

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2009

01/30/2012 Authored by Abeler and Lesch

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
 1.2 relating to human services; changing human services legal provisions; modifying
 1.3 provisions related to human services licensing, licensing data, and the Office
 1.4 of Inspector General; amending the Human Services Background Studies
 1.5 Act; amending Minnesota Statutes 2010, sections 13.46, subdivision 4;
 1.6 245A.02, by adding subdivisions; 245A.04, subdivisions 1, 5, 7, 11, by adding
 1.7 a subdivision; 245A.05; 245A.07, subdivision 3; 245A.08, subdivision 2a;
 1.8 245A.14, subdivision 11, by adding a subdivision; 245A.146, subdivisions
 1.9 2, 3; 245A.16, subdivision 4, by adding a subdivision; 245A.18, subdivision
 1.10 1; 245A.22, subdivision 2; 245A.66, subdivisions 2, 3; 245C.03, subdivision
 1.11 1; 245C.04, subdivision 1; 245C.05, subdivisions 2, 4, 6, 7, by adding a
 1.12 subdivision; 245C.07; 245C.08, subdivisions 1, 2, 3, by adding a subdivision;
 1.13 245C.14, subdivision 2; 245C.15; 245C.16, subdivision 1; 245C.17, subdivision
 1.14 2; 245C.22, subdivision 5; 245C.23, subdivision 2; 245C.24, subdivision 2;
 1.15 245C.28, subdivisions 1, 3; 245C.29, subdivision 2; 256.045, subdivision
 1.16 3b; Minnesota Statutes 2011 Supplement, section 256B.04, subdivision 21;
 1.17 proposing coding for new law in Minnesota Statutes, chapter 245A; repealing
 1.18 Minnesota Rules, part 9503.0150, item E.

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

1.20 ARTICLE 1

1.21 DATA PRACTICES

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

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

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

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

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

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

2.14 (ii) When a correction order, an order to forfeit a fine, an order of license suspension,
 2.15 an order of temporary immediate suspension, an order of license revocation, an order
 2.16 of license denial, or an order of conditional license has been issued, or a complaint is
 2.17 resolved, the following data on current and former licensees and applicants are public: the
 2.18 substance and investigative findings of the licensing or maltreatment complaint, licensing
 2.19 violation, or substantiated maltreatment; the record of informal resolution of a licensing
 2.20 violation; orders of hearing; findings of fact; conclusions of law; specifications of the final
 2.21 correction order, fine, suspension, temporary immediate suspension, revocation, denial, or
 2.22 conditional license contained in the record of licensing action; whether a fine has been
 2.23 paid; and the status of any appeal of these actions. ~~If a licensing sanction under section
 2.24 245A.07, or a license denial under section 245A.05, is based on a determination that the
 2.25 license holder or applicant is responsible for maltreatment or is disqualified under chapter
 2.26 245C, the identity of the license holder or applicant as the individual responsible for
 2.27 maltreatment or as the disqualified individual is public data at the time of the issuance of
 2.28 the licensing sanction or denial.~~

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

2.34 (iv) When a license denial under section 245A.05 or a sanction under section
 2.35 245A.07 is based on a determination that the license holder or applicant is disqualified
 2.36 under chapter 245C, the identity of the license holder or applicant as the disqualified

3.1 individual and the reason for the disqualification are public data at the time of the
3.2 issuance of the licensing sanction or denial. If the applicant or license holder requests
3.3 reconsideration of the disqualification and the disqualification is affirmed, the reason for
3.4 the disqualification and the reason to not set aside the disqualification are public data.

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

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

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

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

4.1 successfully passed a background study. If a licensing sanction under section 245A.07,
4.2 or a license denial under section 245A.05, is based on a determination that an individual
4.3 subject to disqualification under chapter 245C is disqualified, the disqualification as a
4.4 basis for the licensing sanction or denial is public data. As specified in clause (1), item
4.5 (iv), if the disqualified individual is the license holder or applicant, the identity of the
4.6 license holder or applicant ~~is~~ and the reason for the disqualification are public data; and, if
4.7 the license holder or applicant requested reconsideration of the disqualification and the
4.8 disqualification is affirmed, the reason for the disqualification and the reason to not set
4.9 aside the disqualification are public data. If the disqualified individual is an individual
4.10 other than the license holder or applicant, the identity of the disqualified individual shall
4.11 remain private data.

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

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

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

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

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

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

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

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

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

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

5.35 (k) All not public data collected, maintained, used, or disseminated under this
5.36 subdivision and subdivision 3 may be exchanged between the Department of Human

6.1 Services, Licensing Division, and the Department of Corrections for purposes of
6.2 regulating services for which the Department of Human Services and the Department
6.3 of Corrections have regulatory authority.

6.4 **ARTICLE 2**

6.5 **LICENSING**

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

6.8 Subd. 5b. **Conservator.** "Conservator" has the meaning given in section 524.5-102,
6.9 subdivision 3.

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

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

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

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

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

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

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

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

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

7.1 the applicant. An applicant seeking licensure in Minnesota with headquarters outside of
7.2 Minnesota must have a program office located within the state.

7.3 The commissioner shall act on the application within 90 working days after a
7.4 complete application and any required reports have been received from other state
7.5 agencies or departments, counties, municipalities, or other political subdivisions. The
7.6 commissioner shall not consider an application to be complete until the commissioner
7.7 receives all of the information required under section 245C.05.

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

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

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

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

8.1 (e) The applicant must be able to demonstrate competent knowledge of the
 8.2 applicable requirements of this chapter and chapter 245C, and the requirements of
 8.3 other licensing statutes and rules applicable to the program or services for which the
 8.4 applicant is seeking to be licensed. Effective January 1, 2013, the commissioner may
 8.5 require the applicant, except for child foster care, to demonstrate competence in the
 8.6 applicable licensing requirements by successfully completing a written examination. The
 8.7 commissioner may develop a prescribed written examination format.

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

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

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

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

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

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

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

8.28 (2) documents and records, including records maintained in electronic format,
 8.29 notwithstanding chapter 13;

8.30 (3) persons served by the program; and

8.31 (4) staff whenever the program is in operation and the information is relevant to
 8.32 inspections or investigations conducted by the commissioner. The commissioner must be
 8.33 given access without prior notice and as often as the commissioner considers necessary if
 8.34 the commissioner is investigating alleged maltreatment, conducting a licensing inspection,
 8.35 or investigating an alleged violation of applicable laws or rules. In conducting inspections,

9.1 the commissioner may request and shall receive assistance from other state, county, and
9.2 municipal governmental agencies and departments. The applicant or license holder
9.3 shall allow the commissioner to photocopy, photograph, and make audio and video tape
9.4 recordings during the inspection of the program at the commissioner's expense. The
9.5 commissioner shall obtain a court order or the consent of the subject of the records or the
9.6 parents or legal guardian of the subject before photocopying hospital medical records.

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

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

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

- 9.15 (1) the name of the license holder;
- 9.16 (2) the address of the program;
- 9.17 (3) the effective date and expiration date of the license;
- 9.18 (4) the type of license;
- 9.19 (5) the maximum number and ages of persons that may receive services from the
9.20 program; and
- 9.21 (6) any special conditions of licensure.

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

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

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

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

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

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

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

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

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

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

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

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

10.14 (6) not provided the applicant's Social Security number or documentation of the
10.15 applicant's "qualified alien status" as defined under United States Code, title 8, section
10.16 1641(b)(c).

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

10.21 (f) The commissioner shall not issue or reissue a license if an individual living in
10.22 the household where the licensed services will be provided as specified under section
10.23 245C.03, subdivision 1, has been disqualified and the disqualification has not been set
10.24 aside and no variance has been granted.

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

10.31 (h) Notwithstanding paragraph (g), when a revocation is based on the disqualification
10.32 of a controlling individual or license holder, and the controlling individual or license holder
10.33 is ordered under section 245C.17 to be immediately removed from direct contact with
10.34 persons receiving services or is ordered to be under continuous, direct supervision when
10.35 providing direct contact services, the program may continue to operate only if the program
10.36 complies with the order and submits documentation demonstrating compliance with the

11.1 order. If the disqualified individual fails to submit a timely request for reconsideration, or
 11.2 if the disqualification is not set aside and no variance is granted, the order to immediately
 11.3 remove the individual from direct contact or to be under continuous, direct supervision
 11.4 remains in effect pending the outcome of a hearing and final order from the commissioner.

11.5 (i) For purposes of reimbursement for meals only, under the Child and Adult Care
 11.6 Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A,
 11.7 part 226, relocation within the same county by a licensed family day care provider, shall
 11.8 be considered an extension of the license for a period of no more than 30 calendar days or
 11.9 until the new license is issued, whichever occurs first, provided the county agency has
 11.10 determined the family day care provider meets licensure requirements at the new location.

