

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE **S.F. No. 2357**

(SENATE AUTHORS: NEWMAN and Lourey)

DATE	D-PG	OFFICIAL STATUS
03/12/2012	4311	Introduction and first reading Referred to Health and Human Services
03/14/2012	4398a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety
03/23/2012	4922	Author added Lourey
03/29/2012	5262	Comm report: To pass
	5263	Joint rule 2.03, referred to Rules and Administration
04/02/2012	5548	Rules suspended Joint rule 2.03
	5549	Second reading
04/05/2012	5800	Special Order
	5800	Third reading Passed See SF2093, Art. 4, Sec. 11 See SF1675, Art. 15-17 See HF2294, Art. 4, Sec. 12

A bill for an act

1.1 relating to human services; changing human services legal provisions; modifying
1.2 provisions related to human services licensing, licensing data, and the Office of
1.3 Inspector General; amending the Human Services Background Studies Act;
1.4 amending Minnesota Statutes 2010, sections 13.46, subdivisions 2, 3, 4; 13.82,
1.5 subdivision 1; 245A.04, subdivisions 1, 7, 11, by adding a subdivision; 245A.05;
1.6 245A.07, subdivision 3; 245A.08, subdivision 2a; 245A.14, subdivision 11, by
1.7 adding a subdivision; 245A.146, subdivisions 2, 3; 245A.18, subdivision 1;
1.8 245A.22, subdivision 2; 245A.66, subdivisions 2, 3; 245C.03, subdivision 1;
1.9 245C.04, subdivision 1; 245C.05, subdivisions 2, 4, 7, by adding a subdivision;
1.10 245C.07; 245C.16, subdivision 1; 245C.17, subdivision 2; 245C.22, subdivision
1.11 5; 245C.24, subdivision 2; Minnesota Statutes 2011 Supplement, section
1.12 256B.04, subdivision 21; proposing coding for new law in Minnesota Statutes,
1.13 chapter 245A; repealing Minnesota Rules, part 9503.0150, item E.
1.14

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

ARTICLE 1

DATA PRACTICES

1.18 Section 1. Minnesota Statutes 2010, section 13.46, subdivision 2, is amended to read:

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

1.23 (1) according to section 13.05;

1.24 (2) according to court order;

1.25 (3) according to a statute specifically authorizing access to the private data;

1.26 (4) to an agent of the welfare system and an investigator acting on behalf of a county,
1.27 the state, or the federal government, including a law enforcement person, or attorney, ~~or~~

2.1 ~~investigator acting for it~~ in the investigation or prosecution of a criminal ~~or~~ civil, or
2.2 administrative proceeding relating to the administration of a program;

2.3 (5) to personnel of the welfare system who require the data to verify an individual's
2.4 identity; determine eligibility, amount of assistance, and the need to provide services to
2.5 an individual or family across programs; evaluate the effectiveness of programs; assess
2.6 parental contribution amounts; and investigate suspected fraud;

2.7 (6) to administer federal funds or programs;

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

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

2.20 (9) between the Department of Human Services, the Department of Employment
2.21 and Economic Development, and when applicable, the Department of Education, for
2.22 the following purposes:

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

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

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

2.31 (iv) to analyze public assistance employment services and program utilization,
2.32 cost, effectiveness, and outcomes as implemented under the authority established in Title
2.33 II, Sections 201-204 of the Ticket to Work and Work Incentives Improvement Act of
2.34 1999. Health records governed by sections 144.291 to 144.298 and "protected health
2.35 information" as defined in Code of Federal Regulations, title 45, section 160.103, and

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3.1 governed by Code of Federal Regulations, title 45, parts 160-164, including health care
3.2 claims utilization information, must not be exchanged under this clause;

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

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

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

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

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

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

3.25 (i) the participant:

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

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

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

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

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

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

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

4.9 (i) the member:

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

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

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

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

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

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

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

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

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

4.33 (23) to the Department of Education for the purpose of matching Department of
4.34 Education student data with public assistance data to determine students eligible for free
4.35 and reduced-price meals, meal supplements, and free milk according to United States
4.36 Code, title 42, sections 1758, 1761, 1766, 1766a, 1772, and 1773; to allocate federal and

5.1 state funds that are distributed based on income of the student's family; and to verify
5.2 receipt of energy assistance for the telephone assistance plan;

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

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

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

5.15 (27) to monitor and evaluate the Minnesota family investment program by
5.16 exchanging data between the Departments of Human Services and Education, on
5.17 recipients and former recipients of food support, cash assistance under chapter 256, 256D,
5.18 256J, or 256K, child care assistance under chapter 119B, or medical programs under
5.19 chapter 256B, 256D, or 256L;

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

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

5.29 (30) child support data on the parents and the child may be disclosed to agencies
5.30 administering programs under titles IV-B and IV-E of the Social Security Act, as provided
5.31 by federal law. Data may be disclosed only to the extent necessary for the purpose of
5.32 establishing parentage or for determining who has or may have parental rights with respect
5.33 to a child, which could be related to permanency planning.

5.34 (b) Information on persons who have been treated for drug or alcohol abuse may
5.35 only be disclosed according to the requirements of Code of Federal Regulations, title
5.36 42, sections 2.1 to 2.67.

6.1 (c) Data provided to law enforcement agencies under paragraph (a), clause (15),
6.2 (16), (17), or (18), or paragraph (b), are investigative data and are confidential or protected
6.3 nonpublic while the investigation is active. The data are private after the investigation
6.4 becomes inactive under section 13.82, subdivision 5, paragraph (a) or (b).

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

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

6.9 Sec. 2. Minnesota Statutes 2010, section 13.46, subdivision 3, is amended to read:

6.10 Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of
6.11 services, licensees, and applicants that is collected, maintained, used, or disseminated
6.12 by the welfare system in an investigation, authorized by statute, and relating to the
6.13 enforcement of rules or law is confidential data on individuals pursuant to section 13.02,
6.14 subdivision 3, or protected nonpublic data not on individuals pursuant to section 13.02,
6.15 subdivision 13, and shall not be disclosed except:

6.16 (1) pursuant to section 13.05;

6.17 (2) pursuant to statute or valid court order;

6.18 (3) to a party named in a civil or criminal proceeding, administrative or judicial, for
6.19 preparation of defense; or

6.20 (4) to provide notices required or permitted by statute.

