of the license denial or sanction.

2.31 (iv) When a license denial under section 245A.05 or a sanction under section  
2.32 245A.07 is based on a determination that the license holder or applicant is disqualified  
2.33 under chapter 245C, the identity of the license holder or applicant as the disqualified  
2.34 individual and the reason for the disqualification are public data at the time of the  
2.35 issuance of the licensing sanction or denial. If the applicant or license holder requests

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3.1 reconsideration of the disqualification and the disqualification is affirmed, the reason for  
3.2 the disqualification and the reason to not set aside the disqualification are public data.

3.3 (2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b,  
3.4 when any person subject to disqualification under section 245C.14 in connection with a  
3.5 license to provide family day care for children, child care center services, foster care  
3.6 for children in the provider's home, or foster care or day care services for adults in the  
3.7 provider's home is a substantiated perpetrator of maltreatment, and the substantiated  
3.8 maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator  
3.9 of maltreatment is public data. For purposes of this clause, a person is a substantiated  
3.10 perpetrator if the maltreatment determination has been upheld under section 256.045;  
3.11 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or  
3.12 facility has not timely exercised appeal rights under these sections, except as provided  
3.13 under clause (1).

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

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

3.26 (5) The following data on persons subject to disqualification under section 245C.14  
3.27 in connection with a license to provide family day care for children, child care center  
3.28 services, foster care for children in the provider's home, or foster care or day care  
3.29 services for adults in the provider's home, are public: the nature of any disqualification  
3.30 set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside  
3.31 the disqualification; the nature of any disqualification for which a variance was granted  
3.32 under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any  
3.33 variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that  
3.34 any person subject to a background study under section 245C.03, subdivision 1, has  
3.35 successfully passed a background study. If a licensing sanction under section 245A.07,  
3.36 or a license denial under section 245A.05, is based on a determination that an individual

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4.1 subject to disqualification under chapter 245C is disqualified, the disqualification as a  
4.2 basis for the licensing sanction or denial is public data. As specified in clause (1), item  
4.3 (iv), if the disqualified individual is the license holder or applicant, the identity of the  
4.4 license holder or applicant ~~is~~ and the reason for the disqualification are public data; and, if  
4.5 the license holder or applicant requested reconsideration of the disqualification and the  
4.6 disqualification is affirmed, the reason for the disqualification and the reason to not set  
4.7 aside the disqualification are public data. If the disqualified individual is an individual  
4.8 other than the license holder or applicant, the identity of the disqualified individual shall  
4.9 remain private data.

4.10 (6) When maltreatment is substantiated under section 626.556 or 626.557 and the  
4.11 victim and the substantiated perpetrator are affiliated with a program licensed under  
4.12 chapter 245A, the commissioner of human services, local social services agency, or  
4.13 county welfare agency may inform the license holder where the maltreatment occurred of  
4.14 the identity of the substantiated perpetrator and the victim.

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

4.19 (c) The following are private data on individuals under section 13.02, subdivision  
4.20 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial  
4.21 data on family day care program and family foster care program applicants and licensees  
4.22 and their family members who provide services under the license.

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

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

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

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

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

5.11 (i) Data on individuals collected according to licensing activities under chapters  
5.12 245A and 245C, ~~and~~ data on individuals collected by the commissioner of human services  
5.13 according to ~~maltreatment~~ investigations under chapters 245A, 245B, and 245C, and  
5.14 sections 626.556 and 626.557; may be shared with the Department of Human Rights, the  
5.15 Department of Health, the Department of Corrections, the ombudsman for mental health  
5.16 and developmental disabilities, and the individual's professional regulatory board when  
5.17 there is reason to believe that laws or standards under the jurisdiction of those agencies  
5.18 may have been violated or the information may otherwise be relevant to the board's  
5.19 regulatory jurisdiction. Unless otherwise specified in this chapter, the identity of a reporter  
5.20 of alleged maltreatment or licensing violations may not be disclosed.

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

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

ARTICLE 2

LICENSING

Section 1. Minnesota Statutes 2010, section 245A.02, is amended by adding a subdivision to read:

Subd. 3b. **Conservator.** "Conservator" has the meaning given in section 524.5-102, subdivision 3.

Sec. 2. Minnesota Statutes 2010, section 245A.02, is amended by adding a subdivision to read:

Subd. 7c. **Guardian.** "Guardian" has the meaning given in section 524.5-102, subdivision 5.

Sec. 3. Minnesota Statutes 2010, section 245A.02, is amended by adding a subdivision to read:

Subd. 11a. **Primary residence.** "Primary residence" means the location where the license holder physically resides on an ongoing basis and is the address listed on the license holder's Minnesota drivers' license or Minnesota identification card, and voter registration. The license holder must have only one primary residence. The commissioner may require the license holder to submit one or more of the following as evidence:

(1) recent utility bills in the license holder's name;

(2) verification of property insurance in the license holder's name; or

(3) the license holder's current Minnesota drivers' license, Minnesota identification card, or voter's registration.

Sec. 4. Minnesota Statutes 2010, section 245A.04, subdivision 1, is amended to read:

Subdivision 1. **Application for licensure.** (a) An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under section 245A.03 must apply for a license. The application must be made on the forms and in the manner prescribed by the commissioner. The commissioner shall provide the applicant with instruction in completing the application and provide information about the rules and requirements of other state agencies that affect the applicant. An applicant seeking licensure in Minnesota with headquarters outside of Minnesota must have a program office located within the state.

The commissioner shall act on the application within 90 working days after a complete application and any required reports have been received from other state

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7.1 agencies or departments, counties, municipalities, or other political subdivisions. The  
7.2 commissioner shall not consider an application to be complete until the commissioner  
7.3 receives all of the information required under section 245C.05.

7.4 When the commissioner receives an application that is incomplete because the  
7.5 applicant failed to submit required documents or that is substantially deficient because the  
7.6 documents submitted do not meet licensing requirements, the commissioner shall provide  
7.7 the applicant written notice that the application is incomplete or substantially deficient.  
7.8 In the written notice to the applicant the commissioner shall identify documents that  
7.9 are missing or deficient and give the applicant 45 days to resubmit a second application  
7.10 that is substantially complete. An applicant's failure to submit a substantially complete  
7.11 application after receiving notice from the commissioner is a basis for license denial  
7.12 under section 245A.05.

7.13 (b) An application for licensure must specify one or more controlling individuals as  
7.14 an agent who is responsible for dealing with the commissioner of human services on all  
7.15 matters provided for in this chapter and on whom service of all notices and orders must be  
7.16 made. The agent must be authorized to accept service on behalf of all of the controlling  
7.17 individuals of the program. Service on the agent is service on all of the controlling  
7.18 individuals of the program. It is not a defense to any action arising under this chapter that  
7.19 service was not made on each controlling individual of the program. The designation of  
7.20 one or more controlling individuals as agents under this paragraph does not affect the legal  
7.21 responsibility of any other controlling individual under this chapter.

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

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

7.31 (e) The applicant must be able to demonstrate competent knowledge of the  
7.32 applicable requirements of this chapter and chapter 245C, and the requirements of  
7.33 other licensing statutes and rules applicable to the program or services for which the  
7.34 applicant is seeking to be licensed. Effective January 1, 2012, the commissioner may  
7.35 require the applicant to demonstrate competence in the applicable licensing requirements

8.1 by successfully completing a written examination. The commissioner may develop a  
8.2 prescribed written examination format.

8.3 (f) When an applicant is an individual, the individual must provide the applicant's  
8.4 Social Security number and a photocopy of a Minnesota driver's license, Minnesota  
8.5 identification card, or valid United States passport.

8.6 (g) When an applicant is a nonindividual, the applicant must provide the applicant's  
8.7 Minnesota tax identification number, the name, address, and Social Security number of  
8.8 all individuals who will be controlling individuals, including all officers, owners, and  
8.9 managerial officials as defined in section 245A.02, subdivision 5a, and the date that the  
8.10 background study was initiated by the applicant for each controlling individual, and:

8.11 (1) if the agent authorized to accept service on behalf of all the controlling  
8.12 individuals resides in Minnesota, the agent must provide a photocopy of the agent's  
8.13 Minnesota driver's license, Minnesota identification card, or United States passport;

8.14 (2) if the agent authorized to accept service on behalf of all the controlling  
8.15 individuals resides outside Minnesota, the agent must provide a photocopy of the agent's  
8.16 driver's license or identification card from the state where the agent resides or a photocopy  
8.17 of the agent's United States passport.

