

This Document can be made available
in alternative formats upon request

State of Minnesota

Printed
Page No.

173

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 1750

March 16, 2009

Authored by Abeler and Thao

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

March 23, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Early Childhood Finance and Policy Division

April 1, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

A bill for an act

1.1 relating to human services; making changes to licensing provisions; modifying
1.2 license disqualifications and background study requirements; making other
1.3 changes to programs and services licensed by the Department of Human Services;
1.4 amending Minnesota Statutes 2008, sections 157.16, by adding a subdivision;
1.5 245.4871, subdivision 10; 245A.03, subdivision 2, by adding a subdivision;
1.6 245A.04, subdivisions 5, 7; 245A.05; 245A.07, subdivisions 1, 3; 245A.11, by
1.7 adding a subdivision; 245A.1435; 245A.144; 245A.1444; 245A.16, subdivision
1.8 1; 245A.40, subdivision 5; 245A.50, subdivision 5; 245C.03, subdivision 1;
1.9 245C.04, subdivision 1; 245C.07; 245C.13, subdivision 2; 245C.15, subdivisions
1.10 1, 2, 3, 4; 245C.24, subdivisions 2, 3; 245C.25; 245C.27, subdivision 1; 256.045,
1.11 subdivisions 3, 3b; 256B.0943, subdivisions 4, 6, 9; 626.556, subdivisions 2,
1.12 10e, 10f; 626.557, subdivision 9c; 626.5572, subdivision 13; proposing coding
1.13 for new law in Minnesota Statutes, chapter 256; repealing Minnesota Statutes
1.14 2008, section 245C.10, subdivision 1.
1.15

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

1.17 Section 1. Minnesota Statutes 2008, section 157.16, is amended by adding a
1.18 subdivision to read:

1.19 Subd. 5. Exemption for certain establishments. This section does not apply to
1.20 group residential facilities of ten or fewer beds licensed by the commissioner of human
1.21 services under Minnesota Rules, chapter 2960, provided the facility employs or contracts
1.22 with a certified food manager under Minnesota Rules, part 4626.2015.

1.23 Sec. 2. Minnesota Statutes 2008, section 245.4871, subdivision 10, is amended to read:

1.24 Subd. 10. **Day treatment services.** "Day treatment," "day treatment services," or
1.25 "day treatment program" means a structured program of treatment and care provided to a
1.26 child in:

2.1 (1) an outpatient hospital accredited by the Joint Commission on Accreditation of
2.2 Health Organizations and licensed under sections 144.50 to 144.55;

2.3 (2) a community mental health center under section 245.62;

2.4 (3) an entity that is under contract with the county board to operate a program that
2.5 meets the requirements of section 245.4884, subdivision 2, and Minnesota Rules, parts
2.6 9505.0170 to 9505.0475; or

2.7 (4) an entity that operates a program that meets the requirements of section
2.8 245.4884, subdivision 2, and Minnesota Rules, parts 9505.0170 to 9505.0475, that is
2.9 under contract with an entity that is under contract with a county board.

2.10 Day treatment consists of group psychotherapy and other intensive therapeutic
2.11 services that are provided for a minimum ~~three-hour~~ two-hour time block by a
2.12 multidisciplinary staff under the clinical supervision of a mental health professional.

2.13 Day treatment may include education and consultation provided to families and
2.14 other individuals as an extension of the treatment process. The services are aimed at
2.15 stabilizing the child's mental health status, and developing and improving the child's daily
2.16 independent living and socialization skills. Day treatment services are distinguished from
2.17 day care by their structured therapeutic program of psychotherapy services. Day treatment
2.18 services are not a part of inpatient hospital or residential treatment services. ~~Day treatment~~
2.19 ~~services for a child are an integrated set of education, therapy, and family interventions.~~

2.20 A day treatment service must be available to a child ~~at least five days~~ up to 15 hours
2.21 a week throughout the year and must be coordinated with, integrated with, or part of an
2.22 education program offered by the child's school.