6.21 The data referred to in this subdivision shall be classified as public data upon
6.22 its submission to an administrative law judge or court in an administrative or judicial
6.23 proceeding. Inactive welfare investigative data shall be treated as provided in section
6.24 13.39, subdivision 3.

6.25 (b) Notwithstanding any other provision in law, the commissioner of human services
6.26 shall provide all active and inactive investigative data, including the name of the reporter
6.27 of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental
6.28 health and developmental disabilities upon the request of the ombudsman.

6.29 (c) Notwithstanding paragraph (a) and section 13.39, the existence and status of an
6.30 investigation by the commissioner of human services of possible overpayments of public
6.31 funds to a service provider are public data during the investigation.

6.32 Sec. 3. Minnesota Statutes 2010, section 13.46, subdivision 4, is amended to read:

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

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

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

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

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

7.20 (ii) When a correction order, an order to forfeit a fine, an order of license suspension,
7.21 an order of temporary immediate suspension, an order of license revocation, an order
7.22 of license denial, or an order of conditional license has been issued, or a complaint is
7.23 resolved, the following data on current and former licensees and applicants are public: the
7.24 substance and investigative findings of the licensing or maltreatment complaint, licensing
7.25 violation, or substantiated maltreatment; the record of informal resolution of a licensing
7.26 violation; orders of hearing; findings of fact; conclusions of law; specifications of the final
7.27 correction order, fine, suspension, temporary immediate suspension, revocation, denial, or
7.28 conditional license contained in the record of licensing action; whether a fine has been
7.29 paid; and the status of any appeal of these actions. ~~If a licensing sanction under section
7.30 245A.07, or a license denial under section 245A.05, is based on a determination that the
7.31 license holder or applicant is responsible for maltreatment or is disqualified under chapter
7.32 245C, the identity of the license holder or applicant as the individual responsible for
7.33 maltreatment or as the disqualified individual is public data at the time of the issuance of
7.34 the licensing sanction or denial.~~

7.35 (iii) When a license denial under section 245A.05 or a sanction under section
7.36 245A.07 is based on a determination that the license holder or applicant is responsible for

8.1 maltreatment under section 626.556 or 626.557, the identity of the applicant or license
8.2 holder as the individual responsible for maltreatment is public data at the time of the
8.3 issuance of the license denial or sanction.

8.4 (iv) When a license denial under section 245A.05 or a sanction under section
8.5 245A.07 is based on a determination that the license holder or applicant is disqualified
8.6 under chapter 245C, the identity of the license holder or applicant as the disqualified
8.7 individual and the reason for the disqualification are public data at the time of the
8.8 issuance of the licensing sanction or denial. If the applicant or license holder requests
8.9 reconsideration of the disqualification and the disqualification is affirmed, the reason for
8.10 the disqualification and the reason to not set aside the disqualification are public data.

8.11 (2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b,
8.12 when any person subject to disqualification under section 245C.14 in connection with a
8.13 license to provide family day care for children, child care center services, foster care
8.14 for children in the provider's home, or foster care or day care services for adults in the
8.15 provider's home is a substantiated perpetrator of maltreatment, and the substantiated
8.16 maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator
8.17 of maltreatment is public data. For purposes of this clause, a person is a substantiated
8.18 perpetrator if the maltreatment determination has been upheld under section 256.045;
8.19 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or
8.20 facility has not timely exercised appeal rights under these sections, except as provided
8.21 under clause (1).

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

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

8.34 (5) The following data on persons subject to disqualification under section 245C.14
8.35 in connection with a license to provide family day care for children, child care center
8.36 services, foster care for children in the provider's home, or foster care or day care

9.1 services for adults in the provider's home, are public: the nature of any disqualification
9.2 set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside
9.3 the disqualification; the nature of any disqualification for which a variance was granted
9.4 under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any
9.5 variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that
9.6 any person subject to a background study under section 245C.03, subdivision 1, has
9.7 successfully passed a background study. If a licensing sanction under section 245A.07,
9.8 or a license denial under section 245A.05, is based on a determination that an individual
9.9 subject to disqualification under chapter 245C is disqualified, the disqualification as a
9.10 basis for the licensing sanction or denial is public data. As specified in clause (1), item
9.11 (iv), if the disqualified individual is the license holder or applicant, the identity of the
9.12 license holder or applicant ~~is~~ and the reason for the disqualification are public data; and, if
9.13 the license holder or applicant requested reconsideration of the disqualification and the
9.14 disqualification is affirmed, the reason for the disqualification and the reason to not set
9.15 aside the disqualification are public data. If the disqualified individual is an individual
9.16 other than the license holder or applicant, the identity of the disqualified individual shall
9.17 remain private data.

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

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

9.27 (c) The following are private data on individuals under section 13.02, subdivision
9.28 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial
9.29 data on family day care program and family foster care program applicants and licensees
9.30 and their family members who provide services under the license.

9.31 (d) The following are private data on individuals: the identity of persons who have
9.32 made reports concerning licensees or applicants that appear in inactive investigative data,
9.33 and the records of clients or employees of the licensee or applicant for licensure whose
9.34 records are received by the licensing agency for purposes of review or in anticipation of a
9.35 contested matter. The names of reporters of complaints or alleged violations of licensing
9.36 standards under chapters 245A, 245B, 245C, and applicable rules and alleged maltreatment

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10.1 under sections 626.556 and 626.557, are confidential data and may be disclosed only as
10.2 provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

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

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

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

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

10.19 (i) Data on individuals collected according to licensing activities under chapters
10.20 245A and 245C, ~~and~~ data on individuals collected by the commissioner of human services
10.21 according to ~~maltreatment~~ investigations under chapters 245A, 245B, and 245C, and
10.22 sections 626.556 and 626.557; may be shared with the Department of Human Rights, the
10.23 Department of Health, the Department of Corrections, the ombudsman for mental health
10.24 and developmental disabilities, and the individual's professional regulatory board when
10.25 there is reason to believe that laws or standards under the jurisdiction of those agencies
10.26 may have been violated or the information may otherwise be relevant to the board's
10.27 regulatory jurisdiction. Background study data on an individual who is the subject of a
10.28 background study under chapter 245C for a licensed service for which the commissioner
10.29 of human services is the license holder may be shared with the commissioner and the
10.30 commissioner's delegate by the licensing division. Unless otherwise specified in this
10.31 chapter, the identity of a reporter of alleged maltreatment or licensing violations may not
10.32 be disclosed.