8.18 Sec. 5. Minnesota Statutes 2010, section 245A.04, subdivision 5, is amended to read:

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

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

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

8.24 (3) persons served by the program; and

8.25 (4) staff whenever the program is in operation and the information is relevant to  
8.26 inspections or investigations conducted by the commissioner.

8.27 Notwithstanding chapter 13, a program that is operated by a government entity must  
8.28 give the commissioner access to documents and records including records maintained in  
8.29 electronic format.

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



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

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

9.9 Sec. 6. Minnesota Statutes 2010, section 245A.04, subdivision 7, is amended to read:

9.10 Subd. 7. **Grant of license; license extension.** (a) If the commissioner determines  
9.11 that the program complies with all applicable rules and laws, the commissioner shall issue  
9.12 a license. At minimum, the license shall state:

9.13 (1) the name of the license holder;

9.14 (2) the address of the program;

9.15 (3) the effective date and expiration date of the license;

9.16 (4) the type of license;

9.17 (5) the maximum number and ages of persons that may receive services from the  
9.18 program; and

9.19 (6) any special conditions of licensure.

9.20 (b) The commissioner may issue an initial license for a period not to exceed two  
9.21 years if:

9.22 (1) the commissioner is unable to conduct the evaluation or observation required  
9.23 by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet  
9.24 operational;

9.25 (2) certain records and documents are not available because persons are not yet  
9.26 receiving services from the program; and

9.27 (3) the applicant complies with applicable laws and rules in all other respects.

9.28 (c) A decision by the commissioner to issue a license does not guarantee that any  
9.29 person or persons will be placed or cared for in the licensed program. A license shall not  
9.30 be transferable to another individual, corporation, partnership, voluntary association, other  
9.31 organization, or controlling individual or to another location.

9.32 (d) A license holder must notify the commissioner and obtain the commissioner's  
9.33 approval before making any changes that would alter the license information listed under  
9.34 paragraph (a).

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10.1 (e) Except as provided in paragraphs (g) and (h), the commissioner shall not issue or  
10.2 reissue a license if the applicant, license holder, or controlling individual has:

10.3 (1) been disqualified and the disqualification was not set aside and no variance has  
10.4 been granted;

10.5 (2) ~~has~~ been denied a license within the past two years;

10.6 (3) had a license revoked within the past five years; ~~or~~

10.7 (4) ~~has~~ an outstanding debt related to a license fee, licensing fine, or settlement  
10.8 agreement for which payment is delinquent; or

10.9 (5) failed to submit the information required of an applicant under section 245A.04,  
10.10 subdivision 1, paragraph (f) or (g), after being requested by the commissioner.

10.11 When a license is revoked under clause (1) or (3), the license holder and controlling  
10.12 individual may not hold any license under chapter 245A or 245B for five years following  
10.13 the revocation, and other licenses held by the applicant, license holder, or controlling  
10.14 individual shall also be revoked.

10.15 (f) The commissioner shall not issue or reissue a license if an individual living in  
10.16 the household where the licensed services will be provided as specified under section  
10.17 245C.03, subdivision 1, has been disqualified and the disqualification has not been set  
10.18 aside and no variance has been granted.

10.19 (g) Pursuant to section 245A.07, subdivision 1, paragraph (b), when a license has  
10.20 been suspended or revoked and the suspension or revocation is under appeal, the program  
10.21 may continue to operate pending a final order from the commissioner. If the license under  
10.22 suspension or revocation will expire before a final order is issued, a temporary provisional  
10.23 license may be issued provided any applicable license fee is paid before the temporary  
10.24 provisional license is issued.

10.25 (h) Notwithstanding paragraph (g), when a revocation is based on the disqualification  
10.26 of a controlling individual or license holder, and the controlling individual or license holder  
10.27 is ordered under section 245C.17 to be immediately removed from direct contact with  
10.28 persons receiving services or is ordered to be under continuous, direct supervision when  
10.29 providing direct contact services, the program may continue to operate only if the program  
10.30 complies with the order and submits documentation demonstrating compliance with the  
10.31 order. If the disqualified individual fails to submit a timely request for reconsideration, or  
10.32 if the disqualification is not set aside and no variance is granted, the order to immediately  
10.33 remove the individual from direct contact or to be under continuous, direct supervision  
10.34 remains in effect pending the outcome of a hearing and final order from the commissioner.

10.35 (i) For purposes of reimbursement for meals only, under the Child and Adult Care  
10.36 Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A,

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11.1 part 226, relocation within the same county by a licensed family day care provider, shall  
11.2 be considered an extension of the license for a period of no more than 30 calendar days or  
11.3 until the new license is issued, whichever occurs first, provided the county agency has  
11.4 determined the family day care provider meets licensure requirements at the new location.

11.5 (j) Unless otherwise specified by statute, all licenses expire at 12:01 a.m. on the  
11.6 day after the expiration date stated on the license. A license holder must apply for and  
11.7 be granted a new license to operate the program or the program must not be operated  
11.8 after the expiration date.

11.9 (k) The commissioner shall not issue or reissue a license if it has been determined that  
11.10 a tribal licensing authority has established jurisdiction to license the program or service.

11.11 Sec. 7. Minnesota Statutes 2010, section 245A.04, subdivision 11, is amended to read:

11.12 Subd. 11. **Education program; permitted ages, additional requirement.** (a) ~~The~~  
11.13 ~~education program offered in a residential or nonresidential program, except for child care,~~  
11.14 ~~foster care, or services for adults, must be approved by the commissioner of education~~  
11.15 ~~before the commissioner of human services may grant a license to the program. Except for~~  
11.16 foster care, the commissioner of human services may not grant a license to a residential  
11.17 facility for the placement of children before the commissioner has received documentation  
11.18 of approval of the educational program from the commissioner of education according to  
11.19 section 125A.515.

11.20 (b) A residential program licensed by the commissioner of human services under  
11.21 Minnesota Rules, parts 2960.0010 to 2960.0710, may serve persons through the age of  
11.22 19 when:

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

11.27 (2) the facility develops policies, procedures, and plans required under section  
11.28 245A.65;

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

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

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12.1 (c) A child foster care program licensed by the commissioner under Minnesota  
12.2 Rules, chapter 2960, may serve persons who are over the age of 18 but under the age  
12.3 of 21 when the person is:

12.4 (1) completing secondary education or a program leading to an equivalent credential;

12.5 (2) enrolled in an institution which provides postsecondary or vocational education;

12.6 (3) participating in a program or activity designed to promote, or remove barriers to,  
12.7 employment;

12.8 (4) employed for at least 80 hours per month; or

12.9 (5) incapable of doing any of the activities described in clauses (1) to (4) due to a  
12.10 medical condition, which incapability is supported by regularly updated information in the  
12.11 case plan of the person.

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

12.14 Sec. 8. Minnesota Statutes 2010, section 245A.05, is amended to read:

12.15 **245A.05 DENIAL OF APPLICATION.**

12.16 (a) The commissioner may deny a license if an applicant or controlling individual:

12.17 (1) fails to submit a substantially complete application after receiving notice from  
12.18 the commissioner under section 245A.04, subdivision 1;

12.19 ~~(1)~~ (2) fails to comply with applicable laws or rules;

12.20 ~~(2)~~ (3) knowingly withholds relevant information from or gives false or misleading  
12.21 information to the commissioner in connection with an application for a license or during  
12.22 an investigation;

12.23 ~~(3)~~ (4) has a disqualification that has not been set aside under section 245C.22  
12.24 and no variance has been granted;

12.25 ~~(4)~~ (5) has an individual living in the household who received a background study  
12.26 under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification  
12.27 that has not been set aside under section 245C.22, and no variance has been granted; ~~or~~

12.28 ~~(5)~~ (6) is associated with an individual who received a background study under  
12.29 section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised  
12.30 access to children or vulnerable adults, and who has a disqualification that has not been set  
12.31 aside under section 245C.22, and no variance has been granted; or

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

12.33 (b) An applicant whose application has been denied by the commissioner must be  
12.34 given notice of the denial. Notice must be given by certified mail or personal service.