2.23 Sec. 3. Minnesota Statutes 2008, section 245A.03, subdivision 2, is amended to read:

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

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

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

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

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

- 3.1 (5) programs operated by a public school for children 33 months or older;
- 3.2 (6) nonresidential programs primarily for children that provide care or supervision
3.3 for periods of less than three hours a day while the child's parent or legal guardian is in
3.4 the same building as the nonresidential program or present within another building that is
3.5 directly contiguous to the building in which the nonresidential program is located;
- 3.6 (7) nursing homes or hospitals licensed by the commissioner of health except as
3.7 specified under section 245A.02;
- 3.8 (8) board and lodge facilities licensed by the commissioner of health that provide
3.9 services for five or more persons whose primary diagnosis is mental illness that do not
3.10 provide intensive residential treatment;
- 3.11 (9) homes providing programs for persons placed by a county or a licensed agency
3.12 for legal adoption, unless the adoption is not completed within two years;
- 3.13 (10) programs licensed by the commissioner of corrections;
- 3.14 (11) recreation programs for children or adults that are operated or approved by a
3.15 park and recreation board whose primary purpose is to provide social and recreational
3.16 activities;
- 3.17 (12) programs operated by a school as defined in section 120A.22, subdivision
3.18 4; YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as
3.19 defined in section 315.51, whose primary purpose is to provide child care to school-age
3.20 children;
- 3.21 (13) Head Start nonresidential programs which operate for less than 45 days in
3.22 each calendar year;
- 3.23 (14) noncertified boarding care homes unless they provide services for five or more
3.24 persons whose primary diagnosis is mental illness or a developmental disability;
- 3.25 (15) programs for children such as scouting, boys clubs, girls clubs, and sports and
3.26 art programs, and nonresidential programs for children provided for a cumulative total of
3.27 less than 30 days in any 12-month period;
- 3.28 (16) residential programs for persons with mental illness, that are located in hospitals;
- 3.29 (17) the religious instruction of school-age children; Sabbath or Sunday schools; or
3.30 the congregate care of children by a church, congregation, or religious society during the
3.31 period used by the church, congregation, or religious society for its regular worship;
- 3.32 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter
3.33 4630;
- 3.34 (19) mental health outpatient services for adults with mental illness or children
3.35 with emotional disturbance;

4.1 (20) residential programs serving school-age children whose sole purpose is cultural
4.2 or educational exchange, until the commissioner adopts appropriate rules;

4.3 (21) unrelated individuals who provide out-of-home respite care services to persons
4.4 with developmental disabilities from a single related family for no more than 90 days in a
4.5 12-month period and the respite care services are for the temporary relief of the person's
4.6 family or legal representative;

4.7 (22) respite care services provided as a home and community-based service to a
4.8 person with a developmental disability, in the person's primary residence;

4.9 (23) community support services programs as defined in section 245.462, subdivision
4.10 6, and family community support services as defined in section 245.4871, subdivision 17;

4.11 (24) the placement of a child by a birth parent or legal guardian in a preadoptive
4.12 home for purposes of adoption as authorized by section 259.47;

4.13 (25) settings registered under chapter 144D which provide home care services
4.14 licensed by the commissioner of health to fewer than seven adults; ~~or~~

4.15 (26) chemical dependency or substance abuse treatment activities of licensed
4.16 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart
4.17 15, when the treatment activities are not paid for by the consolidated chemical dependency
4.18 treatment fund;

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

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

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

4.26 (28) a program serving only children who are age 33 months or older, that is
4.27 operated by a nonpublic school, for no more than four hours per day per child, with no
4.28 more than 20 children at any one time, and that is accredited by:

4.29 (i) an accrediting agency that is formally recognized by the commissioner of
4.30 education as a nonpublic school accrediting organization; or

4.31 (ii) an accrediting agency that requires background studies and that receives and
4.32 investigates complaints about the services provided.