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

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

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

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

11.26 (b) ~~A residential program licensed by the commissioner of human services under~~
 11.27 ~~Minnesota Rules, parts 2960.0010 to 2960.0710, may serve persons through the age of~~
 11.28 ~~19 when:~~

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

11.33 (2) ~~the facility develops policies, procedures, and plans required under section~~
 11.34 ~~245A.65;~~

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

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

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

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

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

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

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

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

12.18 (c) In addition to the requirements in paragraph (b), a residential program licensed
 12.19 by the commissioner of human services under Minnesota Rules, parts 2960.0010 to
 12.20 2960.0710, may serve persons under the age of 21 provided the facility complies with the
 12.21 following requirements:

12.22 (1) for each person age 18 and older served at the program, the program must assess
 12.23 and document the person's risk of victimizing other residents residing in the facility, and
 12.24 based on the assessment, the facility must develop and implement necessary measures
 12.25 to minimize any risk of harm to other residents, including making arrangements for
 12.26 appropriate sleeping arrangements; and

12.27 (2) the program must assure that the services and living arrangements provided to all
 12.28 residents are suitable to the age and functioning of the residents, including separation of
 12.29 services, staff supervision, and other program operations as appropriate.

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

12.32 Sec. 8. Minnesota Statutes 2010, section 245A.04, is amended by adding a subdivision
 12.33 to read:

12.34 Subd. 16. **Program policy; reporting a death in the program.** Programs licensed
 12.35 under this chapter or chapter 245B must have a written policy for reporting the death of

13.1 an individual served by the program to the commissioner of human services. Within 24
 13.2 hours after the death of an individual served by the program, the license holder shall notify
 13.3 the commissioner of the death.

13.4 Sec. 9. Minnesota Statutes 2010, section 245A.05, is amended to read:

13.5 **245A.05 DENIAL OF APPLICATION.**

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

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

13.9 ~~(1)~~ (2) fails to comply with applicable laws or rules;

13.10 ~~(2)~~ (3) knowingly withholds relevant information from or gives false or misleading
 13.11 information to the commissioner in connection with an application for a license or during
 13.12 an investigation;

13.13 ~~(3)~~ (4) has a disqualification that has not been set aside under section 245C.22
 13.14 and no variance has been granted;

13.15 ~~(4)~~ (5) has an individual living in the household who received a background study
 13.16 under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification
 13.17 that has not been set aside under section 245C.22, and no variance has been granted; ~~or~~

13.18 ~~(5)~~ (6) is associated with an individual who received a background study under
 13.19 section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised
 13.20 access to children or vulnerable adults, and who has a disqualification that has not been set
 13.21 aside under section 245C.22, and no variance has been granted; or

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

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

13.25 The notice must state the reasons the application was denied and must inform the
 13.26 applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules,
 13.27 parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the
 13.28 commissioner in writing by certified mail or personal service. If mailed, the appeal must
 13.29 be postmarked and sent to the commissioner within 20 calendar days after the applicant
 13.30 received the notice of denial. If an appeal request is made by personal service, it must
 13.31 be received by the commissioner within 20 calendar days after the applicant received the
 13.32 notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's
 13.33 denial of an application.

13.34 Sec. 10. Minnesota Statutes 2010, section 245A.07, subdivision 3, is amended to read:

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

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

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

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

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

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

14.19 (b) If the license was suspended or revoked, the notice must inform the license
 14.20 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
 14.21 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
 14.22 a license. The appeal of an order suspending or revoking a license must be made in writing
 14.23 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
 14.24 the commissioner within ten calendar days after the license holder receives notice that the
 14.25 license has been suspended or revoked. If a request is made by personal service, it must be
 14.26 received by the commissioner within ten calendar days after the license holder received
 14.27 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
 14.28 a timely appeal of an order suspending or revoking a license, the license holder may
 14.29 continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs
 14.30 (g) and (h), until the commissioner issues a final order on the suspension or revocation.

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

15.1 made by personal service, it must be received by the commissioner within ten calendar
15.2 days after the license holder received the order.

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

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

15.17 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for
15.18 each determination of maltreatment of a child under section 626.556 or the maltreatment
15.19 of a vulnerable adult under section 626.557 for which the license holder is determined
15.20 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),
15.21 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each
15.22 occurrence of a violation of law or rule governing matters of health, safety, or supervision,
15.23 including but not limited to the provision of adequate staff-to-child or adult ratios, and
15.24 failure to comply with background study requirements under chapter 245C; and the license
15.25 holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those
15.26 subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means
15.27 each violation identified in the commissioner's fine order. Fines assessed against a license
15.28 holder that holds a license to provide the residential-based habilitation services, as defined
15.29 under section 245B.02, subdivision 20, and a license to provide foster care, may be
15.30 assessed against both licenses for the same occurrence, but the combined amount of the
15.31 fines shall not exceed the amount specified in this clause for that occurrence.

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

16.1 (d) Except for background study violations involving the failure to comply with an
 16.2 order to immediately remove an individual or an order to provide continuous, direct
 16.3 supervision, the commissioner shall not issue a fine under paragraph (c) relating to a
 16.4 background study violation to a license holder who self-corrects a background study
 16.5 violation before the commissioner discovers the violation. A license holder who has
 16.6 previously exercised the provisions of this paragraph to avoid a fine for a background
 16.7 study violation may not avoid a fine for a subsequent background study violation unless at
 16.8 least 365 days have passed since the license holder self-corrected the earlier background
 16.9 study violation.

16.10 Sec. 11. Minnesota Statutes 2010, section 245A.08, subdivision 2a, is amended to read:

16.11 Subd. 2a. **Consolidated contested case hearings.** (a) When a denial of a license
 16.12 under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3,
 16.13 is based on a disqualification for which reconsideration was timely requested under
 16.14 section 245C.21 and which was not set aside under section 245C.22, the scope of the
 16.15 contested case hearing shall include the disqualification and the licensing sanction or
 16.16 denial of a license, unless otherwise specified in this subdivision. When the licensing
 16.17 sanction or denial of a license is based on a determination of maltreatment under section
 16.18 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which
 16.19 was not set aside, the scope of the contested case hearing shall include the maltreatment
 16.20 determination, disqualification, and the licensing sanction or denial of a license, unless
 16.21 otherwise specified in this subdivision. In such cases, a fair hearing under section 256.045
 16.22 shall not be conducted as provided for in sections 245C.27, 626.556, subdivision 10i, and
 16.23 626.557, subdivision 9d.

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

16.28 (1) a denial of a license under section 245A.05, or a licensing sanction under section
 16.29 245A.07, is based on a determination that the license holder is responsible for maltreatment
 16.30 or the disqualification of a license holder is based on serious or recurring maltreatment;

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

16.33 (3) the license holder appeals the maltreatment determination or disqualification,
 16.34 and denial of a license or licensing sanction. In these cases, a fair hearing shall not be
 16.35 conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision

17.1 9d. The scope of the contested case hearing must include the maltreatment determination,
17.2 disqualification, and denial of a license or licensing sanction.

17.3 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
17.4 determination or disqualification, but does not appeal the denial of a license or a licensing
17.5 sanction, reconsideration of the maltreatment determination shall be conducted under
17.6 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the
17.7 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing
17.8 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and
17.9 626.557, subdivision 9d.

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

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

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

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

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

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

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

18.1 (g) When a denial of a license under section 245A.05 or a licensing sanction
18.2 under section 245A.07 is based on a disqualification for which reconsideration was
18.3 timely requested under section 245C.21 and was not set aside under section 245C.22, and
18.4 the individual otherwise has no hearing right under section 245C.27, the scope of the
18.5 administrative law judge's review shall include the denial or sanction and a determination
18.6 whether the disqualification should be set aside, unless section 245C.24 prohibits the
18.7 set-aside of the disqualification. In determining whether the disqualification should be
18.8 set aside, the administrative law judge shall consider the factors under section 245C.22,
18.9 subdivision 4, to determine whether the individual poses a risk of harm to any person
18.10 receiving services from the license holder.

18.11 (h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction
18.12 under section 245A.07 is based on the termination of a variance under section 245C.30,
18.13 subdivision 4, the scope of the administrative law judge's review shall include the sanction
18.14 and a determination whether the disqualification should be set aside, unless section
18.15 245C.24 prohibits the set-aside of the disqualification. In determining whether the
18.16 disqualification should be set aside, the administrative law judge shall consider the factors
18.17 under section 245C.22, subdivision 4, to determine whether the individual poses a risk of
18.18 harm to any person receiving services from the license holder.