10.33 (j) In addition to the notice of determinations required under section 626.556,
10.34 subdivision 10f, if the commissioner or the local social services agency has determined
10.35 that an individual is a substantiated perpetrator of maltreatment of a child based on sexual
10.36 abuse, as defined in section 626.556, subdivision 2, and the commissioner or local social

11.1 services agency knows that the individual is a person responsible for a child's care in
11.2 another facility, the commissioner or local social services agency shall notify the head
11.3 of that facility of this determination. The notification must include an explanation of the
11.4 individual's available appeal rights and the status of any appeal. If a notice is given under
11.5 this paragraph, the government entity making the notification shall provide a copy of the
11.6 notice to the individual who is the subject of the notice.

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

11.12 Sec. 4. Minnesota Statutes 2010, section 13.82, subdivision 1, is amended to read:

11.13 Subdivision 1. **Application.** This section shall apply to agencies which carry on
11.14 a law enforcement function, including but not limited to municipal police departments,
11.15 county sheriff departments, fire departments, the Bureau of Criminal Apprehension,
11.16 the Minnesota State Patrol, the Board of Peace Officer Standards and Training, the
11.17 Department of Commerce, and ~~the program integrity section of, and~~ county human service
11.18 agency client and provider fraud investigation, prevention, and control units operated or
11.19 supervised by the Department of Human Services.

11.20 **ARTICLE 2**

11.21 **LICENSING**

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

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

11.32 The commissioner shall act on the application within 90 working days after a
11.33 complete application and any required reports have been received from other state
11.34 agencies or departments, counties, municipalities, or other political subdivisions. The

12.1 commissioner shall not consider an application to be complete until the commissioner
12.2 receives all of the information required under section 245C.05.

12.3 When the commissioner receives an application for initial licensure that is incomplete
12.4 because the applicant failed to submit required documents or that is substantially
12.5 deficient because the documents submitted do not meet licensing requirements, the
12.6 commissioner shall provide the applicant written notice that the application is incomplete
12.7 or substantially deficient. In the written notice to the applicant the commissioner shall
12.8 identify documents that are missing or deficient and give the applicant 45 days to resubmit
12.9 a second application that is substantially complete. An applicant's failure to submit a
12.10 substantially complete application after receiving notice from the commissioner is a basis
12.11 for license denial under section 245A.05.

12.12 (b) An application for licensure must ~~specify one or more~~ identify all controlling
12.13 individuals ~~as~~ and must specify an agent who is responsible for dealing with the
12.14 commissioner of human services on all matters provided for in this chapter and on whom
12.15 service of all notices and orders must be made. The agent must be authorized to accept
12.16 service on behalf of all of the controlling individuals of the program. Service on the agent
12.17 is service on all of the controlling individuals of the program. It is not a defense to any
12.18 action arising under this chapter that service was not made on each controlling individual
12.19 of the program. The designation of one or more controlling individuals as agents under
12.20 this paragraph does not affect the legal responsibility of any other controlling individual
12.21 under this chapter.

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

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

12.31 (e) The applicant must be able to demonstrate competent knowledge of the
12.32 applicable requirements of this chapter and chapter 245C, and the requirements of
12.33 other licensing statutes and rules applicable to the program or services for which the
12.34 applicant is seeking to be licensed. Effective January 1, 2013, the commissioner may
12.35 require the applicant, except for child foster care, to demonstrate competence in the

13.1 applicable licensing requirements by successfully completing a written examination. The
13.2 commissioner may develop a prescribed written examination format.

13.3 (f) When an applicant is an individual, the individual must provide the applicant's
13.4 Social Security number and a notarized signature of the applicant.

13.5 (g) When an applicant is a nonindividual, the applicant must provide the applicant's
13.6 Minnesota tax identification number, the first, middle, and last name, and address for
13.7 all individuals who will be controlling individuals, including all officers, owners, and
13.8 managerial officials as defined in section 245A.02, subdivision 5a, and the date that the
13.9 background study was initiated by the applicant for each controlling individual. The
13.10 applicant must also provide the first, middle, and last name, mailing address, and notarized
13.11 signature of the agent authorized by the applicant to accept service on behalf of the
13.12 controlling individuals.

13.13 Sec. 2. Minnesota Statutes 2010, section 245A.04, subdivision 7, is amended to read:

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

13.17 (1) the name of the license holder;

13.18 (2) the address of the program;

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

13.20 (4) the type of license;

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

13.23 (6) any special conditions of licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

14.18 (f) The commissioner shall not issue or reissue a license if an individual living in
14.19 the household where the licensed services will be provided as specified under section
14.20 245C.03, subdivision 1, has been disqualified and the disqualification has not been set
14.21 aside and no variance has been granted.

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

14.28 (h) Notwithstanding paragraph (g), when a revocation is based on the disqualification
14.29 of a controlling individual or license holder, and the controlling individual or license holder
14.30 is ordered under section 245C.17 to be immediately removed from direct contact with
14.31 persons receiving services or is ordered to be under continuous, direct supervision when
14.32 providing direct contact services, the program may continue to operate only if the program
14.33 complies with the order and submits documentation demonstrating compliance with the
14.34 order. If the disqualified individual fails to submit a timely request for reconsideration, or
14.35 if the disqualification is not set aside and no variance is granted, the order to immediately

15.1 remove the individual from direct contact or to be under continuous, direct supervision
15.2 remains in effect pending the outcome of a hearing and final order from the commissioner.

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

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

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

15.15 Sec. 3. Minnesota Statutes 2010, section 245A.04, subdivision 11, is amended to read:

15.16 Subd. 11. **Education program; permitted ages, additional requirement.** (a) ~~The~~
15.17 ~~education program offered in a residential or nonresidential program, except for child care,~~
15.18 ~~foster care, or services for adults, must be approved by the commissioner of education~~
15.19 ~~before the commissioner of human services may grant a license to the program. Except for~~
15.20 foster care, the commissioner of human services may not grant a license to a residential
15.21 facility for the placement of children before the commissioner has received documentation
15.22 of approval of the educational program from the commissioner of education according to
15.23 section 125A.515.