4.33 A program that asserts its exemption from licensure under item (ii) shall, upon
4.34 request from the commissioner, provide the commissioner with documentation from the
4.35 accrediting agency that verifies: that the accreditation is current; that the accrediting

5.1 agency investigates complaints about services; and that the accrediting agency's standards
5.2 require background studies on all people providing direct contact services.

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

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

5.10 Sec. 4. Minnesota Statutes 2008, section 245A.03, is amended by adding a subdivision
5.11 to read:

5.12 Subd. 7. **Excluded providers seeking licensure.** Nothing in this section shall
5.13 prohibit a program that is excluded from licensure under subdivision 2, paragraph (a),
5.14 clause (28), from seeking licensure. The commissioner shall ensure that any application
5.15 received from such an excluded provider is processed in the same manner as all other
5.16 applications for child care center licensure.

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

5.18 Subd. 5. **Commissioner's right of access.** When the commissioner is exercising the
5.19 powers conferred by this chapter and ~~section~~ sections 245.69, 626.556, and 626.557, the
5.20 commissioner must be given access to the physical plant and grounds where the program
5.21 is provided, documents and records, including records maintained in electronic format,
5.22 persons served by the program, and staff whenever the program is in operation and the
5.23 information is relevant to inspections or investigations conducted by the commissioner.
5.24 The commissioner must be given access without prior notice and as often as the
5.25 commissioner considers necessary if the commissioner is conducting an investigation of
5.26 allegations of maltreatment or other violation of applicable laws or rules. In conducting
5.27 inspections, the commissioner may request and shall receive assistance from other state,
5.28 county, and municipal governmental agencies and departments. The applicant or license
5.29 holder shall allow the commissioner to photocopy, photograph, and make audio and video
5.30 tape recordings during the inspection of the program at the commissioner's expense. The
5.31 commissioner shall obtain a court order or the consent of the subject of the records or the
5.32 parents or legal guardian of the subject before photocopying hospital medical records.

5.33 Persons served by the program have the right to refuse to consent to be interviewed,
5.34 photographed, or audio or videotaped. Failure or refusal of an applicant or license holder

6.1 to fully comply with this subdivision is reasonable cause for the commissioner to deny the
6.2 application or immediately suspend or revoke the license.

6.3 Sec. 6. Minnesota Statutes 2008, section 245A.04, subdivision 7, is amended to read:

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

6.7 (1) the name of the license holder;

6.8 (2) the address of the program;

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

6.10 (4) the type of license;

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

6.13 (6) any special conditions of licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.21 Sec. 7. Minnesota Statutes 2008, section 245A.05, is amended to read:

7.22 **245A.05 DENIAL OF APPLICATION.**

7.23 (a) The commissioner may deny a license if an applicant or controlling individual:
 7.24 (1) fails to comply with applicable laws or rules; or, (2) knowingly withholds relevant
 7.25 information from or gives false or misleading information to the commissioner in
 7.26 connection with an application for a license or during an investigation; (3) has a
 7.27 disqualification which has not been set aside under section 245C.22 and no variance has
 7.28 been granted; or (4) has an individual required to have a background study under section
 7.29 245C.03, subdivision 1, paragraph (a), clause (2) or (6), that has a disqualification which
 7.30 has not been set aside under section 245C.22 and no variance has been granted.

7.31 (b) An applicant whose application has been denied by the commissioner must
 7.32 be given notice of the denial. Notice must be given by certified mail or personal
 7.33 service. The notice must state the reasons the application was denied and must inform
 7.34 the applicant of the right to a contested case hearing under chapter 14 and Minnesota
 7.35 Rules, parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying

8.1 the commissioner in writing by certified mail or personal service ~~within 20 calendar~~
8.2 ~~days after receiving notice that the application was denied.~~ If mailed, the appeal must be
8.3 postmarked and sent to the commissioner within 20 calendar days after the applicant
8.4 received the notice of denial. If an appeal request is made by personal service, it must
8.5 be received by the commissioner within 20 calendar days after the applicant received the
8.6 notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's
8.7 denial of an application.

