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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 1750

March 16, 2009

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

1.1 A bill for an act
1.2 relating to human services; making changes to licensing provisions, including
1.3 data practices, disqualifications, and background study requirements; amending
1.4 Minnesota Statutes 2008, sections 13.46, subdivisions 3, 4; 245A.03, subdivision
1.5 2; 245A.04, subdivisions 5, 7; 245A.041, by adding a subdivision; 245A.05;
1.6 245A.07, subdivisions 1, 3; 245A.1435; 245A.16, subdivision 1; 245A.50,
1.7 subdivision 5; 245C.03, subdivision 1; 245C.15, subdivisions 1, 2, 3, 4; 245C.22,
1.8 subdivision 7; 245C.24, subdivisions 2, 3; 245C.25; 245C.27, subdivision
1.9 1; 256.045, subdivisions 3, 3b; 626.556, subdivisions 2, 10e, 10f; 626.557,
1.10 subdivisions 9c, 12b; 626.5572, subdivision 13.

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

1.12 **ARTICLE 1**

1.13 **DATA PRACTICES**

1.14 Section 1. Minnesota Statutes 2008, section 13.46, subdivision 3, is amended to read:

1.15 Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of
1.16 services ~~and data on~~, licensees, and applicants, that is collected, maintained, used, or
1.17 disseminated by the welfare system in an investigation, authorized by statute and relating
1.18 to the enforcement of rules or law, is confidential data on individuals pursuant to section
1.19 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section
1.20 13.02, subdivision 13, and shall not be disclosed except:

1.21 (1) pursuant to section 13.05;

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

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

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

2.1 The data referred to in this subdivision shall be classified as public data upon
 2.2 its submission to an administrative law judge or court in an administrative or judicial
 2.3 proceeding. Inactive welfare investigative data shall be treated as provided in section
 2.4 13.39, subdivision 3.

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

2.9 Sec. 2. Minnesota Statutes 2008, section 13.46, subdivision 4, is amended to read:

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

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

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

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

2.20 (b)(1) Except as provided in paragraph (c), the following data on applicants, license
 2.21 holders, and former licensees are public: name, address, telephone number of licensees,
 2.22 date of receipt of a completed application, dates of licensure, licensed capacity, type of
 2.23 client preferred, variances granted, record of training and education in child care and child
 2.24 development, type of dwelling, name and relationship of other family members, previous
 2.25 license history, class of license, the existence and status of complaints, and the number
 2.26 of serious injuries to or deaths of individuals in the licensed program as reported to the
 2.27 commissioner of human services, the local social services agency, or any other county
 2.28 welfare agency. For purposes of this clause, a serious injury is one that is treated by
 2.29 a physician. When a correction order ~~or~~, an order to forfeit a fine, an order of license
 2.30 suspension, an order of temporary immediate suspension, an order of license revocation,
 2.31 an order of license denial, or an order of conditional license has been issued, ~~a license is~~
 2.32 ~~suspended, immediately suspended, revoked, denied, or made conditional,~~ or a complaint
 2.33 is resolved, the following data on current and former licensees and applicants are public:
 2.34 the substance and investigative findings of the licensing or maltreatment complaint,
 2.35 licensing violation, or substantiated maltreatment; the record of informal resolution of a

3.1 licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of
3.2 the final correction order, fine, suspension, temporary immediate suspension, revocation,
3.3 denial, or conditional license contained in the record of licensing action; whether a fine
3.4 has been paid; and the status of any appeal of these actions. If a licensing sanction under
3.5 section 245A.07, or a license denial under section 245A.05, is based on a determination
3.6 that the license holder or applicant is responsible for maltreatment or is disqualified under
3.7 chapter 245C, the identity of the license holder or applicant as the individual responsible
3.8 for maltreatment or as the disqualified individual is public data at the time of the issuance
3.9 of the licensing sanction or denial.

3.10 (2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b,
3.11 when any person subject to disqualification under section 245C.14 in connection with a
3.12 license to provide family day care for children, child care center services, foster care
3.13 for children in the provider's home, or foster care or day care services for adults in the
3.14 provider's home is a substantiated perpetrator of maltreatment, and the substantiated
3.15 maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator
3.16 of maltreatment is public data. For purposes of this clause, a person is a substantiated
3.17 perpetrator if the maltreatment determination has been upheld under section 256.045;
3.18 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or
3.19 facility has not timely exercised appeal rights under these sections, except as provided
3.20 under clause (1).

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

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

3.33 (5) The following data on persons subject to disqualification under section 245C.14
3.34 in connection with a license to provide family day care for children, child care center
3.35 services, foster care for children in the provider's home, or foster care or day care services
3.36 for adults in the provider's home, are public: the nature of any disqualification set

4.1 aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the
4.2 disqualification; the nature of any disqualification for which a variance was granted under
4.3 sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance
4.4 under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person
4.5 subject to a background study under section 245C.03, subdivision 1, has successfully
4.6 passed a background study. If a licensing sanction under section 245A.07, or a license
4.7 denial under section 245A.05, is based on a determination that an individual subject to
4.8 disqualification under chapter 245C is disqualified, the disqualification as a basis for the
4.9 licensing sanction or denial is public data. As specified in clause (1), if the disqualified
4.10 individual is the license holder or applicant, the identity of the license holder or applicant
4.11 is public data. If the disqualified individual is an individual other than the license holder
4.12 or applicant, the identity of the disqualified individual shall remain private data.

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

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

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

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

4.34 (e) Data classified as private, confidential, nonpublic, or protected nonpublic under
4.35 this subdivision become public data if submitted to a court or administrative law judge as

5.1 part of a disciplinary proceeding in which there is a public hearing concerning a license
5.2 which has been suspended, immediately suspended, revoked, or denied.

5.3 (f) Data generated in the course of licensing investigations that relate to an alleged
5.4 violation of law chapters 245A, 245B, 245C, and applicable rules, and sections 626.556
5.5 and 626.557, are investigative data under subdivision 3.