12.35 The notice must state the reasons the application was denied and must inform the

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13.1 applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules,  
13.2 parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the  
13.3 commissioner in writing by certified mail or personal service. If mailed, the appeal must  
13.4 be postmarked and sent to the commissioner within 20 calendar days after the applicant  
13.5 received the notice of denial. If an appeal request is made by personal service, it must  
13.6 be received by the commissioner within 20 calendar days after the applicant received the  
13.7 notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's  
13.8 denial of an application.

13.9 Sec. 9. Minnesota Statutes 2010, section 245A.07, subdivision 3, is amended to read:

13.10 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may  
13.11 suspend or revoke a license, or impose a fine if:

13.12 (1) a license holder fails to comply fully with applicable laws or rules;~~if;~~

13.13 (2) a license holder, a controlling individual, or an individual living in the household  
13.14 where the licensed services are provided or is otherwise subject to a background study has  
13.15 a disqualification which has not been set aside under section 245C.22;~~or if;~~

13.16 (3) a license holder knowingly withholds relevant information from or gives false  
13.17 or misleading information to the commissioner in connection with an application for  
13.18 a license, in connection with the background study status of an individual, during an  
13.19 investigation, or regarding compliance with applicable laws or rules;~~or~~

13.20 (4) after July 1, 2012, and upon request by the commissioner, a license holder fails  
13.21 to submit the information required of an applicant under section 245A.04, subdivision 1,  
13.22 paragraph (f) or (g).

13.23 A license holder who has had a license suspended, revoked, or has been ordered  
13.24 to pay a fine must be given notice of the action by certified mail or personal service. If  
13.25 mailed, the notice must be mailed to the address shown on the application or the last  
13.26 known address of the license holder. The notice must state the reasons the license was  
13.27 suspended, revoked, or a fine was ordered.

13.28 (b) If the license was suspended or revoked, the notice must inform the license  
13.29 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts  
13.30 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking  
13.31 a license. The appeal of an order suspending or revoking a license must be made in writing  
13.32 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to  
13.33 the commissioner within ten calendar days after the license holder receives notice that the  
13.34 license has been suspended or revoked. If a request is made by personal service, it must be  
13.35 received by the commissioner within ten calendar days after the license holder received

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14.1 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits  
14.2 a timely appeal of an order suspending or revoking a license, the license holder may  
14.3 continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs  
14.4 (g) and (h), until the commissioner issues a final order on the suspension or revocation.

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

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

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

14.27 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for  
14.28 each determination of maltreatment of a child under section 626.556 or the maltreatment  
14.29 of a vulnerable adult under section 626.557 for which the license holder is determined  
14.30 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),  
14.31 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each  
14.32 occurrence of a violation of law or rule governing matters of health, safety, or supervision,  
14.33 including but not limited to the provision of adequate staff-to-child or adult ratios, and  
14.34 failure to comply with background study requirements under chapter 245C; and the license  
14.35 holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those  
14.36 subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means

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15.1 each violation identified in the commissioner's fine order. Fines assessed against a license  
15.2 holder that holds a license to provide the residential-based habilitation services, as defined  
15.3 under section 245B.02, subdivision 20, and a license to provide foster care, may be  
15.4 assessed against both licenses for the same occurrence, but the combined amount of the  
15.5 fines shall not exceed the amount specified in this clause for that occurrence.

15.6 (5) When a fine has been assessed, the license holder may not avoid payment by  
15.7 closing, selling, or otherwise transferring the licensed program to a third party. In such an  
15.8 event, the license holder will be personally liable for payment. In the case of a corporation,  
15.9 each controlling individual is personally and jointly liable for payment.

15.10 (d) Except for background study violations involving the failure to comply with an  
15.11 order to immediately remove an individual or an order to provide continuous, direct  
15.12 supervision, the commissioner shall not issue a fine under paragraph (c) relating to a  
15.13 background study violation to a license holder who self-corrects a background study  
15.14 violation before the commissioner discovers the violation. A license holder who has  
15.15 previously exercised the provisions of this paragraph to avoid a fine for a background  
15.16 study violation may not avoid a fine for a subsequent background study violation unless at  
15.17 least 365 days have passed since the license holder self-corrected the earlier background  
15.18 study violation.

15.19 Sec. 10. Minnesota Statutes 2010, section 245A.08, subdivision 2a, is amended to read:

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

15.32 (b) Except for family child care and child foster care, reconsideration of a  
15.33 maltreatment determination under sections 626.556, subdivision 10i, and 626.557,  
15.34 subdivision 9d, and reconsideration of a disqualification under section 245C.22, shall  
15.35 not be conducted when:

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16.1 (1) a denial of a license under section 245A.05, or a licensing sanction under section  
16.2 245A.07, is based on a determination that the license holder is responsible for maltreatment  
16.3 or the disqualification of a license holder is based on serious or recurring maltreatment;

16.4 (2) the denial of a license or licensing sanction is issued at the same time as the  
16.5 maltreatment determination or disqualification; and

16.6 (3) the license holder appeals the maltreatment determination or disqualification,  
16.7 and denial of a license or licensing sanction. In these cases, a fair hearing shall not be  
16.8 conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision  
16.9 9d. The scope of the contested case hearing must include the maltreatment determination,  
16.10 disqualification, and denial of a license or licensing sanction.

16.11 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
16.12 determination or disqualification, but does not appeal the denial of a license or a licensing  
16.13 sanction, reconsideration of the maltreatment determination shall be conducted under  
16.14 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the  
16.15 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing  
16.16 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
16.17 626.557, subdivision 9d.

16.18 (c) In consolidated contested case hearings regarding sanctions issued in family child  
16.19 care, child foster care, family adult day services, and adult foster care, the county attorney  
16.20 shall defend the commissioner's orders in accordance with section 245A.16, subdivision 4.

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

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



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

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

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

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

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

17.18 (h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction  
17.19 under section 245A.07 is based on the termination of a variance under section 245C.30,  
17.20 subdivision 4, the scope of the administrative law judge's review shall include the sanction  
17.21 and a determination whether the disqualification should be set aside, unless section  
17.22 245C.24 prohibits the set-aside of the disqualification. In determining whether the  
17.23 disqualification should be set aside, the administrative law judge shall consider the factors  
17.24 under section 245C.22, subdivision 4, to determine whether the individual poses a risk of  
17.25 harm to any person receiving services from the license holder.

17.26 (i) The scope of the consolidated contested case hearing under this section relating  
17.27 to a disqualification does not include the issue of whether the commissioner was required  
17.28 to seal agency records according to a district court order or other applicable law.

17.29 (j) When a license holder that is operating following the appeal of a sanction under  
17.30 section 245A.07 has subsequent substantiated violations of applicable statute or rule  
17.31 before the contested case hearing date, the additional violations will automatically be  
17.32 included in the scope of that hearing.

17.33 Sec. 11. Minnesota Statutes 2010, section 245A.10, subdivision 5, is amended to read:

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18.1 Subd. 5. **License or certification fee for other programs.** (a) Except as provided  
18.2 in paragraphs (b) and (c), a program without a stated licensed capacity shall pay a license  
18.3 or certification fee of \$400.

18.4 (b) A mental health center or mental health clinic requesting certification for  
18.5 purposes of insurance and subscriber contract reimbursement under Minnesota Rules,  
18.6 parts 9520.0750 to 9520.0870, shall pay a certification fee of \$1,000 per year. If the  
18.7 mental health center or mental health clinic provides services at a primary location with  
18.8 satellite facilities, the satellite facilities shall be certified with the primary location without  
18.9 an additional charge.

18.10 (c) A program licensed to provide residential-based habilitation services under the  
18.11 home and community-based waiver for persons with developmental disabilities shall pay  
18.12 an annual license fee that includes a base rate of \$250 plus \$38 times the number of clients  
18.13 served on the first day of ~~August~~ July of the current license year. State-operated programs  
18.14 are exempt from the license fee under this paragraph.