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

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

18.26 Sec. 12. Minnesota Statutes 2010, section 245A.14, subdivision 11, is amended to read:

18.27 Subd. 11. **Swimming pools; family day care and group family day care**
18.28 **providers.** (a) This subdivision governs swimming pools located at family day care
18.29 or group family day care homes licensed under Minnesota Rules, chapter 9502. This
18.30 subdivision does not apply to portable wading pools or whirlpools located at family day
18.31 care or group family day care homes licensed under Minnesota Rules, chapter 9502. For a
18.32 provider to be eligible to allow a child cared for at the family day care or group family day
18.33 care home to use the swimming pool located at the home, the provider must not have had
18.34 a licensing sanction under section 245A.07 or a correction order or conditional license

19.1 under section 245A.06 relating to the supervision or health and safety of children during
19.2 the prior 24 months, and must satisfy the following requirements:

19.3 (1) notify the county agency before initial use of the swimming pool and annually,
19.4 thereafter;

19.5 (2) obtain written consent from a child's parent or legal guardian allowing the child
19.6 to use the swimming pool and renew the parent or legal guardian's written consent at least
19.7 annually. The written consent must include a statement that the parent or legal guardian
19.8 has received and read materials provided by the Department of Health to the Department
19.9 of Human Services for distribution to all family day care or group family day care homes
19.10 and the general public on the human services Internet Web site related to the risk of disease
19.11 transmission as well as other health risks associated with swimming pools. The written
19.12 consent must also include a statement that the Department of Health, Department of
19.13 Human Services, and county agency will not monitor or inspect the provider's swimming
19.14 pool to ensure compliance with the requirements in this subdivision;

19.15 (3) enter into a written contract with a child's parent or legal guardian and renew the
19.16 written contract annually. The terms of the written contract must specify that the provider
19.17 agrees to perform all of the requirements in this subdivision;

19.18 (4) attend and successfully complete a swimming pool operator training course once
19.19 every five years. Acceptable training courses are:

19.20 (i) the National Swimming Pool Foundation Certified Pool Operator course;

19.21 (ii) the National Spa and Pool Institute Tech I and Tech II courses (both required); or

19.22 (iii) the National Recreation and Park Association Aquatic Facility Operator course;

19.23 (5) require a caregiver trained in first aid and adult and child cardiopulmonary
19.24 resuscitation to supervise and be present at the swimming pool with any children in the
19.25 pool;

19.26 (6) toilet all potty-trained children before they enter the swimming pool;

19.27 (7) require all children who are not potty-trained to wear swim diapers while in
19.28 the swimming pool;

19.29 (8) if fecal material enters the swimming pool water, add three times the normal
19.30 shock treatment to the pool water to raise the chlorine level to at least 20 parts per million,
19.31 and close the pool to swimming for the 24 hours following the entrance of fecal material
19.32 into the water or until the water pH and disinfectant concentration levels have returned to
19.33 the standards specified in clause (10), whichever is later;

19.34 (9) prevent any person from entering the swimming pool who has an open wound or
19.35 any person who has or is suspected of having a communicable disease;

20.1 (10) maintain the swimming pool water at a pH of not less than 7.2 and not more
 20.2 than 8.0, maintain the disinfectant concentration between two and five parts per million for
 20.3 chlorine or between 2.3 and 4.5 parts per million for bromine, and maintain a daily record
 20.4 of the swimming pool's operation with pH and disinfectant concentration readings on days
 20.5 when children cared for at the family day care or group family day care home are present;

20.6 (11) have a disinfectant feeder or feeders;

20.7 (12) have a recirculation system that will clarify and disinfect the swimming pool
 20.8 volume of water in ten hours or less;

20.9 (13) maintain the swimming pool's water clarity so that an object on the pool floor at
 20.10 the pool's deepest point is easily visible;

20.11 (14) ~~have two or more suction lines in the swimming pool~~ comply with the provisions
 20.12 of the Abigail Taylor Pool Safety Act in section 144.1222, subdivisions 1c and 1d;

20.13 (15) have in place and enforce written safety rules and swimming pool policies;

20.14 (16) have in place at all times a safety rope that divides the shallow and deep
 20.15 portions of the swimming pool;

20.16 (17) satisfy any existing local ordinances regarding swimming pool installation,
 20.17 decks, and fencing;

20.18 (18) maintain a water temperature of not more than 104 degrees Fahrenheit and
 20.19 not less than 70 degrees Fahrenheit; and

20.20 (19) for lifesaving equipment, have a United States Coast Guard-approved life
 20.21 ring attached to a rope, an exit ladder, and a shepherd's hook available at all times to the
 20.22 caregiver supervising the swimming pool.

20.23 The requirements of clauses (5), (16), and (18) only apply at times when children
 20.24 cared for at the family day care or group family day care home are present.

20.25 (b) A violation of paragraph (a), clauses (1) to (3), is grounds for a sanction under
 20.26 section 245A.07 or a correction order or conditional license under section 245A.06.

20.27 (c) If a provider under this subdivision receives a licensing sanction under section
 20.28 245A.07 or a correction order or a conditional license under section 245A.06 relating to
 20.29 the supervision or health and safety of children, the provider is prohibited from allowing a
 20.30 child cared for at the family day care or group family day care home to continue to use
 20.31 the swimming pool located at the home.

20.32 Sec. 13. Minnesota Statutes 2010, section 245A.146, subdivision 2, is amended to read:

20.33 Subd. 2. **Documentation requirement for license holders.** (a) ~~Effective January~~
 20.34 ~~1, 2006,~~ All licensed child care providers, children's residential facilities, chemical
 20.35 dependency treatment programs with children in care, and residential habilitation

21.1 programs serving children with developmental disabilities must maintain the following
 21.2 documentation for every crib used by or that is accessible to any child in care:

21.3 (1) the crib's brand name; and

21.4 (2) the crib's model number.

21.5 (b) Any crib for which the license holder does not have the documentation required
 21.6 under paragraph (a) must not be used by or be accessible to children in care.

21.7 (c) Effective December 28, 2012, the licensed program must maintain documentation
 21.8 to show that every full-size and non-full-size crib that is used by or is accessible to any
 21.9 child in care is compliant with federal crib standards under Code of Federal Regulations,
 21.10 title 16, part 1219, for full-size baby cribs, or Code of Federal Regulations, title 16, part
 21.11 1220, for non-full-size baby cribs.

21.12 Sec. 14. Minnesota Statutes 2010, section 245A.146, subdivision 3, is amended to read:

21.13 Subd. 3. **License holder documentation of cribs.** (a) Annually, from the date
 21.14 printed on the license, all license holders shall check all their cribs' brand names and
 21.15 model numbers against the United States Consumer Product Safety Commission Web
 21.16 site listing of unsafe cribs.

21.17 (b) The license holder shall maintain written documentation to be reviewed on site
 21.18 for each crib showing that the review required in paragraph (a) has been completed, and
 21.19 which of the following conditions applies:

21.20 (1) the crib was not identified as unsafe on the United States Consumer Product
 21.21 Safety Commission Web site;

21.22 (2) the crib was identified as unsafe on the United States Consumer Product Safety
 21.23 Commission Web site, but the license holder has taken the action directed by the United
 21.24 States Consumer Product Safety Commission to make the crib safe; or

21.25 (3) the crib was identified as unsafe on the United States Consumer Product Safety
 21.26 Commission Web site, and the license holder has removed the crib so that it is no longer
 21.27 used by or accessible to children in care.

21.28 (c) Documentation of the review completed under this subdivision shall be
 21.29 maintained by the license holder on site and made available to parents or guardians of
 21.30 children in care and the commissioner.

21.31 (d) Notwithstanding Minnesota Rules, part 9502.0425, a family child care provider
 21.32 that complies with this section may use a mesh-sided playpen or crib that has not been
 21.33 identified as unsafe on the United States Consumer Product Safety Commission Web site
 21.34 for the care or sleeping of infants.

22.1 Sec. 15. Minnesota Statutes 2010, section 245A.16, is amended by adding a
22.2 subdivision to read:

22.3 Subd. 3a. **Full disclosure to commissioner.** The county or private agency shall not
22.4 withhold from the commissioner any information which may be relevant to the operation
22.5 of the program, the health and safety of the persons served, or the potential disqualification
22.6 of an individual who is the subject of a background study.

22.7 Sec. 16. Minnesota Statutes 2010, section 245A.16, subdivision 4, is amended to read:

22.8 Subd. 4. **Enforcement of commissioner's orders.** The county or private agency
22.9 shall enforce the commissioner's orders under sections 245A.06, 245A.07, 245A.08,
22.10 subdivision 5, and chapter 245C, according to the instructions of the commissioner. The
22.11 county attorney shall assist the county agency in the enforcement and ~~defense of~~ shall
22.12 defend the commissioner's orders under sections 245A.07, 245A.08, and chapter 245C,
22.13 according to the instructions of the commissioner, unless a conflict of interest exists
22.14 between the county attorney and the commissioner. For purposes of this section, a conflict
22.15 of interest means that the county attorney has a direct or shared financial interest with
22.16 the license holder or has a personal relationship or family relationship with a party in
22.17 the licensing action.

22.18 Sec. 17. Minnesota Statutes 2010, section 245A.18, subdivision 1, is amended to read:

22.19 Subdivision 1. **Seat belt and child passenger restraint system use.** When a child
22.20 is transported, a license holder must comply with all seat belt and child passenger restraint
22.21 system requirements under ~~section~~ sections 169.685 and 169.686.

22.22 Sec. 18. Minnesota Statutes 2010, section 245A.22, subdivision 2, is amended to read:

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

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

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

22.32 (d) The commissioner may grant a variance under section 245A.04, subdivision 9,
22.33 to requirements in this section.

23.1 Sec. 19. [245A.191] PROVIDER ELIGIBILITY FOR PAYMENTS FROM THE
 23.2 CHEMICAL DEPENDENCY CONSOLIDATED TREATMENT FUND.

23.3 A chemical dependency treatment provider licensed under Minnesota Rules, parts
 23.4 2960.0430 to 2960.0490 or 9530.6405 to 9530.6505, must also meet the applicable
 23.5 requirements under section 254B.05, subdivision 5, paragraphs (b), clauses (1) to (4)
 23.6 and (6), (c), and (d), to be eligible for enhanced funding from the chemical dependency
 23.7 consolidated treatment fund.