15.24 (b) ~~A residential program licensed by the commissioner of human services under~~
15.25 ~~Minnesota Rules, parts 2960.0010 to 2960.0710, may serve persons through the age of~~
15.26 ~~19 when:~~

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

15.31 (2) ~~the facility develops policies, procedures, and plans required under section~~
15.32 ~~245A.65;~~

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

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

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

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

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

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

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

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

16.15 (c) In addition to the requirements in paragraph (b), a residential program licensed
16.16 by the commissioner of human services under Minnesota Rules, parts 2960.0010 to
16.17 2960.0710, may serve persons under the age of 21 provided the facility complies with the
16.18 following requirements:

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

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

16.27 (d) Nothing in this ~~paragraph~~ subdivision precludes the license holder from seeking
16.28 other variances under subdivision 9.

16.29 Sec. 4. Minnesota Statutes 2010, section 245A.04, is amended by adding a subdivision
16.30 to read:

16.31 Subd. 16. **Program policy; reporting a death in the program.** Unless reporting is
16.32 otherwise already required under statute or rule, programs licensed under this chapter must
16.33 have a written policy for reporting the death of an individual served by the program to the
16.34 commissioner of human services. Within 24 hours of receiving knowledge of the death of
16.35 an individual served by the program, the license holder shall notify the commissioner of

17.1 the death. If the license holder has reason to know that the death has been reported to the
17.2 commissioner, a subsequent report is not required.

17.3 Sec. 5. Minnesota Statutes 2010, section 245A.05, is amended to read:

17.4 **245A.05 DENIAL OF APPLICATION.**

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

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

17.8 ~~(1)~~ (2) fails to comply with applicable laws or rules;

17.9 ~~(2)~~ (3) knowingly withholds relevant information from or gives false or misleading
17.10 information to the commissioner in connection with an application for a license or during
17.11 an investigation;

17.12 ~~(3)~~ (4) has a disqualification that has not been set aside under section 245C.22
17.13 and no variance has been granted;

17.14 ~~(4)~~ (5) has an individual living in the household who received a background study
17.15 under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification
17.16 that has not been set aside under section 245C.22, and no variance has been granted; ~~or~~

17.17 ~~(5)~~ (6) is associated with an individual who received a background study under
17.18 section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised
17.19 access to children or vulnerable adults, and who has a disqualification that has not been set
17.20 aside under section 245C.22, and no variance has been granted; or

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

17.22 (b) An applicant whose application has been denied by the commissioner must be
17.23 given notice of the denial. Notice must be given by certified mail or personal service.
17.24 The notice must state the reasons the application was denied and must inform the
17.25 applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules,
17.26 parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the
17.27 commissioner in writing by certified mail or personal service. If mailed, the appeal must
17.28 be postmarked and sent to the commissioner within 20 calendar days after the applicant
17.29 received the notice of denial. If an appeal request is made by personal service, it must
17.30 be received by the commissioner within 20 calendar days after the applicant received the
17.31 notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's
17.32 denial of an application.

17.33 Sec. 6. Minnesota Statutes 2010, section 245A.07, subdivision 3, is amended to read:

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

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

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

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

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

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

18.19 (b) If the license was suspended or revoked, the notice must inform the license
18.20 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
18.21 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
18.22 a license. The appeal of an order suspending or revoking a license must be made in writing
18.23 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
18.24 the commissioner within ten calendar days after the license holder receives notice that the
18.25 license has been suspended or revoked. If a request is made by personal service, it must be
18.26 received by the commissioner within ten calendar days after the license holder received
18.27 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
18.28 a timely appeal of an order suspending or revoking a license, the license holder may
18.29 continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs
18.30 (g) and (h), until the commissioner issues a final order on the suspension or revocation.

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

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

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

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

19.17 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for
19.18 each determination of maltreatment of a child under section 626.556 or the maltreatment
19.19 of a vulnerable adult under section 626.557 for which the license holder is determined
19.20 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),
19.21 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each
19.22 occurrence of a violation of law or rule governing matters of health, safety, or supervision,
19.23 including but not limited to the provision of adequate staff-to-child or adult ratios, and
19.24 failure to comply with background study requirements under chapter 245C; and the license
19.25 holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those
19.26 subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means
19.27 each violation identified in the commissioner's fine order. Fines assessed against a license
19.28 holder that holds a license to provide the residential-based habilitation services, as defined
19.29 under section 245B.02, subdivision 20, and a license to provide foster care, may be
19.30 assessed against both licenses for the same occurrence, but the combined amount of the
19.31 fines shall not exceed the amount specified in this clause for that occurrence.

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

20.1 (d) Except for background study violations involving the failure to comply with an
20.2 order to immediately remove an individual or an order to provide continuous, direct
20.3 supervision, the commissioner shall not issue a fine under paragraph (c) relating to a
20.4 background study violation to a license holder who self-corrects a background study
20.5 violation before the commissioner discovers the violation. A license holder who has
20.6 previously exercised the provisions of this paragraph to avoid a fine for a background
20.7 study violation may not avoid a fine for a subsequent background study violation unless at
20.8 least 365 days have passed since the license holder self-corrected the earlier background
20.9 study violation.

20.10 Sec. 7. Minnesota Statutes 2010, section 245A.08, subdivision 2a, is amended to read:

20.11 Subd. 2a. **Consolidated contested case hearings.** (a) When a denial of a license
20.12 under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3,
20.13 is based on a disqualification for which reconsideration was timely requested under
20.14 section 245C.21 and which was not set aside under section 245C.22, the scope of the
20.15 contested case hearing shall include the disqualification and the licensing sanction or
20.16 denial of a license, unless otherwise specified in this subdivision. When the licensing
20.17 sanction or denial of a license is based on a determination of maltreatment under section
20.18 626.556 or 626.557, or a disqualification for serious or recurring maltreatment which
20.19 was not set aside, the scope of the contested case hearing shall include the maltreatment
20.20 determination, disqualification, and the licensing sanction or denial of a license, unless
20.21 otherwise specified in this subdivision. In such cases, a fair hearing under section 256.045
20.22 shall not be conducted as provided for in sections 245C.27, 626.556, subdivision 10i, and
20.23 626.557, subdivision 9d.

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

20.28 (1) a denial of a license under section 245A.05, or a licensing sanction under section
20.29 245A.07, is based on a determination that the license holder is responsible for maltreatment
20.30 or the disqualification of a license holder is based on serious or recurring maltreatment;

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

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

21.1 9d. The scope of the contested case hearing must include the maltreatment determination,
21.2 disqualification, and denial of a license or licensing sanction.