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

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

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

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

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

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

6.4 **ARTICLE 2**
6.5 **LICENSING**

6.6 Section 1. Minnesota Statutes 2008, section 245A.03, subdivision 2, is amended to
6.7 read:

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

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

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

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

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

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

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

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

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

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

6.32 (10) programs licensed by the commissioner of corrections;

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

- 7.1 (12) programs operated by a school as defined in section 120A.22, subdivision 4,
7.2 whose primary purpose is to provide child care to school-age children;
- 7.3 (13) Head Start nonresidential programs which operate for less than 45 days in
7.4 each calendar year;
- 7.5 (14) noncertified boarding care homes unless they provide services for five or more
7.6 persons whose primary diagnosis is mental illness or a developmental disability;
- 7.7 (15) programs for children such as scouting, boys clubs, girls clubs, and sports and
7.8 art programs, and nonresidential programs for children provided for a cumulative total of
7.9 less than 30 days in any 12-month period;
- 7.10 (16) residential programs for persons with mental illness, that are located in hospitals;
- 7.11 (17) the religious instruction of school-age children; Sabbath or Sunday schools; or
7.12 the congregate care of children by a church, congregation, or religious society during the
7.13 period used by the church, congregation, or religious society for its regular worship;
- 7.14 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter
7.15 4630;
- 7.16 (19) mental health outpatient services for adults with mental illness or children
7.17 with emotional disturbance;
- 7.18 (20) residential programs serving school-age children whose sole purpose is cultural
7.19 or educational exchange, until the commissioner adopts appropriate rules;
- 7.20 (21) unrelated individuals who provide out-of-home respite care services to persons
7.21 with developmental disabilities from a single related family for no more than 90 days in a
7.22 12-month period and the respite care services are for the temporary relief of the person's
7.23 family or legal representative;
- 7.24 (22) respite care services provided as a home and community-based service to a
7.25 person with a developmental disability, in the person's primary residence;
- 7.26 (23) community support services programs as defined in section 245.462, subdivision
7.27 6, and family community support services as defined in section 245.4871, subdivision 17;
- 7.28 (24) the placement of a child by a birth parent or legal guardian in a preadoptive
7.29 home for purposes of adoption as authorized by section 259.47;
- 7.30 (25) settings registered under chapter 144D which provide home care services
7.31 licensed by the commissioner of health to fewer than seven adults; ~~or~~
- 7.32 (26) chemical dependency or substance abuse treatment activities of licensed
7.33 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart
7.34 15, when the treatment activities are not paid for by the consolidated chemical dependency
7.35 treatment fund; or

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

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

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

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

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

8.15 Sec. 2. Minnesota Statutes 2008, section 245A.04, subdivision 5, is amended to read:

8.16 Subd. 5. **Commissioner's right of access.** When the commissioner is exercising the
8.17 powers conferred by this chapter and ~~section~~ sections 245.69, 626.556, and 626.557, the
8.18 commissioner must be given access to the physical plant and grounds where the program
8.19 is provided, documents and records maintained in the electronic format, persons served by
8.20 the program, and staff whenever the program is in operation and the information is relevant
8.21 to inspections or investigations conducted by the commissioner. The commissioner must
8.22 be given access without prior notice and as often as the commissioner considers necessary
8.23 if the commissioner is conducting an investigation of allegations of maltreatment or other
8.24 violation of applicable laws or rules. In conducting inspections, the commissioner may
8.25 request and shall receive assistance from other state, county, and municipal governmental
8.26 agencies and departments. The applicant or license holder shall allow the commissioner to
8.27 photocopy, photograph, and make audio and video tape recordings during the inspection of
8.28 the program at the commissioner's expense. The commissioner shall obtain a court order
8.29 or the consent of the subject of the records or the parents or legal guardian of the subject
8.30 before photocopying hospital medical records.

8.31 Persons served by the program have the right to refuse to consent to be interviewed,
8.32 photographed, or audio or videotaped. Failure or refusal of an applicant or license holder
8.33 to fully comply with this subdivision is reasonable cause for the commissioner to deny the
8.34 application or immediately suspend or revoke the license.

9.1 Sec. 3. Minnesota Statutes 2008, section 245A.04, subdivision 7, is amended to read:

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

9.5 (1) the name of the license holder;

9.6 (2) the address of the program;

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

9.8 (4) the type of license;

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

9.11 (6) any special conditions of licensure.

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

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

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

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

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

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

9.27 (e) The commissioner shall not issue or reissue a license if the applicant, license
9.28 holder, or controlling individual has:

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

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

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

9.33 (4) has an outstanding debt related to a license fee, licensing fine, or settlement
9.34 agreement for which payment is delinquent.

9.35 When a license is revoked under clause (1) or (3), the license holder and controlling
9.36 individual may not hold any license under chapter 245A or 245B for five years following

10.1 the revocation, and other licenses held by the applicant, license holder, or controlling
 10.2 individual shall also be revoked.

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

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

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

10.17 Sec. 4. Minnesota Statutes 2008, section 245A.041, is amended by adding a
 10.18 subdivision to read:

10.19 Subd. 3. **Electronic records.** License holders shall maintain electronic records
 10.20 in a manner that complies with all requirements of this chapter and chapters 245B and
 10.21 245C, and applicable rules.

10.22 Sec. 5. Minnesota Statutes 2008, section 245A.05, is amended to read:

10.23 **245A.05 DENIAL OF APPLICATION.**

10.24 The commissioner may deny a license if an applicant fails to comply with
 10.25 applicable laws or rules, ~~or~~ knowingly withholds relevant information from or gives
 10.26 false or misleading information to the commissioner in connection with an application
 10.27 for a license or during an investigation, or if an applicant, controlling individual, or an
 10.28 individual living in the household where the licensed services are provided or is otherwise
 10.29 subject to a background study has a disqualification which has not been set aside under
 10.30 section 245C.22, and no variance has been granted. An applicant whose application has
 10.31 been denied by the commissioner must be given notice of the denial. Notice must be given
 10.32 by certified mail or personal service. The notice must state the reasons the application
 10.33 was denied and must inform the applicant of the right to a contested case hearing under
 10.34 chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may

11.1 appeal the denial by notifying the commissioner in writing by certified mail or personal
11.2 service ~~within 20 calendar days after receiving notice that the application was denied. If~~
11.3 mailed, the appeal must be postmarked and sent to the commissioner within 20 calendar
11.4 days after the applicant received the notice of denial. If an appeal request is made by
11.5 personal service, it must be received by the commissioner within 20 calendar days after
11.6 the applicant received the notice of denial. Section 245A.08 applies to hearings held to
11.7 appeal the commissioner's denial of an application.

11.8 Sec. 6. Minnesota Statutes 2008, section 245A.07, subdivision 1, is amended to read:

11.9 Subdivision 1. **Sanctions; appeals; license.** (a) In addition to making a license
11.10 conditional under section 245A.06, the commissioner may ~~propose to~~ suspend or revoke
11.11 the license, impose a fine, or secure an injunction against the continuing operation of the
11.12 program of a license holder who does not comply with applicable law or rule. When
11.13 applying sanctions authorized under this section, the commissioner shall consider the
11.14 nature, chronicity, or severity of the violation of law or rule and the effect of the violation
11.15 on the health, safety, or rights of persons served by the program.