18.15 Sec. 12. Minnesota Statutes 2010, section 245A.14, is amended by adding a  
18.16 subdivision to read:

18.17 Subd. 14. **Child care center attendance records.** A child care center license holder  
18.18 must maintain documentation of attendance for all children in care. The attendance record  
18.19 must be completed daily and include the date; the first, middle, and last name of each  
18.20 child in attendance; the times when each child is dropped off and picked up; and the total  
18.21 number of hours of attendance for each child present on that date. The attendance record  
18.22 must be accessible to the commissioner during the program's hours of operation.

18.23 Sec. 13. Minnesota Statutes 2010, section 245A.22, subdivision 2, is amended to read:

18.24 Subd. 2. **Admission.** (a) The license holder shall accept as clients in the independent  
18.25 living assistance program only youth ages 16 to 21 who are in out-of-home placement,  
18.26 leaving out-of-home placement, at risk of becoming homeless, or homeless.

18.27 (b) Youth who have current drug or alcohol problems, a recent history of violent  
18.28 behaviors, or a mental health disorder or issue that is not being resolved through  
18.29 counseling or treatment are not eligible to receive the services described in subdivision 1.

18.30 (c) Youth who are not employed, participating in employment training, or enrolled  
18.31 in an academic program are not eligible to receive transitional housing or independent  
18.32 living assistance.

18.33 (d) The commissioner may grant variances under section 245A.04, subdivision 9,  
18.34 to requirements in this section.

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19.1 Sec. 14. Minnesota Statutes 2010, section 245C.03, subdivision 1, is amended to read:

19.2 Subdivision 1. **Licensed programs.** (a) The commissioner shall conduct a  
19.3 background study on:

19.4 (1) the person or persons applying for a license;

19.5 (2) an individual age 13 and over living in the household where the licensed program  
19.6 will be provided who is not receiving licensed services from the program;

19.7 (3) current or prospective employees or contractors of the applicant who will have  
19.8 direct contact with persons served by the facility, agency, or program;

19.9 (4) volunteers or student volunteers who will have direct contact with persons served  
19.10 by the program to provide program services if the contact is not under the continuous,  
19.11 direct supervision by an individual listed in clause (1) or (3);

19.12 (5) an individual age ten to 12 living in the household where the licensed services  
19.13 will be provided when the commissioner has reasonable cause;

19.14 (6) an individual who, without providing direct contact services at a licensed  
19.15 program, may have unsupervised access to children or vulnerable adults receiving services  
19.16 from a program, when the commissioner has reasonable cause; and

19.17 (7) all managerial officials as defined under section 245A.02, subdivision 5a.

19.18 (b) For family child foster care settings, a short-term substitute caregiver providing  
19.19 direct contact services for a child for less than 72 hours of continuous care is not required  
19.20 to receive a background study under this chapter.

19.21 Sec. 15. Minnesota Statutes 2010, section 245C.04, subdivision 1, is amended to read:

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

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

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

19.31 (1) registered under chapter 144D; or

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

19.35 (3) the following conditions are met:

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

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

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

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

20.14 (e) The commissioner of human services shall conduct a background study of an  
20.15 individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2)  
20.16 to (6), who is newly affiliated with a child foster care license holder. The county or  
20.17 private agency shall collect and forward to the commissioner the information required  
20.18 under section 245C.05, subdivisions 1 and 5. The background study conducted by the  
20.19 commissioner of human services under this paragraph must include a review of the  
20.20 information required under section 245C.08, subdivisions 1, 3, and 4.

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

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

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

21.19 (i) A license holder must ~~provide the commissioner notice~~ initiate a new background  
21.20 study through the commissioner's online background study system ~~or through a letter~~  
21.21 ~~mailed to the commissioner~~ when:

21.22 (1) an individual returns to a position requiring a background study following an  
21.23 absence of ~~45~~ 90 or more consecutive days; or

21.24 (2) a program that discontinued providing licensed direct contact services for ~~45~~ 90  
21.25 or more consecutive days begins to provide direct contact licensed services again.

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

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

21.35 Sec. 16. Minnesota Statutes 2010, section 245C.05, subdivision 4, is amended to read:

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22.1 Subd. 4. **Electronic transmission.** (a) For background studies conducted by the  
22.2 Department of Human Services, the commissioner shall implement a system for the  
22.3 electronic transmission of:

22.4 (1) background study information to the commissioner;

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

22.6 (3) background study results to county and private agencies for background studies  
22.7 conducted by the commissioner for child foster care; and

22.8 (4) background study results to county agencies for background studies conducted  
22.9 by the commissioner for adult foster care and family adult day services.

22.10 (b) Unless the commissioner has granted a hardship variance under paragraph (c),  
22.11 license holders and applicants must use the electronic transmission system known as  
22.12 NETStudy to submit all requests for background studies to the commissioner as required  
22.13 by this chapter.

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

22.17 Sec. 17. Minnesota Statutes 2010, section 245C.05, subdivision 6, is amended to read:

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

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

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

22.32 Sec. 18. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

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23.1 Subd. 7. **Probation officer and corrections agent.** (a) A probation officer or  
23.2 corrections agent shall notify the commissioner of an individual's conviction if the  
23.3 individual ~~is~~:

23.4 (1) has been affiliated with a program or facility regulated by the Department of  
23.5 Human Services or Department of Health, a facility serving children or youth licensed by  
23.6 the Department of Corrections, or any type of home care agency or provider of personal  
23.7 care assistance services within the preceding year; and

23.8 (2) has been convicted of a crime constituting a disqualification under section  
23.9 245C.14.

23.10 (b) For the purpose of this subdivision, "conviction" has the meaning given it  
23.11 in section 609.02, subdivision 5.

23.12 (c) The commissioner, in consultation with the commissioner of corrections, shall  
23.13 develop forms and information necessary to implement this subdivision and shall provide  
23.14 the forms and information to the commissioner of corrections for distribution to local  
23.15 probation officers and corrections agents.

23.16 (d) The commissioner shall inform individuals subject to a background study that  
23.17 criminal convictions for disqualifying crimes will be reported to the commissioner by the  
23.18 corrections system.

23.19 (e) A probation officer, corrections agent, or corrections agency is not civilly or  
23.20 criminally liable for disclosing or failing to disclose the information required by this  
23.21 subdivision.

23.22 (f) Upon receipt of disqualifying information, the commissioner shall provide the  
23.23 notice required under section 245C.17, as appropriate, to agencies on record as having  
23.24 initiated a background study or making a request for documentation of the background  
23.25 study status of the individual.

23.26 (g) This subdivision does not apply to family child care programs.

23.27 Sec. 19. Minnesota Statutes 2010, section 245C.07, is amended to read:

23.28 **245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

23.29 (a) ~~Except for child foster care and adoption agencies,~~ Subject to the conditions in  
23.30 paragraph (d), when a license holder, applicant, or other entity owns multiple programs or  
23.31 services that are licensed by the Department of Human Services, Department of Health, or  
23.32 Department of Corrections, only one background study is required for an individual who  
23.33 provides direct contact services in one or more of the licensed programs or services if:

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

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

24.8 (b) When a license holder maintains background study compliance for multiple  
24.9 licensed programs according to paragraph (a), and one or more of the licensed programs  
24.10 closes, the license holder shall immediately notify the commissioner which staff must be  
24.11 transferred to an active license so that the background studies can be electronically paired  
24.12 with the license holder's active program.

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

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

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

24.23 (d) If a background study was conducted on an individual related to child foster care  
24.24 and the requirements under paragraph (a) are met, the background study is transferable  
24.25 across all licensed programs. If a background study was conducted on an individual under  
24.26 a license other than child foster care and the requirements under paragraph (a) are met, the  
24.27 background study is transferable to all licensed programs except child foster care.

24.28 (e) The provisions of this section that allow a single background study in one  
24.29 or more licensed programs or services do not apply to background studies submitted  
24.30 by adoption agencies, supplemental nursing services agencies, personnel agencies,  
24.31 educational programs, professional services agencies, and unlicensed personal care  
24.32 provider organizations.

24.33 Sec. 20. Minnesota Statutes 2010, section 245C.08, subdivision 1, is amended to read:



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

25.4           (1) information related to names of substantiated perpetrators of maltreatment of  
25.5 vulnerable adults that has been received by the commissioner as required under section  
25.6 626.557, subdivision 9c, paragraph (j);

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

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

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

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

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

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

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

25.22          (b) Notwithstanding expungement by a court, the commissioner may consider  
25.23 information obtained under paragraph (a), clauses (3) and (4), unless the commissioner  
25.24 received notice of the petition for expungement and the court order for expungement ~~is~~  
25.25 ~~directed~~ specifically to orders the commissioner to seal the commissioner's records.