23.8 Sec. 20. Minnesota Statutes 2010, section 245A.66, subdivision 2, is amended to read:

23.9 Subd. 2. **Child care centers; risk reduction plan.** (a) Child care centers licensed
 23.10 under this chapter and Minnesota Rules, chapter 9503, must develop a risk reduction plan
 23.11 that ~~assesses~~ identifies the general risks to children served by the child care center. The
 23.12 license holder must establish procedures to minimize identified risks, train staff on the
 23.13 procedures, and annually review the procedures.

23.14 (b) The risk reduction plan must include an assessment of risk to children the
 23.15 center serves or intends to serve and identify specific risks based on the outcome of the
 23.16 assessment. The assessment of risk must be based on the following:

23.17 ~~(1) an assessment of the risk presented by the vulnerability of the children served,~~
 23.18 ~~including an evaluation of the following factors: age, developmental functioning, and the~~
 23.19 ~~physical and emotional health of children the program serves or intends to serve;~~

23.20 ~~(2) an assessment of the risks presented by the physical plant where the licensed~~
 23.21 ~~services are provided, including an evaluation of the following factors: the condition and~~
 23.22 ~~design of the facility and its outdoor space, bathrooms, storage areas, and accessibility~~
 23.23 ~~of medications and cleaning products that are harmful to children when children are not~~
 23.24 ~~supervised, doors where finger pinching may occur, and the existence of areas that are~~
 23.25 ~~difficult to supervise; and~~

23.26 ~~(3)~~ (2) an assessment of the risks presented by the environment for each facility and
 23.27 for each site, including an evaluation of the following factors: the type of grounds and
 23.28 terrain surrounding the building and the proximity to hazards, busy roads, and publicly
 23.29 accessed businesses.

23.30 (c) The risk reduction plan must include a statement of measures that will be taken to
 23.31 minimize the risk of harm presented to children for each risk identified in the assessment
 23.32 required under paragraph (b) related to the physical plan and environment. At a minimum,
 23.33 ~~the risk reduction plan stated measures must address the following: include~~

23.34 ~~(1) a general description of supervision, programming, and the development and~~
 23.35 implementation of specific policies and procedures or reference to the existing policies

24.1 and procedures ~~developed and implemented to address~~ that minimize the risks identified
 24.2 ~~in the assessment required under paragraph (b) related to the general population served,~~
 24.3 ~~the physical plant, and environment.~~

24.4 ~~(2)~~ (d) In addition to any program-specific risks identified in paragraph (b), the plan
 24.5 must include development and implementation of specific policies and procedures or refer
 24.6 to existing policies and procedures ~~developed and implemented to~~ that minimize the risk
 24.7 of harm or injury to children, including:

- 24.8 ~~(i)~~ (1) closing children's fingers in doors, including cabinet doors;
- 24.9 ~~(ii)~~ (2) leaving children in the community without supervision;
- 24.10 ~~(iii)~~ (3) children leaving the facility without supervision;
- 24.11 ~~(iv)~~ (4) caregiver dislocation of children's elbows;
- 24.12 ~~(v)~~ (5) burns from hot food or beverages, whether served to children or being
 24.13 consumed by caregivers, and the devices used to warm food and beverages;
- 24.14 ~~(vi)~~ (6) injuries from equipment, such as scissors and glue guns;
- 24.15 ~~(vii)~~ (7) sunburn;
- 24.16 ~~(viii)~~ (8) feeding children foods to which they are allergic;
- 24.17 ~~(ix)~~ (9) children falling from changing tables; and
- 24.18 ~~(x)~~ (10) children accessing dangerous items or chemicals or coming into contact
 24.19 with residue from harmful cleaning products; ~~and.~~

24.20 ~~(3)~~ (e) The plan shall prohibit the accessibility of hazardous items to children.

24.21 (f) The plan must include a detailed supervision plan to ensure children are
 24.22 supervised at all times as defined in section 245A.02, subdivision 18. The supervision plan
 24.23 must include specific policies and procedures to ensure adequate supervision of children
 24.24 with particular emphasis on supervision:

- 24.25 (1) when children are transitioned from one area within the facility to another area;
- 24.26 (2) during nap time including infant crib rooms;
- 24.27 (3) during child drop off and pick up times;
- 24.28 (4) during outdoor play and on community activities such as field trips and
 24.29 neighborhood walks; and
- 24.30 (5) of children in hallways.

24.31 Sec. 21. Minnesota Statutes 2010, section 245A.66, subdivision 3, is amended to read:

24.32 Subd. 3. **Orientation to risk reduction plan and annual review of plan.** (a) The
 24.33 license holder shall ensure that all mandated reporters, as defined in section 626.556,
 24.34 subdivision 3, who are under the control of the license holder, receive an orientation to
 24.35 the risk reduction plan prior to first providing unsupervised direct contact services, as

25.1 defined in section 245C.02, subdivision 11, to children, not to exceed 14 days from the
 25.2 first supervised direct contact, and annually thereafter. The license holder must document
 25.3 the orientation to the risk reduction plan in the mandated reporter's personnel records.

25.4 (b) The license holder must review the risk reduction plan annually and document
 25.5 the annual review. When conducting the review, the license holder must consider incidents
 25.6 that have occurred in the center since the last review, including:

- 25.7 (1) the assessment factors in the plan;
- 25.8 (2) the internal reviews conducted under this section, if any;
- 25.9 (3) substantiated maltreatment findings, if any; and
- 25.10 (4) incidents that caused injury or harm to a child, if any, that occurred since the
 25.11 last review.

25.12 Following any change to the risk reduction plan, the license holder must inform mandated
 25.13 reporters, under the control of the license holder, of the changes in the risk reduction plan,
 25.14 and document that the mandated reporters were informed of the changes.

25.15 Sec. 22. Minnesota Statutes 2010, section 245C.03, subdivision 1, is amended to read:

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

- 25.18 (1) the person or persons applying for a license;
- 25.19 (2) an individual age 13 and over living in the household where the licensed program
 25.20 will be provided who is not receiving licensed services from the program;
- 25.21 (3) current or prospective employees or contractors of the applicant who will have
 25.22 direct contact with persons served by the facility, agency, or program;
- 25.23 (4) volunteers or student volunteers who will have direct contact with persons served
 25.24 by the program to provide program services if the contact is not under the continuous,
 25.25 direct supervision by an individual listed in clause (1) or (3);
- 25.26 (5) an individual age ten to 12 living in the household where the licensed services
 25.27 will be provided when the commissioner has reasonable cause;
- 25.28 (6) an individual who, without providing direct contact services at a licensed
 25.29 program, may have unsupervised access to children or vulnerable adults receiving services
 25.30 from a program, when the commissioner has reasonable cause; and
- 25.31 (7) all managerial officials as defined under section 245A.02, subdivision 5a.

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

26.1 Sec. 23. Minnesota Statutes 2010, section 245C.04, subdivision 1, is amended to read:

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

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

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

26.11 (1) registered under chapter 144D; or

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

26.15 (3) the following conditions are met:

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

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

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

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

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

27.1 (f) From January 1, 2010, to December 31, 2012, unless otherwise specified in
27.2 paragraph (c), the commissioner shall conduct a study of an individual required to
27.3 be studied under section 245C.03 at the time of reapplication for an adult foster care
27.4 or family adult day services license: (1) the county shall collect and forward to the
27.5 commissioner the information required under section 245C.05, subdivision 1, paragraphs
27.6 (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted
27.7 by the commissioner for all family adult day services and for adult foster care when
27.8 the adult foster care license holder resides in the adult foster care or family adult day
27.9 services residence; (2) the license holder shall collect and forward to the commissioner
27.10 the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b);
27.11 and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for
27.12 adult foster care when the license holder does not reside in the adult foster care residence;
27.13 and (3) the background study conducted by the commissioner under this paragraph must
27.14 include a review of the information required under section 245C.08, subdivision 1,
27.15 paragraph (a), clauses (1) to (5), and subdivisions 3 and 4.

27.16 (g) The commissioner shall conduct a background study of an individual specified
27.17 under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly
27.18 affiliated with an adult foster care or family adult day services license holder: (1) the
27.19 county shall collect and forward to the commissioner the information required under
27.20 section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a)
27.21 and (b), for background studies conducted by the commissioner for all family adult day
27.22 services and for adult foster care when the adult foster care license holder resides in
27.23 the adult foster care residence; (2) the license holder shall collect and forward to the
27.24 commissioner the information required under section 245C.05, subdivisions 1, paragraphs
27.25 (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the
27.26 commissioner for adult foster care when the license holder does not reside in the adult
27.27 foster care residence; and (3) the background study conducted by the commissioner under
27.28 this paragraph must include a review of the information required under section 245C.08,
27.29 subdivision 1, paragraph (a), and subdivisions 3 and 4.

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

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

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

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

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

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

28.14 (k) For purposes of family child care, a substitute caregiver must receive repeat
 28.15 background studies at the time of each license renewal.

28.16 Sec. 24. Minnesota Statutes 2010, section 245C.05, subdivision 2, is amended to read:

28.17 Subd. 2. **Applicant, license holder, or other entity.** The applicant, license holder,
 28.18 or other entities as provided in this chapter shall ~~provide~~ verify that the information
 28.19 collected under subdivision 1 about an individual who is the subject of the background
 28.20 study is correct and must provide the information on forms or in a format prescribed by
 28.21 the commissioner.