11.16 (b) If a license holder appeals the suspension or revocation of a license and the
11.17 license holder continues to operate the program pending a final order on the appeal, and
11.18 the license expires during this time period, the commissioner shall issue the license holder
11.19 a temporary provisional license. The temporary provisional license is effective on the date
11.20 issued and expires on the date that a final order is issued. Unless otherwise specified by
11.21 the commissioner, variances in effect on the date of the license sanction under appeal
11.22 continue under the temporary provisional license. If a license holder fails to comply
11.23 with applicable law or rule while operating under a temporary provisional license, the
11.24 commissioner may impose sanctions under this section and section 245A.06, and may
11.25 terminate any prior variance. If the license holder prevails on the appeal and the effective
11.26 period of the previous license has expired, a new license shall be issued to the license
11.27 holder upon payment of any fee required under section 245A.10. The effective date of the
11.28 new license shall be retroactive to the date the license would have shown had no sanction
11.29 been initiated. The expiration date shall be the expiration date of that license had no
11.30 license sanction been initiated.

11.31 (c) If a license holder is under investigation and the license is due to expire
11.32 before completion of the investigation, the program shall be issued a new license upon
11.33 completion of the reapplication requirements. Upon completion of the investigation, a
11.34 licensing sanction may be imposed against the new license under this section, section
11.35 245A.06, or 245A.08.

12.1 (d) Failure to reapply or closure of a license by the license holder prior to the
 12.2 completion of any investigation shall not preclude the commissioner from issuing a
 12.3 licensing sanction under this section, section 245A.06, or 245A.08 at the conclusion
 12.4 of the investigation.

12.5 Sec. 7. Minnesota Statutes 2008, section 245A.07, subdivision 3, is amended to read:

12.6 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may
 12.7 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with
 12.8 applicable laws or rules, if a license holder, a controlling individual, or an individual
 12.9 living in the household where the licensed services are provided or is otherwise subject
 12.10 to a background study has a disqualification which has not been set aside under section
 12.11 245C.22, or if a license holder knowingly withholds relevant information from or gives
 12.12 false or misleading information to the commissioner in connection with an application
 12.13 for a license, in connection with the background study status of an individual, during an
 12.14 investigation, or regarding compliance with applicable laws or rules. A license holder
 12.15 who has had a license suspended, revoked, or has been ordered to pay a fine must be
 12.16 given notice of the action by certified mail or personal service. If mailed, the notice
 12.17 must be mailed to the address shown on the application or the last known address of the
 12.18 license holder. The notice must state the reasons the license was suspended, revoked, or
 12.19 a fine was ordered.

12.20 (b) If the license was suspended or revoked, the notice must inform the license
 12.21 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
 12.22 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
 12.23 a license. The appeal of an order suspending or revoking a license must be made in writing
 12.24 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
 12.25 the commissioner within ten calendar days after the license holder receives notice that the
 12.26 license has been suspended or revoked. If a request is made by personal service, it must be
 12.27 received by the commissioner within ten calendar days after the license holder received
 12.28 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
 12.29 a timely appeal of an order suspending or revoking a license shall stay the suspension or
 12.30 revocation, the license holder may continue to operate until the commissioner issues a
 12.31 final order on the suspension or revocation.

12.32 (c)(1) If the license holder was ordered to pay a fine, the notice must inform the
 12.33 license holder of the responsibility for payment of fines and the right to a contested case
 12.34 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal
 12.35 of an order to pay a fine must be made in writing by certified mail or personal service. If

13.1 mailed, the appeal must be postmarked and sent to the commissioner within ten calendar
13.2 days after the license holder receives notice that the fine has been ordered. If a request is
13.3 made by personal service, it must be received by the commissioner within ten calendar
13.4 days after the license holder received the order.

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

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

13.19 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for
13.20 each determination of maltreatment of a child under section 626.556 or the maltreatment
13.21 of a vulnerable adult under section 626.557 for which the license holder is determined
13.22 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),
13.23 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each
13.24 occurrence of a violation of law or rule governing matters of health, safety, or supervision,
13.25 including but not limited to the provision of adequate staff-to-child or adult ratios, and
13.26 failure to ~~submit a~~ comply with background study requirements under chapter 245C; and
13.27 the license holder shall forfeit \$100 for each occurrence of a violation of law or rule
13.28 other than those subject to a \$1,000 or \$200 fine above. For purposes of this section,
13.29 "occurrence" means each violation identified in the commissioner's fine order. Fines
13.30 assessed against a license holder that holds a license to provide the residential-based
13.31 habilitation services, as defined under section 245B.02, subdivision 20, and a license to
13.32 provide foster care, may be assessed against both licenses for the same occurrence, but
13.33 the combined amount of the fines shall not exceed the amount specified in this clause
13.34 for that occurrence.

13.35 (5) When a fine has been assessed, the license holder may not avoid payment by
13.36 closing, selling, or otherwise transferring the licensed program to a third party. In such an

14.1 event, the license holder will be personally liable for payment. In the case of a corporation,
 14.2 each controlling individual is personally and jointly liable for payment.

14.3 Sec. 8. Minnesota Statutes 2008, section 245A.1435, is amended to read:

14.4 **245A.1435 REDUCTION OF RISK OF SUDDEN INFANT DEATH**
 14.5 **SYNDROME IN LICENSED PROGRAMS.**

14.6 When a license holder is placing an infant to sleep, the license holder must place the
 14.7 infant on the infant's back, unless the license holder has documentation from the infant's
 14.8 parent directing an alternative sleeping position for the infant, and must place the infant in
 14.9 a crib with a firm mattress. The license holder must not place pillows, quilts, comforters,
 14.10 sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. The
 14.11 requirements of this section apply to license holders serving infants up to and including
 14.12 12 months of age. Licensed child care providers must meet the crib requirements under
 14.13 section 245A.146.

14.14 Sec. 9. Minnesota Statutes 2008, section 245A.16, subdivision 1, is amended to read:

14.15 Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and
 14.16 private agencies that have been designated or licensed by the commissioner to perform
 14.17 licensing functions and activities under section 245A.04 background studies for adult
 14.18 foster care, family adult day services, and family child care, under chapter 245C; to
 14.19 recommend denial of applicants under section 245A.05; to issue correction orders, to issue
 14.20 variances, and recommend a conditional license under section 245A.06, or to recommend
 14.21 suspending or revoking a license or issuing a fine under section 245A.07, shall comply
 14.22 with rules and directives of the commissioner governing those functions and with this
 14.23 section. The following variances are excluded from the delegation of variance authority
 14.24 and may be issued only by the commissioner:

14.25 (1) dual licensure of family child care and child foster care, dual licensure of child
 14.26 and adult foster care, and adult foster care and family child care;

14.27 (2) adult foster care maximum capacity;

14.28 (3) adult foster care minimum age requirement;

14.29 (4) child foster care maximum age requirement;

14.30 (5) variances regarding disqualified individuals except that county agencies may
 14.31 issue variances under section 245C.30 regarding disqualified individuals when the county
 14.32 is responsible for conducting a consolidated reconsideration according to sections 245C.25
 14.33 and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination
 14.34 and a disqualification based on serious or recurring maltreatment; and

15.1 (6) the required presence of a caregiver in the adult foster care residence during
15.2 normal sleeping hours.