21.3 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment
21.4 determination or disqualification, but does not appeal the denial of a license or a licensing
21.5 sanction, reconsideration of the maltreatment determination shall be conducted under
21.6 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the
21.7 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing
21.8 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and
21.9 626.557, subdivision 9d.

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

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

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

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

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

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

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

22.1 (g) When a denial of a license under section 245A.05 or a licensing sanction
22.2 under section 245A.07 is based on a disqualification for which reconsideration was
22.3 timely requested under section 245C.21 and was not set aside under section 245C.22, and
22.4 the individual otherwise has no hearing right under section 245C.27, the scope of the
22.5 administrative law judge's review shall include the denial or sanction and a determination
22.6 whether the disqualification should be set aside, unless section 245C.24 prohibits the
22.7 set-aside of the disqualification. In determining whether the disqualification should be
22.8 set aside, the administrative law judge shall consider the factors under section 245C.22,
22.9 subdivision 4, to determine whether the individual poses a risk of harm to any person
22.10 receiving services from the license holder.

22.11 (h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction
22.12 under section 245A.07 is based on the termination of a variance under section 245C.30,
22.13 subdivision 4, the scope of the administrative law judge's review shall include the sanction
22.14 and a determination whether the disqualification should be set aside, unless section
22.15 245C.24 prohibits the set-aside of the disqualification. In determining whether the
22.16 disqualification should be set aside, the administrative law judge shall consider the factors
22.17 under section 245C.22, subdivision 4, to determine whether the individual poses a risk of
22.18 harm to any person receiving services from the license holder.

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

22.23 Sec. 8. Minnesota Statutes 2010, section 245A.14, subdivision 11, is amended to read:

22.24 Subd. 11. **Swimming pools; family day care and group family day care**
22.25 **providers.** (a) This subdivision governs swimming pools located at family day care
22.26 or group family day care homes licensed under Minnesota Rules, chapter 9502. This
22.27 subdivision does not apply to portable wading pools or whirlpools located at family day
22.28 care or group family day care homes licensed under Minnesota Rules, chapter 9502. For a
22.29 provider to be eligible to allow a child cared for at the family day care or group family day
22.30 care home to use the swimming pool located at the home, the provider must not have had
22.31 a licensing sanction under section 245A.07 or a correction order or conditional license
22.32 under section 245A.06 relating to the supervision or health and safety of children during
22.33 the prior 24 months, and must satisfy the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 24.1 (11) have a disinfectant feeder or feeders;
- 24.2 (12) have a recirculation system that will clarify and disinfect the swimming pool
- 24.3 volume of water in ten hours or less;
- 24.4 (13) maintain the swimming pool's water clarity so that an object on the pool floor at
- 24.5 the pool's deepest point is easily visible;
- 24.6 (14) ~~have two or more suction lines in the swimming pool~~ comply with the provisions
- 24.7 of the Abigail Taylor Pool Safety Act in section 144.1222, subdivisions 1c and 1d;
- 24.8 (15) have in place and enforce written safety rules and swimming pool policies;
- 24.9 (16) have in place at all times a safety rope that divides the shallow and deep
- 24.10 portions of the swimming pool;
- 24.11 (17) satisfy any existing local ordinances regarding swimming pool installation,
- 24.12 decks, and fencing;
- 24.13 (18) maintain a water temperature of not more than 104 degrees Fahrenheit and
- 24.14 not less than 70 degrees Fahrenheit; and
- 24.15 (19) for lifesaving equipment, have a United States Coast Guard-approved life
- 24.16 ring attached to a rope, an exit ladder, and a shepherd's hook available at all times to the
- 24.17 caregiver supervising the swimming pool.

24.18 The requirements of clauses (5), (16), and (18) only apply at times when children

24.19 cared for at the family day care or group family day care home are present.

24.20 (b) A violation of paragraph (a), clauses (1) to (3), is grounds for a sanction under

24.21 section 245A.07 or a correction order or conditional license under section 245A.06.

24.22 (c) If a provider under this subdivision receives a licensing sanction under section

24.23 245A.07 or a correction order or a conditional license under section 245A.06 relating to

24.24 the supervision or health and safety of children, the provider is prohibited from allowing a

24.25 child cared for at the family day care or group family day care home to continue to use

24.26 the swimming pool located at the home.

24.27 Sec. 9. Minnesota Statutes 2010, section 245A.146, subdivision 2, is amended to read:

24.28 Subd. 2. **Documentation requirement for license holders.** (a) ~~Effective January~~

24.29 ~~1, 2006,~~ All licensed child care providers, children's residential facilities, chemical

24.30 dependency treatment programs with children in care, and residential habilitation

24.31 programs serving children with developmental disabilities must maintain the following

24.32 documentation for every crib used by or that is accessible to any child in care:

- 24.33 (1) the crib's brand name; and
- 24.34 (2) the crib's model number.

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

25.3 (c) Effective December 28, 2012, the licensed program must maintain documentation
25.4 to show that every full-size and non-full-size crib that is used by or is accessible to any
25.5 child in care is compliant with federal crib standards under Code of Federal Regulations,
25.6 title 16, part 1219, for full-size baby cribs, or Code of Federal Regulations, title 16, part
25.7 1220, for non-full-size baby cribs. Documentation must include verification that each
25.8 crib was either:

25.9 (1) purchased from a retailer on or after June 28, 2011; or

25.10 (2) if purchased before June 28, 2011, has a certificate from the manufacturer or
25.11 retailer verifying compliance with Code of Federal Regulations, title 16, part 1219 or 1220.

25.12 Sec. 10. Minnesota Statutes 2010, section 245A.146, subdivision 3, is amended to read:

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

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

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

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

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

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

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

26.1 Sec. 11. Minnesota Statutes 2010, section 245A.18, subdivision 1, is amended to read:

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

26.5 Sec. 12. **[245A.191] PROVIDER ELIGIBILITY FOR PAYMENTS FROM THE**
26.6 **CHEMICAL DEPENDENCY CONSOLIDATED TREATMENT FUND.**

26.7 (a) When a chemical dependency treatment provider licensed under Minnesota
26.8 Rules, parts 2960.0430 to 2960.0490 or 9530.6405 to 9530.6505, agrees to meet the
26.9 applicable requirements under section 254B.05, subdivision 5, paragraphs (b), clauses
26.10 (1) to (4) and (6), (c), and (d), to be eligible for enhanced funding from the chemical
26.11 dependency consolidated treatment fund, the applicable requirements under section
26.12 254B.05 are also licensing requirements that may be monitored for compliance through a
26.13 licensing investigation or licensing inspection.