28.22 Sec. 25. Minnesota Statutes 2010, section 245C.05, is amended by adding a
 28.23 subdivision to read:

28.24 Subd. 2c. **Privacy notice to background study subject.** (a) For every background
 28.25 study, the commissioner's notice to the background study subject required under
 28.26 section 13.04, subdivision 2, that is provided through the commissioner's electronic
 28.27 NETStudy system or through the commissioner's background study forms shall include
 28.28 the information in paragraph (b).

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

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

29.1 (2) the reason for the disqualification; and
 29.2 (3) information about the decision to set aside the disqualification will be available
 29.3 to the license holder upon request without the consent of the background study subject.

29.4 Sec. 26. Minnesota Statutes 2010, section 245C.05, subdivision 4, is amended to read:

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

29.8 (1) background study information to the commissioner;

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

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

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

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

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

29.21 Sec. 27. Minnesota Statutes 2010, section 245C.05, subdivision 6, is amended to read:

29.22 Subd. 6. **Applicant, license holder, other entities, and agencies.** (a) The
 29.23 applicant, license holder, other entities as provided in this chapter, Bureau of Criminal
 29.24 Apprehension, commissioner of health, and county agencies shall help with the study by
 29.25 giving the commissioner criminal conviction data and reports about the maltreatment of
 29.26 adults substantiated under section 626.557 and the maltreatment of minors substantiated
 29.27 under section 626.556. Upon request, law enforcement agencies shall help with the study
 29.28 by giving the commissioner arrest and investigative data.

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

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

30.4 Sec. 28. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

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

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

30.12 (2) has been convicted of a crime constituting a disqualification under section
 30.13 245C.14.

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

30.16 (c) The commissioner, in consultation with the commissioner of corrections, shall
 30.17 develop forms and information necessary to implement this subdivision and shall provide
 30.18 the forms and information to the commissioner of corrections for distribution to local
 30.19 probation officers and corrections agents.

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

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

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

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

30.31 Sec. 29. Minnesota Statutes 2010, section 245C.07, is amended to read:

30.32 **245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

30.33 (a) ~~Except for child foster care and adoption agencies,~~ Subject to the conditions in
 30.34 paragraph (d), when a license holder, applicant, or other entity owns multiple programs or

31.1 services that are licensed by the Department of Human Services, Department of Health, or
31.2 Department of Corrections, only one background study is required for an individual who
31.3 provides direct contact services in one or more of the licensed programs or services if:

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

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

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

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

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

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

31.26 (d) If a background study was conducted on an individual related to child foster care
31.27 and the requirements under paragraph (a) are met, the background study is transferable
31.28 across all licensed programs. If a background study was conducted on an individual under
31.29 a license other than child foster care and the requirements under paragraph (a) are met, the
31.30 background study is transferable to all licensed programs except child foster care.

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

32.1 Sec. 30. Minnesota Statutes 2010, section 245C.08, subdivision 1, is amended to read:

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

32.5 (1) information related to names of substantiated perpetrators of maltreatment of
 32.6 vulnerable adults that has been received by the commissioner as required under section
 32.7 626.557, subdivision 9c, paragraph (j);

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

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

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

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

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

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

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

32.23 (b) ~~Notwithstanding expungement by a court, the commissioner may consider~~
 32.24 ~~information obtained under paragraph (a), clauses (3) and (4), unless the commissioner~~
 32.25 ~~received notice of the petition for expungement and the court order for expungement is~~
 32.26 ~~directed specifically to the commissioner. When the commissioner has reasonable cause to~~
 32.27 ~~believe that the identity of a background study subject is uncertain, the commissioner may~~
 32.28 ~~require the subject to provide a set of classifiable fingerprints and complete a record check~~
 32.29 ~~with the national crime information databases.~~

32.30 Sec. 31. Minnesota Statutes 2010, section 245C.08, subdivision 2, is amended to read:

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

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

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

33.2 (i) individuals listed in section 245C.03, subdivision 1, paragraph (a), who are ages
33.3 13 through 23 living in the household where the licensed services will be provided; and

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

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

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

33.10 ~~(c) Notwithstanding expungement by a court, the county agency may consider~~
33.11 ~~information obtained under paragraph (a), clause (3), unless the commissioner received~~
33.12 ~~notice of the petition for expungement and the court order for expungement is directed~~
33.13 ~~specifically to the commissioner.~~

33.14 Sec. 32. Minnesota Statutes 2010, section 245C.08, subdivision 3, is amended to read:

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

33.20 (1) the Bureau of Criminal Apprehension;

33.21 (2) the commissioner of health;

33.22 (3) a county attorney;

33.23 (4) a county sheriff;

33.24 (5) a county agency;

33.25 (6) a local chief of police;

33.26 (7) other states;

33.27 (8) the courts;

33.28 (9) the Federal Bureau of Investigation;

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

33.30 (11) criminal records from other states.

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

34.1 Sec. 33. Minnesota Statutes 2010, section 245C.08, is amended by adding a
34.2 subdivision to read:

34.3 Subd. 5. **Effect of expungement order.** Notwithstanding expungement by a
34.4 court, the commissioner or a county agency may consider information obtained under
34.5 this section, unless the commissioner received notice of the petition for expungement
34.6 and the court order for expungement specifically orders the commissioner to seal the
34.7 commissioner's records.

34.8 Sec. 34. Minnesota Statutes 2010, section 245C.14, subdivision 2, is amended to read:

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

34.13 (b) No individual who is disqualified following a background study under section
34.14 245C.03, subdivision 1, paragraph (a), ~~clauses (2), (5), and (6)~~, or as provided elsewhere
34.15 in statute who is disqualified as a result of this section, may be allowed access to persons
34.16 served by the program unless the commissioner has provided written notice under section
34.17 245C.17 stating that:

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

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

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

34.25 Sec. 35. Minnesota Statutes 2010, section 245C.15, is amended to read:

34.26 **245C.15 DISQUALIFYING CRIMES OR CONDUCT.**

34.27 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under
34.28 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the
34.29 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless
34.30 of the level of the offense, the individual has committed any of the following offenses:
34.31 sections 243.166 (violation of predatory offender registration law); 609.185 (murder in
34.32 the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third
34.33 degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second
34.34 degree); a felony offense under 609.221 or 609.222 (assault in the first or second degree);

35.1 a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal
 35.2 abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by
 35.3 strangulation); 609.228 (great bodily harm caused by distribution of drugs); 609.245
 35.4 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the
 35.5 first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663
 35.6 (murder of an unborn child in the third degree); 609.322 (solicitation, inducement, and
 35.7 promotion of prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342
 35.8 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the
 35.9 second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal
 35.10 sexual conduct in the fourth degree); 609.3451 (criminal sexual conduct in the fifth
 35.11 degree); 609.3453 (criminal sexual predatory conduct); 609.352 (solicitation of children
 35.12 to engage in sexual conduct); 609.365 (incest); a felony offense under 609.377 (malicious
 35.13 punishment of a child); a felony offense under 609.378 (neglect or endangerment of
 35.14 a child); 609.561 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting);
 35.15 609.746 (interference with privacy against a minor); 609.749, subdivision 3, 4, or 5
 35.16 (felony-level stalking); 609.855, subdivision 5 (shooting at or in a public transit vehicle or
 35.17 facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause (1) (indecent exposure
 35.18 involving a minor); 617.246 (use of minors in sexual performance prohibited); or 617.247
 35.19 (possession of pictorial representations of minors).

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

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

35.26 (d) When a disqualification is based on a judicial determination other than a
 35.27 conviction, the disqualification period begins from the date of the court order. When a
 35.28 disqualification is based on an admission, the disqualification period begins from the
 35.29 date of an admission in court. When a disqualification is based on an Alford Plea, the
 35.30 disqualification period begins from the date the Alford Plea is entered in court. When
 35.31 a disqualification is based on a preponderance of evidence of a disqualifying act, the
 35.32 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~
 35.33 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the
 35.34 date of the incident, whichever occurs last.

35.35 (e) If the individual studied commits one of the offenses listed in paragraph (a) that
 35.36 is specified as a felony-level only offense, but the sentence or level of offense is a gross

36.1 misdemeanor or misdemeanor, the individual is disqualified, but the disqualification
 36.2 look-back period for the offense is the period applicable to gross misdemeanor or
 36.3 misdemeanor offenses.