25.26          (c) When the commissioner has reasonable cause to believe that the identity of  
25.27 a background study subject is uncertain, the commissioner may require the subject to  
25.28 provide a set of classifiable fingerprints and complete a record check with the national  
25.29 crime information databases.

25.30          Sec. 21. Minnesota Statutes 2010, section 245C.08, subdivision 2, is amended to read:

25.31           Subd. 2. **Background studies conducted by a county agency.** (a) For a  
25.32 background study conducted by a county agency for family child care services, the  
25.33 commissioner shall review:

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

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26.1 (2) information from juvenile courts as required in subdivision 4 for:

26.2 (i) individuals listed in section 245C.03, subdivision 1, paragraph (a), who are ages  
26.3 13 through 23 living in the household where the licensed services will be provided; and

26.4 (ii) any other individual listed under section 245C.03, subdivision 1, when there  
26.5 is reasonable cause; and

26.6 (3) information from the Bureau of Criminal Apprehension.

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

26.10 (c) Notwithstanding expungement by a court, the county agency may consider  
26.11 information obtained under paragraph (a), clause (3), unless the commissioner received  
26.12 notice of the petition for expungement and the court order for expungement ~~is directed~~  
26.13 specifically ~~to~~ orders the commissioner to seal the commissioner's records.

26.14 Sec. 22. Minnesota Statutes 2010, section 245C.08, subdivision 3, is amended to read:

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

26.20 (1) the Bureau of Criminal Apprehension;

26.21 (2) the commissioner of health;

26.22 (3) a county attorney;

26.23 (4) a county sheriff;

26.24 (5) a county agency;

26.25 (6) a local chief of police;

26.26 (7) other states;

26.27 (8) the courts;

26.28 (9) the Federal Bureau of Investigation;

26.29 (10) the National Criminal Records Repository; ~~and~~ or

26.30 (11) criminal records from other states.

26.31 (b) The commissioner is not required to conduct more than one review of a subject's  
26.32 records from the Federal Bureau of Investigation if a review of the subject's criminal  
26.33 history with the Federal Bureau of Investigation has already been completed by the  
26.34 commissioner and there has been no break in the subject's affiliation with the license  
26.35 holder who initiated the background study.

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27.1 Sec. 23. Minnesota Statutes 2010, section 245C.14, subdivision 2, is amended to read:

27.2 Subd. 2. **Disqualification from access.** (a) If an individual who is studied under  
27.3 section 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, is disqualified from  
27.4 direct contact under subdivision 1, the commissioner shall also disqualify the individual  
27.5 from access to a person receiving services from the license holder.

27.6 (b) No individual who is disqualified following a background study under section  
27.7 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, or as provided elsewhere  
27.8 in statute who is disqualified as a result of this section, may be allowed access to persons  
27.9 served by the program unless the commissioner has provided written notice under section  
27.10 245C.17 stating that:

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

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

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

27.18 Sec. 24. Minnesota Statutes 2010, section 245C.15, is amended to read:

27.19 **245C.15 DISQUALIFYING CRIMES OR CONDUCT.**

27.20 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under  
27.21 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the  
27.22 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless  
27.23 of the level of the offense, the individual has committed any of the following offenses:  
27.24 sections 243.166 (violation of predatory offender registration law); 609.185 (murder in  
27.25 the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third  
27.26 degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second  
27.27 degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree);  
27.28 a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal  
27.29 abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by  
27.30 strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245  
27.31 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the  
27.32 first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663  
27.33 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and  
27.34 promotion of prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342  
27.35 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the

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28.1 second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal  
28.2 sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth  
28.3 degree); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children  
28.4 to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious  
28.5 punishment of a child); a felony offense under 609.378 (neglect or endangerment of  
28.6 a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting);  
28.7 609.746 (interference with privacy against a minor); 609.749, subdivision 3, 4, or 5  
28.8 (felony-level stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or  
28.9 facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure  
28.10 involving a minor); 617.246 (use of minors in sexual performance prohibited); or 617.247  
28.11 (possession of pictorial representations of minors).

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

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

28.18 (d) When a disqualification is based on a judicial determination other than a  
28.19 conviction, the disqualification period begins from the date of the court order. When a  
28.20 disqualification is based on an admission, the disqualification period begins from the  
28.21 date of an admission in court. When a disqualification is based on an Alford Plea, the  
28.22 disqualification period begins from the date the Alford Plea is entered in court. When  
28.23 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
28.24 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~  
28.25 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the  
28.26 date of the incident, whichever occurs last.

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

28.32 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section  
28.33 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,  
28.34 if any, for the offense; and (2) the individual has committed a felony-level violation  
28.35 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);  
28.36 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph

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29.1 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);  
29.2 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231  
29.3 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth  
29.4 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a  
29.5 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of  
29.6 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);  
29.7 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter  
29.8 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first  
29.9 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury  
29.10 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275  
29.11 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender);  
29.12 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a  
29.13 witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing  
29.14 stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);  
29.15 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree); 609.563  
29.16 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary tools);  
29.17 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery); 609.631  
29.18 (check forgery; offering a forged check); 609.635 (obtaining signature by false pretense);  
29.19 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled shotguns);  
29.20 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.746 (interference  
29.21 with privacy); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card  
29.22 fraud); 617.23 (indecent exposure), not involving a minor; repeat offenses under 617.241  
29.23 (obscene materials and performances; distribution and exhibition prohibited; penalty);  
29.24 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled  
29.25 substance); or a felony-level conviction involving alcohol or drug use.

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

29.30 (c) An individual is disqualified under section 245C.14 if less than 15 years has  
29.31 passed since the termination of the individual's parental rights under section 260C.301,  
29.32 subdivision 1, paragraph (b), or subdivision 3.

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

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30.1 (e) If the individual studied commits one of the offenses listed in paragraph (a), but  
30.2 the sentence or level of offense is a gross misdemeanor or misdemeanor, the individual  
30.3 is disqualified but the disqualification look-back period for the offense is the period  
30.4 applicable to the gross misdemeanor or misdemeanor disposition.

30.5 (f) When a disqualification is based on a judicial determination other than a  
30.6 conviction, the disqualification period begins from the date of the court order. When a  
30.7 disqualification is based on an admission, the disqualification period begins from the  
30.8 date of an admission in court. When a disqualification is based on an Alford Plea, the  
30.9 disqualification period begins from the date the Alford Plea is entered in court. When  
30.10 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
30.11 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~  
30.12 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the  
30.13 date of the incident, whichever occurs last.

30.14 Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section  
30.15 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed,  
30.16 if any, for the offense; and (2) the individual has committed a gross misdemeanor-level  
30.17 violation of any of the following offenses: sections 256.98 (wrongfully obtaining  
30.18 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,  
30.19 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide  
30.20 and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or  
30.21 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree);  
30.22 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a  
30.23 vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of  
30.24 persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal  
30.25 abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335  
30.26 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a  
30.27 vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision  
30.28 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house);  
30.29 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child);  
30.30 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into  
30.31 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance  
30.32 of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611  
30.33 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous  
30.34 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable  
30.35 adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2  
30.36 (stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud);

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31.1 617.23 (indecent exposure), not involving a minor; 617.241 (obscene materials and  
31.2 performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials;  
31.3 dissemination and display to minors prohibited); or violation of an order for protection  
31.4 under section 518B.01, subdivision 14.

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

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

31.13 (d) If the individual studied commits one of the offenses listed in paragraph  
31.14 (a), but the sentence or level of offense is a misdemeanor disposition, the individual  
31.15 is disqualified but the disqualification lookback period for the offense is the period  
31.16 applicable to misdemeanors. If the individual studied commits one of the offenses listed in  
31.17 paragraph (a), but the sentence or level of offense is a felony disposition, the individual  
31.18 is disqualified, but the disqualification look-back period for the offense is the period  
31.19 applicable to that felony offense under this section.