26.14 (b) Noncompliance with the requirements identified under paragraph (a) may
26.15 result in:

26.16 (1) a correction order or a conditional license under section 245A.06, or sanctions
26.17 under section 245A.07;

26.18 (2) nonpayment of claims submitted by the license holder for public program
26.19 reimbursement;

26.20 (3) recovery of payments made for the service;

26.21 (4) disenrollment in the public payment program; or

26.22 (5) other administrative, civil, or criminal penalties as provided by law.

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

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

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

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

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

27.1 Sec. 14. Minnesota Statutes 2010, section 245A.66, subdivision 2, is amended to read:

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

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

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

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

27.19 ~~(3)~~ (2) an assessment of the risks presented by the environment for each facility and
27.20 for each site, including an evaluation of the following factors: the type of grounds and
27.21 terrain surrounding the building and the proximity to hazards, busy roads, and publicly
27.22 accessed businesses.

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

27.27 ~~(1) a general description of supervision, programming, and the development and~~
27.28 ~~implementation of specific policies and procedures or reference to the existing policies~~
27.29 ~~and procedures developed and implemented to address that minimize the risks identified~~
27.30 ~~in the assessment required under paragraph (b) related to the general population served,~~
27.31 ~~the physical plant, and environment;~~

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

27.36 ~~(i)~~ (1) closing children's fingers in doors, including cabinet doors;

- 28.1 ~~(ii)~~ (2) leaving children in the community without supervision;
- 28.2 ~~(iii)~~ (3) children leaving the facility without supervision;
- 28.3 ~~(iv)~~ (4) caregiver dislocation of children's elbows;
- 28.4 ~~(v)~~ (5) burns from hot food or beverages, whether served to children or being
- 28.5 consumed by caregivers, and the devices used to warm food and beverages;
- 28.6 ~~(vi)~~ (6) injuries from equipment, such as scissors and glue guns;
- 28.7 ~~(vii)~~ (7) sunburn;
- 28.8 ~~(viii)~~ (8) feeding children foods to which they are allergic;
- 28.9 ~~(ix)~~ (9) children falling from changing tables; and
- 28.10 ~~(x)~~ (10) children accessing dangerous items or chemicals or coming into contact
- 28.11 with residue from harmful cleaning products; ~~and~~.
- 28.12 ~~(3)~~ (e) The plan shall prohibit the accessibility of hazardous items to children.
- 28.13 (f) The plan must include specific policies and procedures to ensure adequate
- 28.14 supervision of children at all times as defined under section 245A.02, subdivision 18, with
- 28.15 particular emphasis on:
- 28.16 (1) times when children are transitioned from one area within the facility to another;
- 28.17 (2) nap-time supervision, including infant crib rooms as specified under section
- 28.18 245A.02, subdivision 18, which requires that when an infant is placed in a crib to sleep,
- 28.19 supervision occurs when a staff person is within sight or hearing of the infant. When
- 28.20 supervision of a crib room is provided by sight or hearing, the center must have a plan to
- 28.21 address the other supervision component;
- 28.22 (3) child drop-off and pick-up times;
- 28.23 (4) supervision during outdoor play and on community activities, including but not
- 28.24 limited to field trips and neighborhood walks; and
- 28.25 (5) supervision of children in hallways.

28.26 Sec. 15. Minnesota Statutes 2010, section 245A.66, subdivision 3, is amended to read:

28.27 Subd. 3. **Orientation to risk reduction plan and annual review of plan.** (a) The

28.28 license holder shall ensure that all mandated reporters, as defined in section 626.556,

28.29 subdivision 3, who are under the control of the license holder, receive an orientation to

28.30 the risk reduction plan prior to first providing unsupervised direct contact services, as

28.31 defined in section 245C.02, subdivision 11, to children, not to exceed 14 days from the

28.32 first supervised direct contact, and annually thereafter. The license holder must document

28.33 the orientation to the risk reduction plan in the mandated reporter's personnel records.

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

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

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

29.12 Sec. 16. Minnesota Statutes 2010, section 245C.03, subdivision 1, is amended to read:

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

- 29.15 (1) the person or persons applying for a license;
- 29.16 (2) an individual age 13 and over living in the household where the licensed program
29.17 will be provided who is not receiving licensed services from the program;
- 29.18 (3) current or prospective employees or contractors of the applicant who will have
29.19 direct contact with persons served by the facility, agency, or program;
- 29.20 (4) volunteers or student volunteers who will have direct contact with persons served
29.21 by the program to provide program services if the contact is not under the continuous,
29.22 direct supervision by an individual listed in clause (1) or (3);
- 29.23 (5) an individual age ten to 12 living in the household where the licensed services
29.24 will be provided when the commissioner has reasonable cause;
- 29.25 (6) an individual who, without providing direct contact services at a licensed
29.26 program, may have unsupervised access to children or vulnerable adults receiving services
29.27 from a program, when the commissioner has reasonable cause; and
- 29.28 (7) all managerial officials as defined under section 245A.02, subdivision 5a.

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

29.32 Sec. 17. Minnesota Statutes 2010, section 245C.04, subdivision 1, is amended to read:

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

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

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

30.10 (1) registered under chapter 144D; or

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

30.14 (3) the following conditions are met:

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

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

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

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

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

30.35 (f) From January 1, 2010, to December 31, 2012, unless otherwise specified in
30.36 paragraph (c), the commissioner shall conduct a study of an individual required to

31.1 be studied under section 245C.03 at the time of reapplication for an adult foster care
31.2 or family adult day services license: (1) the county shall collect and forward to the
31.3 commissioner the information required under section 245C.05, subdivision 1, paragraphs
31.4 (a) and (b), and subdivision 5, paragraphs (a) and (b), for background studies conducted
31.5 by the commissioner for all family adult day services and for adult foster care when
31.6 the adult foster care license holder resides in the adult foster care or family adult day
31.7 services residence; (2) the license holder shall collect and forward to the commissioner
31.8 the information required under section 245C.05, subdivisions 1, paragraphs (a) and (b);
31.9 and 5, paragraphs (a) and (b), for background studies conducted by the commissioner for
31.10 adult foster care when the license holder does not reside in the adult foster care residence;
31.11 and (3) the background study conducted by the commissioner under this paragraph must
31.12 include a review of the information required under section 245C.08, subdivision 1,
31.13 paragraph (a), clauses (1) to (5), and subdivisions 3 and 4.