15.3 Except as provided in section 245A.14, subdivision 4, paragraph (e), a county agency
15.4 must not grant a license holder a variance to exceed the maximum allowable family child
15.5 care license capacity of 14 children.

15.6 (b) County agencies must report information about disqualification reconsiderations
15.7 under sections 245C.25 and 245C.27, subdivision 2, paragraphs (a) and (b), and variances
15.8 granted under paragraph (a), clause (5), to the commissioner at least monthly in a format
15.9 prescribed by the commissioner.

15.10 (c) For family day care programs, the commissioner may authorize licensing reviews
15.11 every two years after a licensee has had at least one annual review.

15.12 (d) For family adult day services programs, the commissioner may authorize
15.13 licensing reviews every two years after a licensee has had at least one annual review.

15.14 (e) A license issued under this section may be issued for up to two years.

15.15 Sec. 10. Minnesota Statutes 2008, section 245A.50, subdivision 5, is amended to read:

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

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

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

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

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

16.1 Sec. 11. Minnesota Statutes 2008, section 245C.03, subdivision 1, is amended to read:

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

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

16.5 (2) an individual age 13 and over living in the household where the licensed
16.6 program will be provided;

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

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

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

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

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

16.18 (8) a former employee who is rehired to provide direct contact services to persons
16.19 served by the program following a lay off or termination of employment;

16.20 (9) an individual required to have a background study under clause (3) who has
16.21 not provided direct contact services to persons served by the program for more than 45
16.22 consecutive days must have a new background study initiated before returning to a
16.23 position that provides direct contact services to persons served by the program; and

16.24 (10) an individual whose background study was completed under a license that
16.25 subsequently closes must have a new background study initiated by the facility, agency, or
16.26 program under an active license.

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

16.30 Sec. 12. Minnesota Statutes 2008, section 245C.15, subdivision 1, is amended to read:

16.31 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under
16.32 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the
16.33 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless
16.34 of the level of the offense, the individual has committed any of the following offenses:
16.35 sections 243.166 (violation of predatory offender registration law); 609.185 (murder in the

17.1 first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree);
17.2 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a
17.3 felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony
17.4 offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child
17.5 abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation);
17.6 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated
17.7 robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the first degree);
17.8 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an
17.9 unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of
17.10 prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342 (criminal sexual
17.11 conduct in the first degree); 609.343 (criminal sexual conduct in the second degree);
17.12 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct
17.13 in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453
17.14 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual
17.15 conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a
17.16 child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561
17.17 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision
17.18 3, 4, or 5 (felony-level harassment; stalking); 609.855, subdivision 5 (shooting at or in a
17.19 public transit vehicle or facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause
17.20 (1) (indecent exposure involving a minor); 617.246 (use of minors in sexual performance
17.21 prohibited); or 617.247 (possession of pictorial representations of minors). An individual
17.22 also is disqualified under section 245C.14 regardless of how much time has passed since
17.23 the involuntary termination of the individual's parental rights under section 260C.301.

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

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

17.30 (d) When a disqualification is based on a judicial determination other than a
17.31 conviction, the disqualification period begins from the date of the court order. When a
17.32 disqualification is based on an admission, the disqualification period begins from the
17.33 date of an admission in court. When a disqualification is based on an Alford Plea, the
17.34 disqualification period begins from the date the Alford Plea is entered in court. When
17.35 a disqualification is based on a preponderance of evidence of a disqualifying act, the
17.36 disqualification date begins from the date of the dismissal, the date of discharge of the

18.1 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
 18.2 date of the incident, whichever occurs last.

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

18.8 Sec. 13. Minnesota Statutes 2008, section 245C.15, subdivision 2, is amended to read:

18.9 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section
 18.10 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,
 18.11 if any, for the offense; and (2) the individual has committed a felony-level violation
 18.12 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);
 18.13 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph
 18.14 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);
 18.15 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231
 18.16 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth
 18.17 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a
 18.18 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of
 18.19 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);
 18.20 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter
 18.21 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first
 18.22 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury
 18.23 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275
 18.24 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender);
 18.25 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a
 18.26 witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing
 18.27 stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
 18.28 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree);
 18.29 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary
 18.30 tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery);
 18.31 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by
 18.32 false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled
 18.33 shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82
 18.34 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent
 18.35 exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and

19.1 performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons
19.2 not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level
19.3 conviction involving alcohol or drug use.

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

19.8 (c) For foster care and family child care an individual is disqualified under section
19.9 245C.14 if less than 15 years has passed since the individual's voluntary termination of
19.10 the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or
19.11 260C.301, subdivision 3.

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

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

19.20 (f) When a disqualification is based on a judicial determination other than a
19.21 conviction, the disqualification period begins from the date of the court order. When a
19.22 disqualification is based on an admission, the disqualification period begins from the
19.23 date of an admission in court. When a disqualification is based on an Alford Plea, the
19.24 disqualification period begins from the date the Alford Plea is entered in court. When
19.25 a disqualification is based on a preponderance of evidence of a disqualifying act, the
19.26 disqualification date begins from the date of the dismissal, the date of discharge of the
19.27 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
19.28 date of the incident, whichever occurs last.

19.29 Sec. 14. Minnesota Statutes 2008, section 245C.15, subdivision 3, is amended to read:

19.30 Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section
19.31 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed,
19.32 if any, for the offense; and (2) the individual has committed a gross misdemeanor-level
19.33 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
19.34 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
19.35 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide

20.1 and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or
20.2 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree);
20.3 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a
20.4 vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of
20.5 persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal
20.6 abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335
20.7 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a
20.8 vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision
20.9 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house);
20.10 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child);
20.11 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into
20.12 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance
20.13 of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611
20.14 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous
20.15 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable
20.16 adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2
20.17 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction
20.18 card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene
20.19 materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful
20.20 materials; dissemination and display to minors prohibited); or violation of an order for
20.21 protection under section 518B.01, subdivision 14.