31.20 (e) When a disqualification is based on a judicial determination other than a  
31.21 conviction, the disqualification period begins from the date of the court order. When a  
31.22 disqualification is based on an admission, the disqualification period begins from the  
31.23 date of an admission in court. When a disqualification is based on an Alford Plea, the  
31.24 disqualification period begins from the date the Alford Plea is entered in court. When  
31.25 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
31.26 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~  
31.27 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the  
31.28 date of the incident, whichever occurs last.

31.29 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under  
31.30 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence  
31.31 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level  
31.32 violation of any of the following offenses: sections 256.98 (wrongfully obtaining  
31.33 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,  
31.34 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide  
31.35 and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree);  
31.36 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224

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32.1 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation  
32.2 of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult);  
32.3 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation  
32.4 of an order for protection under 609.3232 (protective order authorized; procedures;  
32.5 penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen  
32.6 goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);  
32.7 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous  
32.8 weapons); 609.665 (spring guns); 609.72 (disorderly conduct when the individual was  
32.9 initially charged with domestic assault); 609.746 (interference with privacy); 609.79  
32.10 (obscene or harassing telephone calls); 609.795 (letter, telegram, or package; opening;  
32.11 harassment); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card  
32.12 fraud); 617.23 (indecent exposure), not involving a minor; 617.293 (harmful materials;  
32.13 dissemination and display to minors prohibited); or violation of an order for protection  
32.14 under section 518B.01 (Domestic Abuse Act).

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

32.17 (1) failure to make required reports under section 626.556, subdivision 3, or  
32.18 626.557, subdivision 3, for incidents in which: (i) the final disposition under section  
32.19 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was  
32.20 recurring or serious; or

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

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

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

32.34 (e) When a disqualification is based on a judicial determination other than a  
32.35 conviction, the disqualification period begins from the date of the court order. When a  
32.36 disqualification is based on an admission, the disqualification period begins from the



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33.1 date of an admission in court. When a disqualification is based on an Alford Plea, the  
33.2 disqualification period begins from the date the Alford Plea is entered in court. When  
33.3 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
33.4 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~  
33.5 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the  
33.6 date of the incident, whichever occurs last.

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

33.9 (g) If the individual studied commits one of the offenses listed in paragraph (a),  
33.10 but the sentence or level of offense is a gross misdemeanor or felony disposition, the  
33.11 individual is disqualified, but the disqualification look-back period for the offense is the  
33.12 period applicable to that gross misdemeanor or felony offense under this section.

33.13 Subd. 5. **Mental illness.** The commissioner may not disqualify an individual subject  
33.14 to a background study under this chapter because that individual has, or has had, a mental  
33.15 illness as defined in section 245.462, subdivision 20.

33.16 Sec. 25. Minnesota Statutes 2010, section 245C.22, subdivision 5, is amended to read:

33.17 Subd. 5. **Scope of set-aside.** If the commissioner sets aside a disqualification under  
33.18 this section, the disqualified individual remains disqualified, but may hold a license and  
33.19 have direct contact with or access to persons receiving services. The commissioner's  
33.20 set-aside of a disqualification is limited solely to the licensed program, applicant, or  
33.21 agency specified in the set aside notice under section 245C.23, unless otherwise specified  
33.22 in the notice. For personal care provider organizations, the commissioner's set-aside may  
33.23 further be limited to a specific individual who is receiving services. For new background  
33.24 studies required under section 245C.04, subdivision 1, paragraph (i), if an individual's  
33.25 disqualification was previously set aside for the license holder's program and the new  
33.26 background study results in no new information that indicates the individual may pose a  
33.27 risk of harm to persons receiving services from the license holder, the previous set-aside  
33.28 shall remain in effect.

33.29 Sec. 26. Minnesota Statutes 2010, section 245C.28, subdivision 1, is amended to read:

33.30 Subdivision 1. **License holder.** (a) If a maltreatment determination or a  
33.31 disqualification for which reconsideration was requested and which was not set aside is  
33.32 the basis for a denial of a license under section 245A.05 or a licensing sanction under  
33.33 section 245A.07, the license holder has the right to a contested case hearing under chapter

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34.1 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder must submit  
34.2 the appeal under section 245A.05 or 245A.07, subdivision 3.

34.3 (b) As provided under section 245A.08, subdivision 2a, if the denial of a license or  
34.4 licensing sanction is based on a disqualification for which reconsideration was requested  
34.5 and was not set aside, the scope of the consolidated contested case hearing must include:

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

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

34.9 (c) As provided for under section 245A.08, subdivision 2a, if the denial of a license  
34.10 or licensing sanction is based on a determination of maltreatment under section 626.556  
34.11 or 626.557, or a disqualification for serious or recurring maltreatment which was not set  
34.12 aside, the scope of the contested case hearing must include:

34.13 (1) the maltreatment determination, if the maltreatment is not conclusive under  
34.14 section 245C.29;

34.15 (2) the disqualification, if the disqualification is not conclusive under section  
34.16 245C.29; and

34.17 (3) the licensing sanction or denial of a license. In such cases, a fair hearing must not  
34.18 be conducted under section 256.045. If the disqualification was based on a determination  
34.19 of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the  
34.20 appeal must be submitted under sections 245A.07, subdivision 3, and 626.556, subdivision  
34.21 10i, or 626.557, subdivision 9d.

34.22 (d) Except for family child care and child foster care, reconsideration of a  
34.23 maltreatment determination under sections 626.556, subdivision 10i, and 626.557,  
34.24 subdivision 9d, and reconsideration of a disqualification under section 245C.22, must  
34.25 not be conducted when:

34.26 (1) a denial of a license under section 245A.05, or a licensing sanction under section  
34.27 245A.07, is based on a determination that the license holder is responsible for maltreatment  
34.28 or the disqualification of a license holder based on serious or recurring maltreatment;

34.29 (2) the denial of a license or licensing sanction is issued at the same time as the  
34.30 maltreatment determination or disqualification; and

34.31 (3) the license holder appeals the maltreatment determination, disqualification, and  
34.32 denial of a license or licensing sanction. In such cases a fair hearing under section 256.045  
34.33 must not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557,  
34.34 subdivision 9d. Under section 245A.08, subdivision 2a, the scope of the consolidated  
34.35 contested case hearing must include the maltreatment determination, disqualification, and  
34.36 denial of a license or licensing sanction.

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35.1 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
35.2 determination or disqualification, but does not appeal the denial of a license or a licensing  
35.3 sanction, reconsideration of the maltreatment determination shall be conducted under  
35.4 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the  
35.5 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing  
35.6 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
35.7 626.557, subdivision 9d.

35.8 (e) The scope of the consolidated contested case hearing under this section relating  
35.9 to a disqualification does not include the issue of whether the commissioner was required  
35.10 to seal agency records pursuant to a district court order or other applicable law.

35.11 Sec. 27. Minnesota Statutes 2010, section 245C.28, subdivision 3, is amended to read:

35.12 Subd. 3. **Employees of public employer.** (a) A disqualified individual who is an  
35.13 employee of an employer, as defined in section 179A.03, subdivision 15, may request  
35.14 a contested case hearing under chapter 14 following a reconsideration decision under  
35.15 section 245C.23, unless the disqualification is deemed conclusive under section 245C.29.  
35.16 The request for a contested case hearing must be made in writing and must be postmarked  
35.17 and sent within 30 calendar days after the employee receives notice of the reconsideration  
35.18 decision. If the individual was disqualified based on a conviction or admission to any  
35.19 crimes listed in section 245C.15, the scope of the contested case hearing shall be limited  
35.20 solely to whether the individual poses a risk of harm pursuant to section 245C.22.

35.21 (b) When an individual is disqualified based on a maltreatment determination, the  
35.22 scope of the contested case hearing under paragraph (a), must include the maltreatment  
35.23 determination and the disqualification. In such cases, a fair hearing must not be conducted  
35.24 under section 256.045.

35.25 (c) Rules adopted under this chapter may not preclude an employee in a contested  
35.26 case hearing for a disqualification from submitting evidence concerning information  
35.27 gathered under this chapter.

35.28 (d) When an individual has been disqualified from multiple licensed programs, if  
35.29 at least one of the disqualifications entitles the person to a contested case hearing under  
35.30 this subdivision, the scope of the contested case hearing shall include all disqualifications  
35.31 from licensed programs.