36.4 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section
 36.5 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,
 36.6 if any, for the offense; and (2) the individual has committed a felony-level violation of
 36.7 any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182
 36.8 (false representation; concealment of facts); 343.21 (overworking or mistreating animals);
 36.9 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.165 (felon
 36.10 ineligible to possess firearm); 609.21 (criminal vehicular homicide and injury); 609.215
 36.11 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses
 36.12 under 609.224 (assault in the fifth degree); 609.229 (crimes committed for benefit of a
 36.13 gang); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of
 36.14 a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple
 36.15 robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the
 36.16 first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267
 36.17 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the
 36.18 second degree); 609.268 (injury or death of an unborn child in the commission of a crime);
 36.19 609.27 (coercion); 609.275 (attempt to coerce); 609.466 (medical assistance fraud);
 36.20 609.495 (aiding an offender); 609.498, subdivision 1 or 1b (aggravated first-degree or
 36.21 first-degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting
 36.22 gear); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53
 36.23 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.562 (arson
 36.24 in the second degree); 609.563 (arson in the third degree); 609.582 (burglary); 609.59
 36.25 (possession of burglary tools); 609.611 (insurance fraud); 609.625 (aggravated forgery);
 36.26 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635 (obtaining
 36.27 signature by false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and
 36.28 short-barreled shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic
 36.29 threats); 609.746 (interference with privacy); 609.82 (fraud in obtaining credit); 609.821
 36.30 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor;
 36.31 repeat offenses under 617.241 (obscene materials and performances; distribution and
 36.32 exhibition prohibited; penalty); 624.713 (certain persons not to possess firearms); 629.75
 36.33 (violation of domestic abuse no contact order); providing material support to foreign
 36.34 terrorist organizations under United States Code, title 18, section 2339B; chapter 152
 36.35 (drugs; controlled substance); or a felony-level conviction involving alcohol or drug use.

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

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

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

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

37.16 (f) When a disqualification is based on a judicial determination other than a
37.17 conviction, the disqualification period begins from the date of the court order. When a
37.18 disqualification is based on an admission, the disqualification period begins from the
37.19 date of an admission in court. When a disqualification is based on an Alford Plea, the
37.20 disqualification period begins from the date the Alford Plea is entered in court. When
37.21 a disqualification is based on a preponderance of evidence of a disqualifying act, the
37.22 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~
37.23 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the
37.24 date of the incident, whichever occurs last.

37.25 Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section
37.26 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed,
37.27 if any, for the offense; and (2) the individual has committed a gross misdemeanor-level
37.28 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
37.29 assistance); 268.182 (false representation; concealment of facts); 343.21 (overworking or
37.30 mistreating animals); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program
37.31 fraud); 609.21 (criminal vehicular homicide and injury); 609.221 or 609.222 (assault in
37.32 the first or second degree); 609.223 or 609.2231 (assault in the third or fourth degree);
37.33 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the
37.34 fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic
37.35 assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents
37.36 or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect

38.1 of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234
38.2 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275
38.3 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in
38.4 prostitution); 609.33 (disorderly house); 609.377 (malicious punishment of a child);
38.5 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52
38.6 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53
38.7 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary);
38.8 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check
38.9 forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72,
38.10 subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under
38.11 609.746 (interference with privacy); 609.749, subdivision 2 (stalking); 609.82 (fraud in
38.12 obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent exposure),
38.13 not involving a minor; 617.241 (obscene materials and performances); 617.243 (indecent
38.14 literature, distribution); 617.293 (harmful materials; dissemination and display to minors
38.15 prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

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

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

38.24 (d) If the individual studied commits one of the offenses listed in paragraph
38.25 (a), but the sentence or level of offense is a misdemeanor disposition, the individual
38.26 is disqualified but the disqualification lookback period for the offense is the period
38.27 applicable to misdemeanors. If the individual studied commits one of the offenses listed in
38.28 paragraph (a), but the sentence or level of offense is a felony disposition, the individual
38.29 is disqualified, but the disqualification look-back period for the offense is the period
38.30 applicable to that felony offense under this section.

38.31 (e) When a disqualification is based on a judicial determination other than a
38.32 conviction, the disqualification period begins from the date of the court order. When a
38.33 disqualification is based on an admission, the disqualification period begins from the
38.34 date of an admission in court. When a disqualification is based on an Alford Plea, the
38.35 disqualification period begins from the date the Alford Plea is entered in court. When
38.36 a disqualification is based on a preponderance of evidence of a disqualifying act, the

39.1 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~
 39.2 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the
 39.3 date of the incident, whichever occurs last.

39.4 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under
 39.5 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence
 39.6 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level
 39.7 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
 39.8 assistance); 268.182 (false representation; concealment of facts); 343.21 (overworking or
 39.9 mistreating animals); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program
 39.10 fraud); 609.21 (criminal vehicular homicide and injury); 609.221 (assault in the first
 39.11 degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree);
 39.12 609.2231 (assault in the fourth degree); 609.224 (assault in the fifth degree); 609.2242
 39.13 (domestic assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234
 39.14 (failure to report maltreatment of a vulnerable adult); 609.2672 (assault of an unborn
 39.15 child in the third degree); 609.27 (coercion); violation of an order for protection under
 39.16 609.3232 (protective order authorized; procedures; penalties); 609.466 (medical assistance
 39.17 fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity
 39.18 theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks);
 39.19 609.611 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746
 39.20 (interference with privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter,
 39.21 telegram, or package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821
 39.22 (financial transaction card fraud); 617.23 (indecent exposure), not involving a minor;
 39.23 617.293 (harmful materials; dissemination and display to minors prohibited); or violation
 39.24 of an order for protection under section 518B.01 (Domestic Abuse Act).

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

39.27 (1) failure to make required reports under section 626.556, subdivision 3, or
 39.28 626.557, subdivision 3, for incidents in which: (i) the final disposition under section
 39.29 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was
 39.30 recurring or serious; or

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

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

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

40.9 (e) When a disqualification is based on a judicial determination other than a
 40.10 conviction, the disqualification period begins from the date of the court order. When a
 40.11 disqualification is based on an admission, the disqualification period begins from the
 40.12 date of an admission in court. When a disqualification is based on an Alford Plea, the
 40.13 disqualification period begins from the date the Alford Plea is entered in court. When
 40.14 a disqualification is based on a preponderance of evidence of a disqualifying act, the
 40.15 disqualification date begins from the date of the dismissal, ~~the date of discharge of the~~
 40.16 ~~sentence imposed for a conviction for a disqualifying crime of similar elements,~~ or the
 40.17 date of the incident, whichever occurs last.

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

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

40.24 (h) An individual is disqualified under section 245C.14 if less than seven years have
 40.25 passed since a determination by the commissioner under section 268.18, subdivision 2,
 40.26 that the individual has obtained unemployment benefits by fraud.

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

40.30 Sec. 36. Minnesota Statutes 2010, section 245C.16, subdivision 1, is amended to read:

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

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

- 41.3 (1) the recency of the disqualifying characteristic;
41.4 (2) the recency of discharge from probation for the crimes;
41.5 (3) the number of disqualifying characteristics;
41.6 (4) the intrusiveness or violence of the disqualifying characteristic;
41.7 (5) the vulnerability of the victim involved in the disqualifying characteristic;
41.8 (6) the similarity of the victim to the persons served by the program where the
41.9 individual studied will have direct contact;

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

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

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

41.19 (d) This section does not apply to a background study related to an initial application
41.20 for a child foster care license.

41.21 (e) This section does not apply to a background study that is also subject to the
41.22 requirements under section 256B.0659, subdivisions 11 and 13, for a personal care
41.23 assistant or a qualified professional as defined in section 256B.0659, subdivision 1.

41.24 ~~(e)~~ (f) If the commissioner has reason to believe, based on arrest information or an
41.25 active maltreatment investigation, that an individual poses an imminent risk of harm to
41.26 persons receiving services, the commissioner may order that the person be continuously
41.27 supervised or immediately removed pending the conclusion of the maltreatment
41.28 investigation or criminal proceedings.

41.29 Sec. 37. Minnesota Statutes 2010, section 245C.17, subdivision 2, is amended to read:

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

- 41.33 (1) the information causing disqualification;
41.34 (2) instructions on how to request a reconsideration of the disqualification;

42.1 (3) an explanation of any restrictions on the commissioner's discretion to set aside
42.2 the disqualification under section 245C.24, when applicable to the individual;

42.3 (4) a statement that, if the individual's disqualification is set-aside under section
42.4 245C.22, the applicant, license holder, or other entity that initiated the background study
42.5 will be provided with the reason for the individual's disqualification and an explanation
42.6 that the factors under section 245C.22, subdivision 4, which were the basis of the decision
42.7 to set aside the disqualification shall be made available to the license holder upon request
42.8 without the consent of the subject of the background study;

42.9 ~~(4)~~ (5) a statement indicating that if the individual's disqualification is set aside or
42.10 the facility is granted a variance under section 245C.30, the individual's identity and the
42.11 reason for the individual's disqualification will become public data under section 245C.22,
42.12 subdivision 7, when applicable to the individual; ~~and~~

42.13 (6) a statement that when a subsequent background study is initiated on the
42.14 individual following a set aside of the individual's disqualification, and the commissioner
42.15 makes a determination under section 245C.22, subdivision 5, paragraph (b), that the
42.16 previous set-aside applies to the subsequent background study, the applicant, license
42.17 holder, or other entity that initiated the background study will be informed in the notice
42.18 under section 245C.22, subdivision 5, paragraph (c):

42.19 (i) of the reason for the individual's disqualification;

42.20 (ii) that the individual's disqualification is set aside for that program or agency; and

42.21 (iii) that information about the factors under section 245C.22, subdivision 4, that
42.22 were the basis of the decision to set aside the disqualification are available to the license
42.23 holder upon request without the consent of the background study subject; and

42.24 ~~(5)~~ (7) the commissioner's determination of the individual's immediate risk of harm
42.25 under section 245C.16.