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

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

20.30 (d) If the individual studied commits one of the offenses listed in paragraph (a), but
20.31 the sentence or level of offense is a misdemeanor disposition, the individual is disqualified
20.32 but the disqualification lookback period for the offense is the period applicable to
20.33 misdemeanors.

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

21.1 date of an admission in court. When a disqualification is based on an Alford Plea, the
 21.2 disqualification period begins from the date the Alford Plea is entered in court. When
 21.3 a disqualification is based on a preponderance of evidence of a disqualifying act, the
 21.4 disqualification date begins from the date of the dismissal, the date of discharge of the
 21.5 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
 21.6 date of the incident, whichever occurs last.

21.7 Sec. 15. Minnesota Statutes 2008, section 245C.15, subdivision 4, is amended to read:

21.8 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under
 21.9 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence
 21.10 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level
 21.11 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
 21.12 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
 21.13 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide
 21.14 and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree);
 21.15 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224
 21.16 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation
 21.17 of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult);
 21.18 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation
 21.19 of an order for protection under 609.3232 (protective order authorized; procedures;
 21.20 penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen
 21.21 goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
 21.22 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous
 21.23 weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or
 21.24 harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment);
 21.25 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23
 21.26 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination
 21.27 and display to minors prohibited); or violation of an order for protection under section
 21.28 518B.01 (Domestic Abuse Act).

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

21.31 (1) failure to make required reports under section 626.556, subdivision 3, or
 21.32 626.557, subdivision 3, for incidents in which: (i) the final disposition under section
 21.33 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was
 21.34 recurring or serious; or

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

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

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

22.14 (e) When a disqualification is based on a judicial determination other than a
 22.15 conviction, the disqualification period begins from the date of the court order. When a
 22.16 disqualification is based on an admission, the disqualification period begins from the
 22.17 date of an admission in court. When a disqualification is based on an Alford Plea, the
 22.18 disqualification period begins from the date the Alford Plea is entered in court. When
 22.19 a disqualification is based on a preponderance of evidence of a disqualifying act, the
 22.20 disqualification date begins from the date of the dismissal, the date of discharge of the
 22.21 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
 22.22 date of the incident, whichever occurs last.

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

22.25 Sec. 16. Minnesota Statutes 2008, section 245C.22, subdivision 7, is amended to read:

22.26 Subd. 7. **Classification of certain data.** (a) Notwithstanding section 13.46, upon
 22.27 setting aside a disqualification under this section, the identity of the disqualified individual
 22.28 who received the set-aside and the individual's disqualifying characteristics are public
 22.29 data if the set-aside was:

22.30 (1) for any disqualifying characteristic under section 245C.15, when the set-aside
 22.31 relates to a child care center or a family child care provider licensed under chapter 245A; or

22.32 (2) for a disqualifying characteristic under section 245C.15, subdivision 2.

22.33 (b) Notwithstanding section 13.46, upon granting a variance to a license holder
 22.34 under section 245C.30, the identity of the disqualified individual who is the subject of

23.1 the variance, the individual's disqualifying characteristics under section 245C.15, and the
 23.2 terms of the variance are public data, when the variance:

23.3 (1) is issued to a child care center or a family child care provider licensed under
 23.4 chapter 245A; or

23.5 (2) relates to an individual with a disqualifying characteristic under section 245C.15,
 23.6 subdivision 2.

23.7 (c) The identity of a disqualified individual and the reason for disqualification
 23.8 remain private data when:

23.9 (1) a disqualification is not set aside and no variance is granted, except as provided
 23.10 under section 13.46, subdivision 4;

23.11 (2) the data are not public under paragraph (a) or (b);

23.12 (3) the disqualification is rescinded because the information relied upon to disqualify
 23.13 the individual is incorrect; or

23.14 (4) the disqualification relates to a license to provide relative child foster care.

23.15 As used in this clause, "relative" has the meaning given it under section 260C.007,
 23.16 subdivision 27.

23.17 (d) Licensed family child care providers and child care centers must provide notices
 23.18 as required under section 245C.301.

23.19 (e) Notwithstanding paragraphs (a) and (b), the identity of household members who
 23.20 are the subject of a disqualification related set-aside or variance is not public data if:

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

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

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

23.26 Sec. 17. Minnesota Statutes 2008, section 245C.24, subdivision 2, is amended to read:

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

23.31 (b) For an individual in the chemical dependency or corrections field who was
 23.32 disqualified for a crime or conduct listed under section 245C.15, subdivision 1, and whose
 23.33 disqualification was set aside prior to July 1, 2005, the commissioner must consider
 23.34 granting a variance pursuant to section 245C.30 for the license holder for a program
 23.35 dealing primarily with adults. A request for reconsideration evaluated under this paragraph

24.1 must include a letter of recommendation from the license holder that was subject to the
 24.2 prior set-aside decision addressing the individual's quality of care to children or vulnerable
 24.3 adults and the circumstances of the individual's departure from that service.

24.4 (c) When a licensed foster care provider adopts an individual who had received
 24.5 foster care services from the provider for over a year, and the adopted individual is
 24.6 required to receive a background study under section 245C.03, subdivision 1, paragraph
 24.7 (a), clause (2) or (6), the commissioner may grant a variance to the license holder under
 24.8 section 245C.30 to permit the adopted individual with a permanent disqualification
 24.9 to remain affiliated with the license holder under the conditions of the variance when
 24.10 the variance is recommended by the county of responsibility for each of the remaining
 24.11 individuals in placement in the home and the licensing agency for the home.

24.12 Sec. 18. Minnesota Statutes 2008, section 245C.24, subdivision 3, is amended to read:

24.13 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may
 24.14 not set aside the disqualification of an individual in connection with a license to provide
 24.15 family child care for children, foster care for children in the provider's home, or foster
 24.16 care or day care services for adults in the provider's home if: (1) less than ten years
 24.17 has passed since the discharge of the sentence imposed, if any, for the offense; or (2)
 24.18 when disqualified based on a preponderance of evidence determination under section
 24.19 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section 245C.14,
 24.20 subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the
 24.21 individual committed the act or admitted to committing the act, whichever is later; and
 24.22 (3) the individual has committed a violation of any of the following offenses: sections
 24.23 609.165 (felon ineligible to possess firearm); criminal vehicular homicide or criminal
 24.24 vehicular operation causing death under 609.21 (criminal vehicular homicide and injury);
 24.25 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or
 24.26 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit
 24.27 of a gang); 609.713 (terroristic threats); 609.235 (use of drugs to injure or to facilitate
 24.28 crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the
 24.29 second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first-degree or
 24.30 first-degree tampering with a witness); burglary in the first or second degree under 609.582
 24.31 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns
 24.32 and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor harassment;
 24.33 stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree);
 24.34 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance
 24.35 crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled

25.1 substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree
 25.2 assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons
 25.3 confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a
 25.4 vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial
 25.5 exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction);
 25.6 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree);
 25.7 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree);
 25.8 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses
 25.9 under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material
 25.10 to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor
 25.11 offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense
 25.12 under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under
 25.13 609.377 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct
 25.14 against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

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

25.19 (c) The commissioner may not set aside the disqualification of an individual if less
 25.20 than ten years have passed since the discharge of the sentence imposed for an offense in
 25.21 any other state or country, the elements of which are substantially similar to the elements
 25.22 of any of the offenses listed in paragraph (a).