31.14 (g) The commissioner shall conduct a background study of an individual specified
31.15 under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly
31.16 affiliated with an adult foster care or family adult day services license holder: (1) the
31.17 county shall collect and forward to the commissioner the information required under
31.18 section 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a)
31.19 and (b), for background studies conducted by the commissioner for all family adult day
31.20 services and for adult foster care when the adult foster care license holder resides in
31.21 the adult foster care residence; (2) the license holder shall collect and forward to the
31.22 commissioner the information required under section 245C.05, subdivisions 1, paragraphs
31.23 (a) and (b); and 5, paragraphs (a) and (b), for background studies conducted by the
31.24 commissioner for adult foster care when the license holder does not reside in the adult
31.25 foster care residence; and (3) the background study conducted by the commissioner under
31.26 this paragraph must include a review of the information required under section 245C.08,
31.27 subdivision 1, paragraph (a), and subdivisions 3 and 4.

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

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

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

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

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

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

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

32.14 Sec. 18. Minnesota Statutes 2010, section 245C.05, subdivision 2, is amended to read:

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

32.20 Sec. 19. Minnesota Statutes 2010, section 245C.05, is amended by adding a
32.21 subdivision to read:

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

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

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

32.33 (2) the reason for the disqualification; and

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

33.3 Sec. 20. Minnesota Statutes 2010, section 245C.05, subdivision 4, is amended to read:

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

33.7 (1) background study information to the commissioner;

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

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

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

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

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

33.20 Sec. 21. Minnesota Statutes 2010, section 245C.05, subdivision 7, is amended to read:

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

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

33.28 (2) has been convicted of a crime constituting a disqualification under section
33.29 245C.14.

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

33.32 (c) The commissioner, in consultation with the commissioner of corrections, shall
33.33 develop forms and information necessary to implement this subdivision and shall provide

34.1 the forms and information to the commissioner of corrections for distribution to local
34.2 probation officers and corrections agents.

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

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

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

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

34.14 Sec. 22. Minnesota Statutes 2010, section 245C.07, is amended to read:

34.15 **245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

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

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

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

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

34.33 (c) When a background study is being initiated by a licensed program or service or a
34.34 foster care provider that is also registered under chapter 144D, a study subject affiliated
34.35 with multiple licensed programs or services may attach to the background study form a

35.1 cover letter indicating the additional names of the programs or services, addresses, and
35.2 background study identification numbers.

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

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

35.8 (d) If a background study was conducted on an individual related to child foster care
35.9 and the requirements under paragraph (a) are met, the background study is transferable
35.10 across all licensed programs. If a background study was conducted on an individual under
35.11 a license other than child foster care and the requirements under paragraph (a) are met, the
35.12 background study is transferable to all licensed programs except child foster care.

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

35.18 Sec. 23. Minnesota Statutes 2010, section 245C.16, subdivision 1, is amended to read:

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

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

35.26 (1) the recency of the disqualifying characteristic;

35.27 (2) the recency of discharge from probation for the crimes;

35.28 (3) the number of disqualifying characteristics;

35.29 (4) the intrusiveness or violence of the disqualifying characteristic;

35.30 (5) the vulnerability of the victim involved in the disqualifying characteristic;

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

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

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

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

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

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

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

36.18 Sec. 24. Minnesota Statutes 2010, section 245C.17, subdivision 2, is amended to read:

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

36.22 (1) the information causing disqualification;

36.23 (2) instructions on how to request a reconsideration of the disqualification;

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

36.26 (4) a statement that, if the individual's disqualification is set-aside under section
36.27 245C.22, the applicant, license holder, or other entity that initiated the background study
36.28 will be provided with the reason for the individual's disqualification and an explanation
36.29 that the factors under section 245C.22, subdivision 4, which were the basis of the decision
36.30 to set aside the disqualification shall be made available to the license holder upon request
36.31 without the consent of the subject of the background study;

36.32 ~~(4)~~ (5) a statement indicating that if the individual's disqualification is set aside or
36.33 the facility is granted a variance under section 245C.30, the individual's identity and the
36.34 reason for the individual's disqualification will become public data under section 245C.22,
36.35 subdivision 7, when applicable to the individual; ~~and~~

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

37.7 (i) of the reason for the individual's disqualification;
37.8 (ii) that the individual's disqualification is set aside for that program or agency; and
37.9 (iii) that information about the factors under section 245C.22, subdivision 4, that
37.10 were the basis of the decision to set aside the disqualification are available to the license
37.11 holder upon request without the consent of the background study subject; and

37.12 ~~(5)~~ (7) the commissioner's determination of the individual's immediate risk of harm
37.13 under section 245C.16.

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

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

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

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

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

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

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

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

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

38.15 (c) When a disqualification is set aside under paragraph (b), the notice of background
38.16 study results issued under section 245C.17, in addition to the requirements under section
38.17 245C.17, shall state that the disqualification is set aside for the program or agency that
38.18 initiated the subsequent background study. The notice must inform the individual that the
38.19 individual may request reconsideration of the disqualification under section 245C.21 on
38.20 the basis that the information used to disqualify the individual is incorrect.

38.21 Sec. 26. Minnesota Statutes 2010, section 245C.24, subdivision 2, is amended to read:

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

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

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

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

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

39.19 Sec. 27. **REVISOR'S INSTRUCTION.**

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

39.23 Sec. 28. **REPEALER.**

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

39.25 **ARTICLE 3**

39.26 **PROGRAM INTEGRITY**

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

39.29 Subdivision 1. **Application for licensure.** (a) An individual, corporation,
39.30 partnership, voluntary association, other organization or controlling individual that is
39.31 subject to licensure under section 245A.03 must apply for a license. The application
39.32 must be made on the forms and in the manner prescribed by the commissioner. The
39.33 commissioner shall provide the applicant with instruction in completing the application

40.1 and provide information about the rules and requirements of other state agencies that affect
40.2 the applicant. An applicant seeking licensure in Minnesota with headquarters outside of
40.3 Minnesota must have a program office located within the state.