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

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

42.35 Sec. 38. Minnesota Statutes 2010, section 245C.22, subdivision 5, is amended to read:

43.1 Subd. 5. **Scope of set-aside.** (a) If the commissioner sets aside a disqualification
 43.2 under this section, the disqualified individual remains disqualified, but may hold a license
 43.3 and have direct contact with or access to persons receiving services. Except as provided
 43.4 in paragraph (b), the commissioner's set-aside of a disqualification is limited solely
 43.5 to the licensed program, applicant, or agency specified in the set aside notice under
 43.6 section 245C.23, unless otherwise specified in the notice. For personal care provider
 43.7 organizations, the commissioner's set-aside may further be limited to a specific individual
 43.8 who is receiving services. For new background studies required under section 245C.04,
 43.9 subdivision 1, paragraph (i), if an individual's disqualification was previously set aside for
 43.10 the license holder's program and the new background study results in no new information
 43.11 that indicates the individual may pose a risk of harm to persons receiving services from
 43.12 the license holder, the previous set-aside shall remain in effect.

43.13 (b) If the commissioner has previously set aside an individual's disqualification
 43.14 for one or more programs or agencies, and the individual is the subject of a subsequent
 43.15 background study for a different program or agency, the commissioner shall determine
 43.16 whether the disqualification is set aside for the program or agency that initiated the
 43.17 subsequent background study. A notice of a set-aside under paragraph (c) shall be issued
 43.18 within 15 working days if all of the following criteria are met:

43.19 (1) the subsequent background study was initiated in connection with a program
 43.20 licensed or regulated under the same provisions of law and rule for at least one program
 43.21 for which the individual's disqualification was previously set aside by the commissioner;

43.22 (2) the individual is not disqualified for an offense specified in section 245C.15,
 43.23 subdivision 1 or 2;

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

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

43.27 (c) When a disqualification is set aside under paragraph (b), the notice of background
 43.28 study results issued under section 245C.17, in addition to the requirements under section
 43.29 245C.17, shall state that the disqualification is set aside for the program or agency that
 43.30 initiated the subsequent background study. The notice must inform the individual that the
 43.31 individual may request reconsideration of the disqualification under section 245C.21 on
 43.32 the basis that the information used to disqualify the individual is incorrect.

43.33 Sec. 39. Minnesota Statutes 2010, section 245C.23, subdivision 2, is amended to read:

43.34 Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The
 43.35 commissioner shall notify the license holder of the disqualification and order the license

44.1 holder to immediately remove the individual from any position allowing direct contact
44.2 with persons receiving services from the license holder if:

44.3 (1) the individual studied does not submit a timely request for reconsideration
44.4 under section 245C.21;

44.5 (2) the individual submits a timely request for reconsideration, but the commissioner
44.6 does not set aside the disqualification for that license holder under section 245C.22, and
44.7 the individual does not have a right to a hearing under sections 245C.27 and 256.045, or
44.8 245C.28 and chapter 14;

44.9 (3) an individual who has a right to request a hearing under sections 245C.27 and
44.10 256.045, or 245C.28 and chapter 14 for a disqualification that has not been set aside, does
44.11 not request a hearing within the specified time; or

44.12 (4) an individual submitted a timely request for a hearing under sections 245C.27
44.13 and 256.045, or 245C.28 and chapter 14, but the commissioner does not set aside the
44.14 disqualification under section 245A.08, subdivision 5, or 256.045.

44.15 (b) If the commissioner does not set aside the disqualification under section 245C.22,
44.16 and the license holder was previously ordered under section 245C.17 to immediately
44.17 remove the disqualified individual from direct contact with persons receiving services or
44.18 to ensure that the individual is under continuous, direct supervision when providing direct
44.19 contact services, the order remains in effect pending the outcome of a hearing under
44.20 sections 245C.27 and 256.045, or 245C.28 and chapter 14.

44.21 (c) If the commissioner does not set aside the disqualification under section
44.22 245C.22, and the license holder was not previously ordered to immediately remove the
44.23 individual from any position allowing direct contact with persons receiving services from
44.24 the program or to ensure that the individual is under continuous, direct supervision when
44.25 providing direct contact services, the commissioner shall order the license holder to ensure
44.26 that the individual remains under continuous, direct supervision when providing direct
44.27 contact services pending the outcome of a hearing under sections 245C.27 and 256.045, or
44.28 245C.28 and chapter 14.

44.29 ~~(e)~~ (d) For background studies related to child foster care, the commissioner shall
44.30 also notify the county or private agency that initiated the study of the results of the
44.31 reconsideration.

44.32 ~~(d)~~ (e) For background studies related to adult foster care and family adult day
44.33 services, the commissioner shall also notify the county that initiated the study of the
44.34 results of the reconsideration.

44.35 Sec. 40. Minnesota Statutes 2010, section 245C.24, subdivision 2, is amended to read:

45.1 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as otherwise
45.2 provided in paragraph (b) this section, the commissioner may not set aside the
45.3 disqualification of any individual disqualified pursuant to this chapter, regardless of how
45.4 much time has passed, if the individual was disqualified for a crime or conduct listed in
45.5 section 245C.15, subdivision 1.

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

45.14 (c) When a licensed foster care provider adopts an individual who had received
45.15 foster care services from the provider for over six months, and the adopted individual is
45.16 required to receive a background study under section 245C.03, subdivision 1, paragraph
45.17 (a), clause (2) or (6), the commissioner may grant a variance to the license holder under
45.18 section 245C.30 to permit the adopted individual with a permanent disqualification
45.19 to remain affiliated with the license holder under the conditions of the variance when
45.20 the variance is recommended by the county of responsibility for each of the remaining
45.21 individuals in placement in the home and the licensing agency for the home.

45.22 (d) For background studies related to an application or license to provide child foster
45.23 care for a specific child related to the applicant or license holder, the commissioner shall
45.24 consider granting a variance under section 245C.30 to an individual with a disqualification
45.25 under section 245C.15, subdivision 1. The variance shall be limited to the specific child
45.26 related to the applicant or license holder.

45.27 (e) When a background study is required on a child foster care provider's former
45.28 recipient of foster care services because the former recipient of foster care services
45.29 returns for occasional overnight visits or temporarily resides with the foster parents, the
45.30 commissioner shall consider granting a variance under section 245C.30 related to the
45.31 former foster care recipient with a disqualification under section 245C.15, subdivision 1.

45.32 Sec. 41. Minnesota Statutes 2010, section 245C.28, subdivision 1, is amended to read:

45.33 Subdivision 1. **License holder.** (a) If a maltreatment determination or a
45.34 disqualification for which reconsideration was requested and which was not set aside is
45.35 the basis for a denial of a license under section 245A.05 or a licensing sanction under

46.1 section 245A.07, the license holder has the right to a contested case hearing under chapter
46.2 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder must submit
46.3 the appeal under section 245A.05 or 245A.07, subdivision 3.

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

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

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

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

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

46.16 (2) the disqualification, if the disqualification is not conclusive under section
46.17 245C.29; and

46.18 (3) the licensing sanction or denial of a license. In such cases, a fair hearing must not
46.19 be conducted under section 256.045. If the disqualification was based on a determination
46.20 of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the
46.21 appeal must be submitted under sections 245A.07, subdivision 3, and 626.556, subdivision
46.22 10i, or 626.557, subdivision 9d.

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

46.27 (1) a denial of a license under section 245A.05, or a licensing sanction under section
46.28 245A.07, is based on a determination that the license holder is responsible for maltreatment
46.29 or the disqualification of a license holder based on serious or recurring maltreatment;

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

46.32 (3) the license holder appeals the maltreatment determination, disqualification, and
46.33 denial of a license or licensing sanction. In such cases a fair hearing under section 256.045
46.34 must not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557,
46.35 subdivision 9d. Under section 245A.08, subdivision 2a, the scope of the consolidated

47.1 contested case hearing must include the maltreatment determination, disqualification, and
47.2 denial of a license or licensing sanction.

47.3 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
47.4 determination or disqualification, but does not appeal the denial of a license or a licensing
47.5 sanction, reconsideration of the maltreatment determination shall be conducted under
47.6 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the
47.7 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing
47.8 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and
47.9 626.557, subdivision 9d.

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

47.13 Sec. 42. Minnesota Statutes 2010, section 245C.28, subdivision 3, is amended to read:

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

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

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

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

47.34 (e) In determining whether the disqualification should be set aside, the administrative
47.35 law judge shall consider all of the characteristics that cause the individual to be disqualified

48.1 in order to determine whether the individual poses a risk of harm. The administrative law
 48.2 judge's recommendation and the commissioner's order to set aside a disqualification that is
 48.3 the subject of the hearing constitutes a determination that the individual does not pose a
 48.4 risk of harm and that the individual may provide direct contact services in the individual
 48.5 program specified in the set aside.