35.32 (e) In determining whether the disqualification should be set aside, the administrative  
35.33 law judge shall consider all of the characteristics that cause the individual to be disqualified  
35.34 in order to determine whether the individual poses a risk of harm. The administrative law  
35.35 judge's recommendation and the commissioner's order to set aside a disqualification that is

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36.1 the subject of the hearing constitutes a determination that the individual does not pose a  
36.2 risk of harm and that the individual may provide direct contact services in the individual  
36.3 program specified in the set aside.

36.4 (f) The scope of the consolidated contested case hearing under this section relating  
36.5 to a disqualification does not include the issue of whether the commissioner was required  
36.6 to seal agency records pursuant to a district court order or other applicable law.

36.7 Sec. 28. Minnesota Statutes 2010, section 245C.29, subdivision 2, is amended to read:

36.8 Subd. 2. **Conclusive disqualification determination.** (a) Unless otherwise  
36.9 specified in statute, a ~~determination that~~ disqualification is conclusive for current and  
36.10 future background studies if the disqualification is based on

36.11 ~~(1) the information the commissioner relied upon to disqualify an individual under~~  
36.12 ~~section 245C.14 was correct based on serious or recurring maltreatment, as defined~~  
36.13 in section 245C.02,

36.14 ~~(2) a preponderance of the evidence shows~~ showing that the individual committed an  
36.15 act or acts that meet the definition of any of the crimes listed in section 245C.15<sup>2</sup> or

36.16 ~~(3) the individual failed~~ individual's failure to make required reports under section  
36.17 626.556, subdivision 3, or 626.557, subdivision 3, ~~is conclusive if and:~~

36.18 ~~(i) (1) the commissioner has issued a final order in an appeal of that determination~~  
36.19 the disqualification under section 245A.08, subdivision 5, or 256.045, or a court has  
36.20 issued a final decision;

36.21 ~~(ii) (2) the individual did not request reconsideration of the disqualification under~~  
36.22 section 245C.21 on the basis that the information relied upon to disqualify the subject  
36.23 was incorrect; or

36.24 ~~(iii) (3) the individual did not~~ timely request a hearing on the disqualification under  
36.25 section 256.045 or chapter 14.

36.26 (b) When a licensing action under section 245A.05, 245A.06, or 245A.07 is based  
36.27 on the disqualification of an individual in connection with a license to provide family child  
36.28 care, foster care for children in the provider's own home, or foster care services for adults  
36.29 in the provider's own home, that disqualification shall be conclusive for purposes of the  
36.30 licensing action if a request for reconsideration was not submitted within 30 calendar days  
36.31 of the individual's receipt of the notice of disqualification.

36.32 (c) If a ~~determination that the information relied upon to disqualify an individual~~  
36.33 ~~was correct and~~ disqualification is conclusive under this section, ~~and~~ the individual  
36.34 ~~is subsequently disqualified under section 245C.15, the individual~~ has a right to request  
36.35 reconsideration ~~on the risk of harm~~ under section 245C.21. ~~Subsequent determinations~~

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37.1 ~~regarding the risk of harm~~ The commissioner's decision on reconsideration shall be made  
37.2 ~~according to section 245C.22 and are not subject to another~~ the final agency decision and  
37.3 ~~not subject to a hearing under section 256.045 or chapter 14.~~

37.4 Sec. 29. Minnesota Statutes 2010, section 256.045, subdivision 3b, is amended to read:

37.5 Subd. 3b. **Standard of evidence for maltreatment and disqualification hearings.**

37.6 (a) The state human services referee shall determine that maltreatment has occurred if a  
37.7 preponderance of evidence exists to support the final disposition under sections 626.556  
37.8 and 626.557. For purposes of hearings regarding disqualification, the state human services  
37.9 referee shall affirm the proposed disqualification in an appeal under subdivision 3,  
37.10 paragraph (a), clause (9), if a preponderance of the evidence shows the individual has:

37.11 (1) committed maltreatment under section 626.556 or 626.557, which is serious or  
37.12 recurring;

37.13 (2) committed an act or acts meeting the definition of any of the crimes listed in  
37.14 section 245C.15, subdivisions 1 to 4; or

37.15 (3) failed to make required reports under section 626.556 or 626.557, for incidents  
37.16 in which the final disposition under section 626.556 or 626.557 was substantiated  
37.17 maltreatment that was serious or recurring.

37.18 (b) If the disqualification is affirmed, the state human services referee shall  
37.19 determine whether the individual poses a risk of harm in accordance with the requirements  
37.20 of section 245C.22, and whether the disqualification should be set aside or not set aside.

37.21 In determining whether the disqualification should be set aside, the human services  
37.22 referee shall consider all of the characteristics that cause the individual to be disqualified,  
37.23 including those characteristics that were not subject to review under paragraph (a), in  
37.24 order to determine whether the individual poses a risk of harm. A decision to set aside  
37.25 a disqualification that is the subject of the hearing constitutes a determination that the  
37.26 individual does not pose a risk of harm and that the individual may provide direct contact  
37.27 services in the individual program specified in the set aside. ~~If a determination that the~~  
37.28 ~~information relied upon to disqualify an individual was correct and is conclusive under~~  
37.29 ~~section 245C.29, and the individual is subsequently disqualified under section 245C.14,~~  
37.30 ~~the individual has a right to again request reconsideration on the risk of harm under section~~  
37.31 ~~245C.21. Subsequent determinations regarding risk of harm are not subject to another~~  
37.32 ~~hearing under this section.~~

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

38.1            (d) The scope of review for disqualification hearings under this section does  
38.2 not include the issue of whether the commissioner was required to seal agency records  
38.3 pursuant to a district court order or other applicable law.

38.4            ~~(e)~~ (e) The state human services referee shall recommend an order to the  
38.5 commissioner of health, education, or human services, as applicable, who shall issue a  
38.6 final order. The commissioner shall affirm, reverse, or modify the final disposition. Any  
38.7 order of the commissioner issued in accordance with this subdivision is conclusive upon  
38.8 the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing  
38.9 appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to  
38.10 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided  
38.11 under section 245C.29.

38.12            Sec. 30. Minnesota Statutes 2010, section 626.557, subdivision 9c, is amended to read:

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

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

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

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

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

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

39.3 (d) When substantiated maltreatment is determined to have been committed by  
39.4 an individual who is also the facility license holder, both the individual and the facility  
39.5 must be determined responsible for the maltreatment, and both the background study  
39.6 disqualification standards under section 245C.15, subdivision 4, and the licensing actions  
39.7 under section 245A.06 or 245A.07 apply.

39.8 (e) The lead agency shall complete its final disposition within 60 calendar days. If  
39.9 the lead agency is unable to complete its final disposition within 60 calendar days, the lead  
39.10 agency shall notify the following persons provided that the notification will not endanger  
39.11 the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable  
39.12 adult's legal guardian, when known, if the lead agency knows them to be aware of the  
39.13 investigation; and (2) the facility, where applicable. The notice shall contain the reason for  
39.14 the delay and the projected completion date. If the lead agency is unable to complete its  
39.15 final disposition by a subsequent projected completion date, the lead agency shall again  
39.16 notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead  
39.17 agency knows them to be aware of the investigation, and the facility, where applicable,  
39.18 of the reason for the delay and the revised projected completion date provided that the  
39.19 notification will not endanger the vulnerable adult or hamper the investigation. A lead  
39.20 agency's inability to complete the final disposition within 60 calendar days or by any  
39.21 projected completion date does not invalidate the final disposition.

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

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

39.35 (h) The lead agency shall routinely provide investigation memoranda for  
39.36 substantiated reports to the appropriate licensing boards. These reports must include the

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40.1 names of substantiated perpetrators. The lead agency may ~~not also provide investigative~~  
40.2 ~~memoranda for inconclusive or false reports~~ other information to the appropriate licensing  
40.3 boards ~~unless when the lead agency's investigation gives~~ agency has reason to believe  
40.4 that ~~there may have been~~ the information may represent a violation of the applicable  
40.5 professional practice laws. ~~If the~~ When an investigation memorandum is provided to a  
40.6 licensing board, the subject of the investigation memorandum shall be notified and receive  
40.7 a summary of the investigative findings.