25.23 Sec. 19. Minnesota Statutes 2008, section 245C.25, is amended to read:

25.24 **245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT**
 25.25 **DETERMINATION AND DISQUALIFICATION.**

25.26 (a) If an individual is disqualified on the basis of a determination of maltreatment
 25.27 under section 626.556 or 626.557, which was serious or recurring, and the individual
 25.28 requests reconsideration of the maltreatment determination under section 626.556,
 25.29 subdivision 10i, or 626.557, subdivision 9d, and also requests reconsideration of
 25.30 the disqualification under section 245C.21, the commissioner shall consolidate the
 25.31 reconsideration of the maltreatment determination and the disqualification into a single
 25.32 reconsideration.

25.33 (b) For maltreatment and disqualification determinations made by county agencies,
 25.34 the county agency shall conduct the consolidated reconsideration. If the county agency
 25.35 has disqualified an individual on multiple bases, one of which is a county maltreatment

26.1 determination for which the individual has a right to request reconsideration, the county
26.2 shall conduct the reconsideration of all disqualifications.

26.3 (c) If the county has previously conducted a consolidated reconsideration under
26.4 paragraph (b) of a maltreatment determination and a disqualification based on serious or
26.5 recurring maltreatment, and the county subsequently disqualifies the individual based
26.6 on that determination, the county shall conduct the reconsideration of the subsequent
26.7 disqualification. The scope of the subsequent disqualification shall be limited to whether
26.8 the individual poses a risk of harm in accordance with section 245C.22, subdivision 4. If
26.9 the commissioner subsequently disqualifies the individual in connection with a child foster
26.10 care license based on the county's previous maltreatment determination, the commissioner
26.11 shall conduct the reconsideration of the subsequent disqualification.

26.12 Sec. 20. Minnesota Statutes 2008, section 245C.27, subdivision 1, is amended to read:

26.13 Subdivision 1. **Fair hearing when disqualification is not set aside.** (a) If the
26.14 commissioner does not set aside a disqualification of an individual under section
26.15 245C.22 who is disqualified on the basis of a preponderance of evidence that the
26.16 individual committed an act or acts that meet the definition of any of the crimes listed in
26.17 section 245C.15; for a determination under section 626.556 or 626.557 of substantiated
26.18 maltreatment that was serious or recurring under section 245C.15; or for failure to make
26.19 required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant
26.20 to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request
26.21 a fair hearing under section 256.045, unless the disqualification is deemed conclusive
26.22 under section 245C.29.

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

26.27 (c) Except as provided under paragraph (e), if the individual was disqualified
26.28 based on a conviction ~~or~~ of, admission to, or Alford Plea to any crimes listed in section
26.29 245C.15, subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision
26.30 8, the reconsideration decision under section 245C.22 is the final agency determination
26.31 for purposes of appeal by the disqualified individual and is not subject to a hearing under
26.32 section 256.045. If the individual was disqualified based on a judicial determination, that
26.33 determination is treated the same as a conviction for purposes of appeal.

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

27.1 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a
27.2 disqualification of an individual who was disqualified based on both a preponderance
27.3 of evidence and a conviction or admission, the individual may request a fair hearing
27.4 under section 256.045, unless the disqualifications are deemed conclusive under section
27.5 245C.29. The scope of the hearing conducted under section 256.045 with regard to the
27.6 disqualification based on a conviction or admission shall be limited solely to whether the
27.7 individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case,
27.8 the reconsideration decision under section 245C.22 is not the final agency decision for
27.9 purposes of appeal by the disqualified individual.

27.10 Sec. 21. Minnesota Statutes 2008, section 256.045, subdivision 3, is amended to read:

27.11 Subd. 3. **State agency hearings.** (a) State agency hearings are available for the
27.12 following:

27.13 (1) any person applying for, receiving or having received public assistance, medical
27.14 care, or a program of social services granted by the state agency or a county agency or
27.15 the federal Food Stamp Act whose application for assistance is denied, not acted upon
27.16 with reasonable promptness, or whose assistance is suspended, reduced, terminated, or
27.17 claimed to have been incorrectly paid;

27.18 (2) any patient or relative aggrieved by an order of the commissioner under section
27.19 252.27;

27.20 (3) a party aggrieved by a ruling of a prepaid health plan;

27.21 (4) except as provided under chapter 245C, any individual or facility determined by
27.22 a lead agency to have maltreated a vulnerable adult under section 626.557 after they have
27.23 exercised their right to administrative reconsideration under section 626.557;

27.24 (5) any person whose claim for foster care payment according to a placement of the
27.25 child resulting from a child protection assessment under section 626.556 is denied or not
27.26 acted upon with reasonable promptness, regardless of funding source;

27.27 (6) any person to whom a right of appeal according to this section is given by other
27.28 provision of law;

27.29 (7) an applicant aggrieved by an adverse decision to an application for a hardship
27.30 waiver under section 256B.15;

27.31 (8) an applicant aggrieved by an adverse decision to an application or redetermination
27.32 for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

27.33 (9) except as provided under chapter 245A, an individual or facility determined
27.34 to have maltreated a minor under section 626.556, after the individual or facility has
27.35 exercised the right to administrative reconsideration under section 626.556; or

28.1 (10) except as provided under chapter 245C, an individual disqualified under
28.2 sections 245C.14 and 245C.15, which has not been set aside under sections 245C.22
28.3 and 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the
28.4 evidence that the individual has committed an act or acts that meet the definition of any of
28.5 the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports
28.6 required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings
28.7 regarding a maltreatment determination under clause (4) or (9) and a disqualification under
28.8 this clause in which the basis for a disqualification is serious or recurring maltreatment,
28.9 which has not been set aside under sections 245C.22 and 245C.23, shall be consolidated
28.10 into a single fair hearing. In such cases, the scope of review by the human services referee
28.11 shall include both the maltreatment determination and the disqualification. The failure to
28.12 exercise the right to an administrative reconsideration shall not be a bar to a hearing under
28.13 this section if federal law provides an individual the right to a hearing to dispute a finding
28.14 of maltreatment. Individuals and organizations specified in this section may contest the
28.15 specified action, decision, or final disposition before the state agency by submitting a
28.16 written request for a hearing to the state agency within 30 days after receiving written
28.17 notice of the action, decision, or final disposition, or within 90 days of such written notice
28.18 if the applicant, recipient, patient, or relative shows good cause why the request was
28.19 not submitted within the 30-day time limit.