8.8 Sec. 8. Minnesota Statutes 2008, section 245A.07, subdivision 1, is amended to read:

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

8.16 (b) If a license holder appeals the suspension or revocation of a license and the
8.17 license holder continues to operate the program pending a final order on the appeal, and
8.18 the license expires during this time period, the commissioner shall issue the license holder
8.19 a temporary provisional license. The temporary provisional license is effective on the date
8.20 issued and expires on the date that a final order is issued. Unless otherwise specified by
8.21 the commissioner, variances in effect on the date of the license sanction under appeal
8.22 continue under the temporary provisional license. If a license holder fails to comply
8.23 with applicable law or rule while operating under a temporary provisional license, the
8.24 commissioner may impose sanctions under this section and section 245A.06, and may
8.25 terminate any prior variance. If the license holder prevails on the appeal and the effective
8.26 period of the previous license has expired, a new license shall be issued to the license
8.27 holder upon payment of any fee required under section 245A.10. The effective date of the
8.28 new license shall be retroactive to the date the license would have shown had no sanction
8.29 been initiated. The expiration date shall be the expiration date of that license had no
8.30 license sanction been initiated.

8.31 (c) If a license holder is under investigation and the license is due to expire
8.32 before completion of the investigation, the program shall be issued a new license upon
8.33 completion of the reapplication requirements. Upon completion of the investigation, a
8.34 licensing sanction may be imposed against the new license under this section, section
8.35 245A.06, or 245A.08.

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

9.5 Sec. 9. Minnesota Statutes 2008, section 245A.07, subdivision 3, is amended to read:

9.6 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may
9.7 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with
9.8 applicable laws or rules, if a license holder, a controlling individual, or an individual
9.9 living in the household where the licensed services are provided or is otherwise subject
9.10 to a background study has a disqualification which has not been set aside under section
9.11 245C.22, or if a license holder knowingly withholds relevant information from or gives
9.12 false or misleading information to the commissioner in connection with an application
9.13 for a license, in connection with the background study status of an individual, during an
9.14 investigation, or regarding compliance with applicable laws or rules. A license holder
9.15 who has had a license suspended, revoked, or has been ordered to pay a fine must be
9.16 given notice of the action by certified mail or personal service. If mailed, the notice
9.17 must be mailed to the address shown on the application or the last known address of the
9.18 license holder. The notice must state the reasons the license was suspended, revoked, or
9.19 a fine was ordered.

9.20 (b) If the license was suspended or revoked, the notice must inform the license
9.21 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
9.22 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
9.23 a license. The appeal of an order suspending or revoking a license must be made in writing
9.24 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
9.25 the commissioner within ten calendar days after the license holder receives notice that the
9.26 license has been suspended or revoked. If a request is made by personal service, it must be
9.27 received by the commissioner within ten calendar days after the license holder received
9.28 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits
9.29 a timely appeal of an order suspending or revoking a license shall stay the suspension or
9.30 revocation, the license holder may continue to operate until the commissioner issues a
9.31 final order on the suspension or revocation.

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

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

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

10.12 (3) A license holder shall promptly notify the commissioner of human services,
10.13 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon
10.14 reinspection the commissioner determines that a violation has not been corrected as
10.15 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The
10.16 commissioner shall notify the license holder by certified mail or personal service that a
10.17 second fine has been assessed. The license holder may appeal the second fine as provided
10.18 under this subdivision.