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

40.9 (b) An application for licensure must specify one or more controlling individuals as
40.10 an agent who is responsible for dealing with the commissioner of human services on all
40.11 matters provided for in this chapter and on whom service of all notices and orders must be
40.12 made. The agent must be authorized to accept service on behalf of all of the controlling
40.13 individuals of the program. Service on the agent is service on all of the controlling
40.14 individuals of the program. It is not a defense to any action arising under this chapter that
40.15 service was not made on each controlling individual of the program. The designation of
40.16 one or more controlling individuals as agents under this paragraph does not affect the legal
40.17 responsibility of any other controlling individual under this chapter.

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

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

40.27 (e) At the time of application for licensure or renewal of a license, the applicant
40.28 or license holder must acknowledge on the form provided by the commissioner if the
40.29 applicant or license holder elects to receive any public funding reimbursement from the
40.30 commissioner for services provided under the license that:

40.31 (1) the applicant's or license holder's compliance with the provider enrollment
40.32 agreement or registration requirements for receipt of public funding may be monitored by
40.33 the commissioner as part of a licensing investigation or licensing inspection; and

40.34 (2) noncompliance with the provider enrollment agreement or registration
40.35 requirements for receipt of public funding that is identified through a licensing

41.1 investigation or licensing inspection, or noncompliance with a licensing requirement that
41.2 is a basis of enrollment for reimbursement for a service, may result in:

41.3 (i) a correction order or a conditional license under section 245A.06, or sanctions
41.4 under section 245A.07;

41.5 (ii) nonpayment of claims submitted by the license holder for public program
41.6 reimbursement;

41.7 (iii) recovery of payments made for the service;

41.8 (iv) disenrollment in the public payment program; or

41.9 (v) other administrative, civil, or criminal penalties as provided by law.

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

41.12 Subd. 14. **Attendance records for publicly funded services.** (a) A child care
41.13 center licensed under this chapter and according to Minnesota Rules, chapter 9503, must
41.14 maintain documentation of actual attendance for each child receiving care for which the
41.15 license holder is reimbursed by a governmental program. The records must be accessible
41.16 to the commissioner during the program's hours of operation, they must be completed on
41.17 the actual day of attendance, and they must include:

41.18 (1) the first and last name of the child;

41.19 (2) the time of day that the child was dropped off; and

41.20 (3) the time of day that the child was picked up.

41.21 (b) A family child care provider licensed under this chapter and according to
41.22 Minnesota Rules, chapter 9502, must maintain documentation of actual attendance for
41.23 each child receiving care for which the license holder is reimbursed by a governmental
41.24 program. The records must be accessible to the commissioner during the program's
41.25 hours of operation, they must be completed on the actual day of attendance, and they
41.26 must include:

41.27 (1) the first and last name of the child;

41.28 (2) the time of day that the child was dropped off; and

41.29 (3) the time of day that the child was picked up.

41.30 (c) An adult day services program licensed under this chapter and according to
41.31 Minnesota Rules, parts 9555.5105 to 9555.6265, must maintain documentation of actual
41.32 attendance for each adult day service recipient for which the license holder is reimbursed
41.33 by a governmental program. The records must be accessible to the commissioner during
41.34 the program's hours of operation, they must be completed on the actual day of attendance,
41.35 and they must include:

- 42.1 (1) the first, middle, and last name of the recipient;
- 42.2 (2) the time of day that the recipient was dropped off; and
- 42.3 (3) the time of day that the recipient was picked up.
- 42.4 (d) The commissioner shall not issue a correction for attendance record errors that
- 42.5 occur before August 1, 2013.

42.6 **Sec. 3. [245A.167] PUBLIC FUNDS PROGRAM INTEGRITY MONITORING.**

42.7 (a) An applicant or a license holder that has enrolled to receive public funding

42.8 reimbursement for services is required to comply with the registration or enrollment

42.9 requirements as licensing standards.

42.10 (b) Compliance with the licensing standards established under paragraph (a) may

42.11 be monitored during a licensing investigation or inspection. Noncompliance with these

42.12 licensure standards may result in:

42.13 (i) a correction order or a conditional license under section 245A.06, or sanctions

42.14 under section 245A.07;

42.15 (ii) nonpayment of claims submitted by the license holder for public program

42.16 reimbursement according to the statute applicable to that program;

42.17 (iii) recovery of payments made for the service according to the statute applicable to

42.18 that program;

42.19 (iv) disenrollment in the public payment program according to the statute applicable

42.20 to that program; or

42.21 (v) a referral for other administrative, civil, or criminal penalties as provided by law.

42.22 **Sec. 4. Minnesota Statutes 2011 Supplement, section 256B.04, subdivision 21, is**

42.23 **amended to read:**

42.24 **Subd. 21. **Provider enrollment.**** (a) If the commissioner or the Centers for

42.25 **Medicare and Medicaid Services** determines that a provider is designated "high-risk," the

42.26 **commissioner may withhold payment from providers within that category upon initial**

42.27 **enrollment for a 90-day period. The withholding for each provider must begin on the date**

42.28 **of the first submission of a claim.**

42.29 (b) An enrolled provider that is also licensed by the commissioner under chapter

42.30 245A must designate an individual as the entity's compliance officer. The compliance

42.31 officer must:

42.32 (1) develop policies and procedures to assure adherence to medical assistance laws

42.33 and regulations and to prevent inappropriate claims submissions;

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

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

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

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

43.9 (6) within 60 days of discovery by the provider of a medical assistance
43.10 reimbursement overpayment, report the overpayment to the commissioner and make
43.11 arrangements with the commissioner for the commissioner's recovery of the overpayment.

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

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

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

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

43.33 (f) As a condition of enrollment in medical assistance, the commissioner shall
43.34 require that a high-risk provider, or a person with a direct or indirect ownership interest in
43.35 the provider of five percent or higher, consent to criminal background checks, including
43.36 fingerprinting, when required to do so under state law or by a determination by the

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- 44.1 commissioner or the Centers for Medicare and Medicaid Services that a provider is
- 44.2 designated high-risk for fraud, waste, or abuse.

APPENDIX
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