28.20 (b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or
28.21 (10), is the only administrative appeal to the final agency determination specifically,
28.22 including a challenge to the accuracy and completeness of data under section 13.04.
28.23 Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment
28.24 that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing
28.25 homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a
28.26 contested case proceeding under the provisions of chapter 14. Hearings requested under
28.27 paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after
28.28 July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is
28.29 only available when there is no juvenile court or adult criminal action pending. If such
28.30 action is filed in either court while an administrative review is pending, the administrative
28.31 review must be suspended until the judicial actions are completed. If the juvenile court
28.32 action or criminal charge is dismissed or the criminal action overturned, the matter may be
28.33 considered in an administrative hearing.

28.34 (c) For purposes of this section, bargaining unit grievance procedures are not an
28.35 administrative appeal.

29.1 (d) The scope of hearings involving claims to foster care payments under paragraph
29.2 (a), clause (5), shall be limited to the issue of whether the county is legally responsible
29.3 for a child's placement under court order or voluntary placement agreement and, if so,
29.4 the correct amount of foster care payment to be made on the child's behalf and shall not
29.5 include review of the propriety of the county's child protection determination or child
29.6 placement decision.

29.7 (e) A vendor of medical care as defined in section 256B.02, subdivision 7, or a
29.8 vendor under contract with a county agency to provide social services is not a party and
29.9 may not request a hearing under this section, except if assisting a recipient as provided in
29.10 subdivision 4.

29.11 (f) An applicant or recipient is not entitled to receive social services beyond the
29.12 services prescribed under chapter 256M or other social services the person is eligible
29.13 for under state law.

29.14 (g) The commissioner may summarily affirm the county or state agency's proposed
29.15 action without a hearing when the sole issue is an automatic change due to a change in
29.16 state or federal law.

29.17 Sec. 22. Minnesota Statutes 2008, section 256.045, subdivision 3b, is amended to read:

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

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

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

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

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

29.31 (b) If the disqualification is affirmed, the state human services referee shall
29.32 determine whether the individual poses a risk of harm in accordance with the requirements
29.33 of section ~~245C.16~~ 245C.22, and whether the disqualification should be set aside or not set
29.34 aside. In determining whether the disqualification should be set aside, the human services
29.35 referee shall consider all of the characteristics that cause the individual to be disqualified,

30.1 including those characteristics that were not subject to review under paragraph (a), in
30.2 order to determine whether the individual poses a risk of harm. A decision to set aside
30.3 a disqualification that is the subject of the hearing constitutes a determination that the
30.4 individual does not pose a risk of harm and that the individual may provide direct contact
30.5 services in the individual program specified in the set aside. If a determination that the
30.6 information relied upon to disqualify an individual was correct and is conclusive under
30.7 section 245C.29, and the individual is subsequently disqualified under section 245C.14,
30.8 the individual has a right to again request reconsideration on the risk of harm under section
30.9 245C.21. Subsequent determinations regarding risk of harm are not subject to another
30.10 hearing under this section.

30.11 (c) The state human services referee shall recommend an order to the commissioner
30.12 of health, education, or human services, as applicable, who shall issue a final order. The
30.13 commissioner shall affirm, reverse, or modify the final disposition. Any order of the
30.14 commissioner issued in accordance with this subdivision is conclusive upon the parties
30.15 unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal
30.16 under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to 144A.46,
30.17 the commissioner's determination as to maltreatment is conclusive, as provided under
30.18 section 245C.29.

30.19 Sec. 23. Minnesota Statutes 2008, section 626.556, subdivision 2, is amended to read:

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

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

30.28 (b) "Investigation" means fact gathering related to the current safety of a child
30.29 and the risk of subsequent maltreatment that determines whether child maltreatment
30.30 occurred and whether child protective services are needed. An investigation must be used
30.31 when reports involve substantial child endangerment, and for reports of maltreatment in
30.32 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to
30.33 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
30.34 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
30.35 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

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

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

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

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

31.12 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
31.13 609.195;

31.14 (6) manslaughter in the first or second degree under section 609.20 or 609.205;

31.15 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
31.16 609.223;

31.17 (8) solicitation, inducement, and promotion of prostitution under section 609.322;

31.18 (9) criminal sexual conduct under sections 609.342 to 609.3451;

31.19 (10) solicitation of children to engage in sexual conduct under section 609.352;

31.20 (11) malicious punishment or neglect or endangerment of a child under section
31.21 609.377 or 609.378;

31.22 (12) use of a minor in sexual performance under section 617.246; or

31.23 (13) parental behavior, status, or condition which mandates that the county attorney
31.24 file a termination of parental rights petition under section 260C.301, subdivision 3,
31.25 paragraph (a).

31.26 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
31.27 child's care, by a person who has a significant relationship to the child, as defined in
31.28 section 609.341, or by a person in a position of authority, as defined in section 609.341,
31.29 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
31.30 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
31.31 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
31.32 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
31.33 abuse also includes any act which involves a minor which constitutes a violation of
31.34 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
31.35 threatened sexual abuse.

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

32.9 (f) "Neglect" means the commission or omission of any of the acts specified under
32.10 clauses (1) to (9), other than by accidental means:

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

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

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

32.22 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
32.23 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
32.24 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

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

32.33 (6) prenatal exposure to a controlled substance, as defined in section 253B.02,
32.34 subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal
32.35 symptoms in the child at birth, results of a toxicology test performed on the mother at

33.1 delivery or the child at birth, or medical effects or developmental delays during the child's
33.2 first year of life that medically indicate prenatal exposure to a controlled substance;

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

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

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

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

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

33.23 (1) throwing, kicking, burning, biting, or cutting a child;

33.24 (2) striking a child with a closed fist;

33.25 (3) shaking a child under age three;

33.26 (4) striking or other actions which result in any nonaccidental injury to a child
33.27 under 18 months of age;

33.28 (5) unreasonable interference with a child's breathing;

33.29 (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

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

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

34.1 (9) unreasonable physical confinement or restraint not permitted under section
34.2 609.379, including but not limited to tying, caging, or chaining; or