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

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

40.14 Sec. 31. Minnesota Statutes 2010, section 626.557, subdivision 12b, is amended to  
40.15 read:

40.16 Subd. 12b. **Data management.** (a) In performing any of the duties of this section as  
40.17 a lead agency, the county social service agency shall maintain appropriate records. Data  
40.18 collected by the county social service agency under this section are welfare data under  
40.19 section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this  
40.20 paragraph that are inactive investigative data on an individual who is a vendor of services  
40.21 are private data on individuals, as defined in section 13.02. The identity of the reporter  
40.22 may only be disclosed as provided in paragraph (c).

40.23 Data maintained by the common entry point are confidential data on individuals or  
40.24 protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163,  
40.25 the common entry point shall maintain data for three calendar years after date of receipt  
40.26 and then destroy the data unless otherwise directed by federal requirements.

40.27 (b) The commissioners of health and human services shall prepare an investigation  
40.28 memorandum for each report alleging maltreatment investigated under this section.  
40.29 County social service agencies must maintain private data on individuals but are not  
40.30 required to prepare an investigation memorandum. During an investigation by the  
40.31 commissioner of health or the commissioner of human services, data collected under this  
40.32 section are confidential data on individuals or protected nonpublic data as defined in  
40.33 section 13.02. Upon completion of the investigation, the data are classified as provided in  
40.34 clauses (1) to (3) and paragraph (c).



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41.1 (1) The investigation memorandum must contain the following data, which are  
41.2 public:

41.3 (i) the name of the facility investigated;

41.4 (ii) a statement of the nature of the alleged maltreatment;

41.5 (iii) pertinent information obtained from medical or other records reviewed;

41.6 (iv) the identity of the investigator;

41.7 (v) a summary of the investigation's findings;

41.8 (vi) statement of whether the report was found to be substantiated, inconclusive,  
41.9 false, or that no determination will be made;

41.10 (vii) a statement of any action taken by the facility;

41.11 (viii) a statement of any action taken by the lead agency; and

41.12 (ix) when a lead agency's determination has substantiated maltreatment, a statement  
41.13 of whether an individual, individuals, or a facility were responsible for the substantiated  
41.14 maltreatment, if known.

41.15 The investigation memorandum must be written in a manner which protects the  
41.16 identity of the reporter and of the vulnerable adult and may not contain the names or, to  
41.17 the extent possible, data on individuals or private data listed in clause (2).

41.18 (2) Data on individuals collected and maintained in the investigation memorandum  
41.19 are private data, including:

41.20 (i) the name of the vulnerable adult;

41.21 (ii) the identity of the individual alleged to be the perpetrator;

41.22 (iii) the identity of the individual substantiated as the perpetrator; and

41.23 (iv) the identity of all individuals interviewed as part of the investigation.

41.24 (3) Other data on individuals maintained as part of an investigation under this section  
41.25 are private data on individuals upon completion of the investigation.

41.26 (c) After the assessment or investigation is completed, the name of the reporter  
41.27 must be confidential. The subject of the report may compel disclosure of the name of the  
41.28 reporter only with the consent of the reporter or upon a written finding by a court that  
41.29 the report was false and there is evidence that the report was made in bad faith. This  
41.30 subdivision does not alter disclosure responsibilities or obligations under the Rules of  
41.31 Criminal Procedure, except that where the identity of the reporter is relevant to a criminal  
41.32 prosecution, the district court shall do an in-camera review prior to determining whether  
41.33 to order disclosure of the identity of the reporter.

41.34 (d) Notwithstanding section 138.163, data maintained under this section by the  
41.35 commissioners of health and human services must be maintained under the following  
41.36 schedule and then destroyed unless otherwise directed by federal requirements:

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42.1 (1) data from reports determined to be false, shall be maintained for three years  
42.2 after the finding was made;

42.3 (2) data from reports determined to be inconclusive, regarding maltreatment shall  
42.4 be maintained for four years after the finding was made;

42.5 (3) data from reports with a final disposition of unsubstantiated shall be maintained  
42.6 for four years after the finding was made;

42.7 (4) data from reports determined to be substantiated, shall be maintained for seven  
42.8 years after the finding was made; and

42.9 ~~(4)~~ (5) data from reports which were not investigated by a lead agency and for which  
42.10 there is no final disposition, maintained for three years from the date of the report.

42.11 (e) The commissioners of health and human services shall each annually report to  
42.12 the legislature and the governor on the number and type of reports of alleged maltreatment  
42.13 involving licensed facilities reported under this section, the number of those requiring  
42.14 investigation under this section, and the resolution of those investigations. The report  
42.15 shall identify:

42.16 (1) whether and where backlogs of cases result in a failure to conform with statutory  
42.17 time frames;

42.18 (2) where adequate coverage requires additional appropriations and staffing; and

42.19 (3) any other trends that affect the safety of vulnerable adults.

42.20 (f) Each lead agency must have a record retention policy.

42.21 (g) Lead agencies, prosecuting authorities, and law enforcement agencies may  
42.22 exchange not public data, as defined in section 13.02, if the agency or authority requesting  
42.23 the data determines that the data are pertinent and necessary to the requesting agency in  
42.24 initiating, furthering, or completing an investigation under this section. Data collected  
42.25 under this section must be made available to prosecuting authorities and law enforcement  
42.26 officials, local county agencies, and licensing agencies investigating the alleged  
42.27 maltreatment under this section. The lead agency shall exchange not public data with the  
42.28 vulnerable adult maltreatment review panel established in section 256.021 if the data are  
42.29 pertinent and necessary for a review requested under that section. Upon completion of the  
42.30 review, not public data received by the review panel must be returned to the lead agency.

42.31 (h) Each lead agency shall keep records of the length of time it takes to complete its  
42.32 investigations.

42.33 (i) A lead agency may notify other affected parties and their authorized representative  
42.34 if the agency has reason to believe maltreatment has occurred and determines the  
42.35 information will safeguard the well-being of the affected parties or dispel widespread  
42.36 rumor or unrest in the affected facility.

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43.1 (j) Under any notification provision of this section, where federal law specifically  
43.2 prohibits the disclosure of patient identifying information, a lead agency may not provide  
43.3 any notice unless the vulnerable adult has consented to disclosure in a manner which  
43.4 conforms to federal requirements.

43.5 Sec. 32. Minnesota Statutes 2010, section 626.5572, subdivision 8, is amended to read:

43.6 Subd. 8. **Final disposition.** "Final disposition" is the determination of an  
43.7 investigation by a lead agency that a report of maltreatment under ~~Laws 1995, chapter~~  
43.8 ~~229~~ section 626.557, is substantiated, unsubstantiated, inconclusive, false, or that no  
43.9 determination will be made. When a lead agency determination has substantiated  
43.10 maltreatment, the final disposition also identifies, if known, which individual or  
43.11 individuals were responsible for the substantiated maltreatment, and whether a facility  
43.12 was responsible for the substantiated maltreatment.

43.13 Sec. 33. Minnesota Statutes 2010, section 626.5572, subdivision 11, is amended to  
43.14 read:

43.15 Subd. 11. **Inconclusive.** "Inconclusive" as to maltreatment means there is less than  
43.16 a preponderance of evidence to show that maltreatment did or did not occur. Inconclusive  
43.17 as to responsibility means that there is less than a preponderance of evidence to show that  
43.18 either the facility or an individual is the responsible party for substantiated maltreatment.

43.19 Sec. 34. Minnesota Statutes 2010, section 626.5572, is amended by adding a  
43.20 subdivision to read:

43.21 Subd. 20a. **Unsubstantiated.** "Unsubstantiated" means the lead investigative  
43.22 agency has determined that there is not a preponderance of evidence that shows that an act  
43.23 that meets the definition of maltreatment occurred.

43.24 Sec. 35. **REVISOR'S INSTRUCTION.**

43.25 The revisor shall renumber Minnesota Statutes, section 245B.05, subdivision 4, as  
43.26 Minnesota Statutes, section 245A.04, subdivision 2a. The revisor shall make necessary  
43.27 cross-reference changes to effectuate this renumbering.

APPENDIX  
Article locations in 11-0140

ARTICLE 1	DATA PRACTICES .....	Page.Ln 1.14
ARTICLE 2	LICENSING .....	Page.Ln 6.1