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

48.9 Sec. 43. Minnesota Statutes 2010, section 245C.29, subdivision 2, is amended to read:

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

48.13 ~~(1) the information the commissioner relied upon to disqualify an individual under~~
 48.14 ~~section 245C.14 was correct based on (1)(i) serious or recurring maltreatment as defined~~
 48.15 in section 245C.02;

48.16 ~~(2)(ii) a preponderance of the evidence shows~~ showing that the individual committed
 48.17 an act or acts that meet the definition of any of the crimes listed in section 245C.15; or

48.18 ~~(3)(iii) the individual failed~~ individual's failure to make required reports under
 48.19 section 626.556, subdivision 3, or 626.557, subdivision 3, ~~is conclusive if~~; and

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

48.23 (ii) the individual did not request reconsideration of the disqualification under
 48.24 section 245C.21 on the basis that the information relied upon to disqualify the subject
 48.25 was incorrect; or

48.26 (iii) the individual did not timely request a hearing on the disqualification under
 48.27 section 256.045 or chapter 14.

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

48.34 (c) If a ~~determination that the information relied upon to disqualify an individual~~
 48.35 ~~was correct and~~ disqualification is conclusive under this section, ~~and~~ the individual

49.1 ~~is subsequently disqualified under section 245C.15, the individual has a right to request~~
 49.2 ~~reconsideration on the risk of harm under section 245C.21. Subsequent determinations~~
 49.3 ~~regarding the risk of harm. The commissioner's decision on reconsideration shall be made~~
 49.4 ~~according to section 245C.22 and are not subject to another~~ the final agency decision and
 49.5 not subject to a hearing under section 256.045 or chapter 14.

49.6 Sec. 44. Minnesota Statutes 2010, section 256.045, subdivision 3b, is amended to read:

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

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

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

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

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

49.20 (b) If the disqualification is affirmed, the state human services referee shall
 49.21 determine whether the individual poses a risk of harm in accordance with the requirements
 49.22 of section 245C.22, and whether the disqualification should be set aside or not set aside.
 49.23 In determining whether the disqualification should be set aside, the human services
 49.24 referee shall consider all of the characteristics that cause the individual to be disqualified,
 49.25 including those characteristics that were not subject to review under paragraph (a), in
 49.26 order to determine whether the individual poses a risk of harm. A decision to set aside
 49.27 a disqualification that is the subject of the hearing constitutes a determination that the
 49.28 individual does not pose a risk of harm and that the individual may provide direct contact
 49.29 services in the individual program specified in the set aside. ~~If a determination that the~~
 49.30 ~~information relied upon to disqualify an individual was correct and is conclusive under~~
 49.31 ~~section 245C.29, and the individual is subsequently disqualified under section 245C.14,~~
 49.32 ~~the individual has a right to again request reconsideration on the risk of harm under section~~
 49.33 ~~245C.21. Subsequent determinations regarding risk of harm are not subject to another~~
 49.34 ~~hearing under this section.~~

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

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

50.7 ~~(e)~~ (e) The state human services referee shall recommend an order to the
 50.8 commissioner of health, education, or human services, as applicable, who shall issue a
 50.9 final order. The commissioner shall affirm, reverse, or modify the final disposition. Any
 50.10 order of the commissioner issued in accordance with this subdivision is conclusive upon
 50.11 the parties unless appeal is taken in the manner provided in subdivision 7. In any licensing
 50.12 appeal under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to
 50.13 144A.46, the commissioner's determination as to maltreatment is conclusive, as provided
 50.14 under section 245C.29.

50.15 Sec. 45. **REVISOR'S INSTRUCTION.**

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

50.19 Sec. 46. **REPEALER.**

50.20 Minnesota Rules, part 9503.0150, item E, is repealed.

50.21 **ARTICLE 3**

50.22 **PROGRAM INTEGRITY**

50.23 Section 1. Minnesota Statutes 2010, section 245A.04, subdivision 1, is amended to
 50.24 read:

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

51.1 The commissioner shall act on the application within 90 working days after a
 51.2 complete application and any required reports have been received from other state
 51.3 agencies or departments, counties, municipalities, or other political subdivisions. The
 51.4 commissioner shall not consider an application to be complete until the commissioner
 51.5 receives all of the information required under section 245C.05.

51.6 (b) An application for licensure must specify one or more controlling individuals as
 51.7 an agent who is responsible for dealing with the commissioner of human services on all
 51.8 matters provided for in this chapter and on whom service of all notices and orders must be
 51.9 made. The agent must be authorized to accept service on behalf of all of the controlling
 51.10 individuals of the program. Service on the agent is service on all of the controlling
 51.11 individuals of the program. It is not a defense to any action arising under this chapter that
 51.12 service was not made on each controlling individual of the program. The designation of
 51.13 one or more controlling individuals as agents under this paragraph does not affect the legal
 51.14 responsibility of any other controlling individual under this chapter.

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

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

51.24 (e) An applicant for licensure and renewal of licensure must indicate whether the
 51.25 applicant or license holder program intends to receive, has received, or intends not to
 51.26 receive any public funding reimbursement for services provided. For an applicant or
 51.27 license holder that received or intends to receive public funding for services, the applicant
 51.28 or license holder must:

51.29 (1) attest to full compliance with the public program's enrollment provider agreement
 51.30 requirements;

51.31 (2) acknowledge that the applicant or license holder's compliance with public
 51.32 program enrollment provider agreement requirements may be monitored by the
 51.33 commissioner as part of a licensing investigation or inspection; and

51.34 (3) acknowledge that noncompliance with public program enrollment agreement
 51.35 requirements that are identified through a licensing investigation or inspection, or
 51.36 noncompliance with licensing requirements may result in nonpayment of claims submitted

52.1 by the license holder for public program reimbursement or recovery of reimbursement
52.2 funds if paid and also may result in disenrollment from the public program.

52.3 Sec. 2. Minnesota Statutes 2010, section 245A.14, is amended by adding a subdivision
52.4 to read:

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

52.11 Sec. 3. Minnesota Statutes 2011 Supplement, section 256B.04, subdivision 21, is
52.12 amended to read:

52.13 Subd. 21. **Provider enrollment.** (a) If the commissioner or the Centers for
52.14 Medicare and Medicaid Services determines that a provider is designated "high-risk," the
52.15 commissioner may withhold payment from providers within that category upon initial
52.16 enrollment for a 90-day period. The withholding for each provider must begin on the date
52.17 of the first submission of a claim.

52.18 (b) As a condition of enrollment in medical assistance and of licensure under chapter
52.19 245A, the commissioner shall require that a provider entity have a designated compliance
52.20 officer. The compliance officer must:

52.21 (1) develop policies and procedures to assure adherence to medical assistance laws
52.22 and regulations and to prevent inappropriate claims submissions;

52.23 (2) train the employees of the provider entity, and any agents or subcontractors of
52.24 the provider entity including billers, on the policies and procedures under clause (1);

52.25 (3) respond to allegations of improper conduct related to the provision or billing of
52.26 medical assistance services, and implement action to remediate any resulting problems;

52.27 (4) use evaluation techniques to monitor compliance with medical assistance laws
52.28 and regulations;

52.29 (5) promptly report to the commissioner any identified violations of medical
52.30 assistance laws or regulations; and

52.31 (6) promptly repay or make arrangements to repay any identified overpayments of
52.32 medical assistance reimbursement.

53.1 The commissioner may require, as a condition of enrollment in medical assistance, that a
53.2 provider within a particular industry sector or category establish a compliance program that
53.3 contains the core elements established by the Centers for Medicare and Medicaid Services.

53.4 (c) The commissioner may revoke the enrollment of an ordering or rendering
53.5 provider for a period of not more than one year, if the provider fails to maintain and, upon
53.6 request from the commissioner, provide access to documentation relating to written orders
53.7 or requests for payment for durable medical equipment, certifications for home health
53.8 services, or referrals for other items or services written or ordered by such provider, when
53.9 the commissioner has identified a pattern of a lack of documentation. A pattern means a
53.10 failure to maintain documentation or provide access to documentation on more than one
53.11 occasion. Nothing in this paragraph limits the authority of the commissioner to sanction a
53.12 provider under the provisions of section 256B.064.

53.13 (d) The commissioner shall terminate or deny the enrollment of any individual or
53.14 entity if the individual or entity has been terminated from participation in Medicare or
53.15 under the Medicaid program or Children's Health Insurance Program of any other state.

53.16 (e) As a condition of enrollment in medical assistance, the commissioner shall
53.17 require that a provider designated "moderate" or "high-risk" by the Centers for Medicare
53.18 and Medicaid Services or the Minnesota Department of Human Services permit the
53.19 Centers for Medicare and Medicaid Services, its agents, or its designated contractors and
53.20 the state agency, its agents, or its designated contractors to conduct unannounced on-site
53.21 inspections of any provider location.

53.22 (f) As a condition of enrollment in medical assistance, the commissioner shall
53.23 require that a high-risk provider, or a person with a direct or indirect ownership interest in
53.24 the provider of five percent or higher, consent to criminal background checks, including
53.25 fingerprinting, when required to do so under state law or by a determination by the
53.26 commissioner or the Centers for Medicare and Medicaid Services that a provider is
53.27 designated high-risk for fraud, waste, or abuse.

APPENDIX
Article locations in 12-3995

ARTICLE 1	DATA PRACTICES	Page.Ln 1.20
ARTICLE 2	LICENSING	Page.Ln 6.4
ARTICLE 3	PROGRAM INTEGRITY	Page.Ln 50.21