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

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

34.8 (i) "Facility" means:

34.9 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
34.10 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
34.11 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

34.12 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
34.13 124D.10; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35.15 Sec. 24. Minnesota Statutes 2008, section 626.556, subdivision 10e, is amended to
35.16 read:

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

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

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

35.28 (d) If the commissioner of education conducts an assessment or investigation,
35.29 the commissioner shall determine whether maltreatment occurred and what corrective
35.30 or protective action was taken by the school facility. If a determination is made that
35.31 maltreatment has occurred, the commissioner shall report to the employer, the school
35.32 board, and any appropriate licensing entity the determination that maltreatment occurred
35.33 and what corrective or protective action was taken by the school facility. In all other cases,
35.34 the commissioner shall inform the school board or employer that a report was received,
35.35 the subject of the report, the date of the initial report, the category of maltreatment alleged

36.1 as defined in paragraph (f), the fact that maltreatment was not determined, and a summary
36.2 of the specific reasons for the determination.

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

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

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

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

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

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

- 36.32 (1) whether the actions of the facility or the individual caregivers were according to,
36.33 and followed the terms of, an erroneous physician order, prescription, individual care plan,
36.34 or directive; however, this is not a mitigating factor when the facility or caregiver was
36.35 responsible for the issuance of the erroneous order, prescription, individual care plan, or

37.1 directive or knew or should have known of the errors and took no reasonable measures to
37.2 correct the defect before administering care;

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

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

37.10 (j) Notwithstanding paragraph (i), when maltreatment is determined to have been
37.11 committed by an individual who is also the facility license holder, both the individual and
37.12 the facility must be determined responsible for the maltreatment, and both the background
37.13 study disqualification standards under section 245C.15, subdivision 4, and the licensing
37.14 actions under sections 245A.06 or 245A.07 apply.

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

37.21 Sec. 25. Minnesota Statutes 2008, section 626.556, subdivision 10f, is amended to read:

37.22 Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion
37.23 of a family assessment, the local welfare agency shall notify the parent or guardian
37.24 of the child of the need for services to address child safety concerns or significant risk
37.25 of subsequent child maltreatment. The local welfare agency and the family may also
37.26 jointly agree that family support and family preservation services are needed. Within ten
37.27 working days of the conclusion of an investigation, the local welfare agency or agency
37.28 responsible for assessing or investigating the report shall notify the parent or guardian
37.29 of the child, the person determined to be maltreating the child, and if applicable, the
37.30 director of the facility, of the determination and a summary of the specific reasons for
37.31 the determination. When the investigation involves a child foster care setting that is
37.32 monitored by a private licensing agency under section 245A.16, the local welfare agency
37.33 responsible for assessing or investigating the report shall notify the private licensing
37.34 agency of the determination and shall provide a summary of the specific reasons for
37.35 the determination. The notice to the private licensing agency must include identifying

38.1 private data, but not the identity of the reporter of maltreatment. The notice must also
38.2 include a certification that the information collection procedures under subdivision 10,
38.3 paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to
38.4 obtain access to other private data on the subject collected, created, or maintained under
38.5 this section. In addition, the notice shall include the length of time that the records will be
38.6 kept under subdivision 11c. The investigating agency shall notify the parent or guardian
38.7 of the child who is the subject of the report, and any person or facility determined to
38.8 have maltreated a child, of their appeal or review rights under this section or section
38.9 256.022. The notice must also state that a finding of maltreatment may result in denial of a
38.10 license application or background study disqualification under chapter 245C related to
38.11 employment or services that are licensed by the Department of Human Services under
38.12 chapter 245A, the Department of Health under chapter 144 or 144A, the Department of
38.13 Corrections under section 241.021, and from providing services related to an unlicensed
38.14 personal care provider organization under chapter 256B.

38.15 Sec. 26. Minnesota Statutes 2008, section 626.557, subdivision 9c, is amended to read:

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

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

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

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

38.33 (2) the comparative responsibility between the facility, other caregivers, and
38.34 requirements placed upon the employee, including but not limited to, the facility's
38.35 compliance with related regulatory standards and factors such as the adequacy of facility

39.1 policies and procedures, the adequacy of facility training, the adequacy of an individual's
39.2 participation in the training, the adequacy of caregiver supervision, the adequacy of facility
39.3 staffing levels, and a consideration of the scope of the individual employee's authority; and

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

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

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

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

39.35 ~~(f)~~ (g) The lead agency shall notify the vulnerable adult who is the subject of
39.36 the report or the vulnerable adult's legal guardian, if known, and any person or facility

40.1 determined to have maltreated a vulnerable adult, of their appeal or review rights under
40.2 this section or section 256.021.

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

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

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

40.17 Sec. 27. Minnesota Statutes 2008, section 626.557, subdivision 12b, is amended to
40.18 read:

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

40.26 Data maintained by the common entry point are confidential data on individuals or
40.27 protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163,
40.28 the common entry point shall destroy data three calendar years after date of receipt.

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

41.1 section 13.02. Upon completion of the investigation, the data are classified as provided in
41.2 clauses (1) to (3) and paragraph (c).

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

41.5 (i) the name of the facility investigated;

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

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

41.8 (iv) the identity of the investigator;

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

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

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

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

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

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

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

41.22 (i) the name of the vulnerable adult;

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

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

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

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

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

42.1 (d) Notwithstanding section 138.163, data maintained under this section by the
42.2 commissioners of health and human services must be destroyed under the following
42.3 schedule:

42.4 (1) data from reports determined to be false, two years after the finding was made;

42.5 (2) data from reports determined to be inconclusive, four years after the finding
42.6 was made;

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

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

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

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

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

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

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

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

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

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

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

43.5 Sec. 28. Minnesota Statutes 2008, section 626.5572, subdivision 13, is amended to
43.6 read:

43.7 Subd. 13. **Lead agency.** "Lead agency" is the primary administrative agency
43.8 responsible for investigating reports made under section 626.557.

43.9 (a) The Department of Health is the lead agency for the facilities which are licensed
43.10 or are required to be licensed as hospitals, home care providers, nursing homes, residential
43.11 care homes, ~~or~~ boarding care homes, or residential facilities that are also federally certified
43.12 as intermediate care facilities that serve people with developmental disabilities.

43.13 (b) The Department of Human Services is the lead agency for the programs licensed
43.14 or required to be licensed as adult day care, adult foster care, programs for people with
43.15 developmental disabilities, mental health programs, or chemical health programs, ~~or~~
43.16 ~~personal care provider organizations.~~

43.17 (c) The county social service agency or its designee is the lead agency for all
43.18 other reports.