10.19 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for
10.20 each determination of maltreatment of a child under section 626.556 or the maltreatment
10.21 of a vulnerable adult under section 626.557 for which the license holder is determined
10.22 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),
10.23 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each
10.24 occurrence of a violation of law or rule governing matters of health, safety, or supervision,
10.25 including but not limited to the provision of adequate staff-to-child or adult ratios, and
10.26 failure to ~~submit a~~ comply with background study requirements under chapter 245C; and
10.27 the license holder shall forfeit \$100 for each occurrence of a violation of law or rule
10.28 other than those subject to a \$1,000 or \$200 fine above. For purposes of this section,
10.29 "occurrence" means each violation identified in the commissioner's fine order. Fines
10.30 assessed against a license holder that holds a license to provide the residential-based
10.31 habilitation services, as defined under section 245B.02, subdivision 20, and a license to
10.32 provide foster care, may be assessed against both licenses for the same occurrence, but
10.33 the combined amount of the fines shall not exceed the amount specified in this clause
10.34 for that occurrence.

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

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

11.3 Sec. 10. Minnesota Statutes 2008, section 245A.11, is amended by adding a
11.4 subdivision to read:

11.5 Subd. 8. **Alternate overnight supervision; adult foster care license.** (a) The
11.6 commissioner may grant an applicant or license holder an adult foster care license for a
11.7 residence that does not have a caregiver in residence during normal sleeping hours as
11.8 required under Minnesota Rules, part 9555.5105, subpart 37, item B, but uses monitoring
11.9 technology to alert the license holder when an incident occurs that may jeopardize the
11.10 health, safety, or rights of a foster care recipient. The applicant or license holder must
11.11 comply with all other requirements under Minnesota Rules, parts 9555.5105 to 9555.6265,
11.12 and the requirements under this subdivision. The license printed by the commissioner
11.13 must state in bold and large font:

11.14 (1) that staff are not present on site overnight; and

11.15 (2) the telephone number of the county's common entry point for making reports of
11.16 suspected maltreatment of vulnerable adults under section 626.557, subdivision 9.

11.17 (b) Before a license is issued by the commissioner, and for the duration of the license,
11.18 the applicant or license holder must establish, maintain, and document the implementation
11.19 of written policies and procedures addressing the requirements in paragraphs (c) to (f).

11.20 (c) The applicant or license holder must have policies and procedures that:

11.21 (1) establish characteristics of target populations that must be admitted into the
11.22 home, and characteristics of populations that must not be accepted into the home;

11.23 (2) explain the discharge process when a foster care recipient requires overnight
11.24 supervision or other services that cannot be provided by the license holder due to the
11.25 limited hours of on-site staff;

11.26 (3) describe the types of events to which the program must respond with a physical
11.27 presence when those events occur in the home during time when staff are not on site, and
11.28 how the license holder's response plan meets the requirements in paragraph (d), clause
11.29 (1) or (2);

11.30 (4) establish a process for documenting a review of the implementation and
11.31 effectiveness of the response protocol for the response required under paragraph (d),
11.32 clause (1) or (2). The documentation must include:

11.33 (i) a description of the triggering incident;

11.34 (ii) the date and time of the triggering incident;

11.35 (iii) the time of the response or responses under paragraph (d), clause (1) or (2);

- 12.1 (iv) whether the response met the resident's needs;
- 12.2 (v) whether the existing policies and response protocols were followed; and
- 12.3 (vi) whether the existing policies and protocols are adequate or need modification.
- 12.4 When no physical presence response is completed for a three-month period, the
- 12.5 license holder's written policies and procedures must require a physical presence response
- 12.6 drill be conducted for which the effectiveness of the response protocol under paragraph
- 12.7 (d), clause (1) or (2), must be reviewed and documented as required under this clause; and
- 12.8 (5) establish that emergency and nonemergency phone numbers are posted in a
- 12.9 prominent location in a common area of the home where they can be easily observed by a
- 12.10 person responding to an incident who is not otherwise affiliated with the home.
- 12.11 (d) The license holder must document and include in the license application which
- 12.12 method under clause (1) or (2) is in place for responding to situations that present a serious
- 12.13 risk to the health, safety, or rights of people receiving foster care services in the home:
- 12.14 (1) no more than ten minutes must pass before the license holder or the license
- 12.15 holder's staff person must be physically present on site to respond to the situation; or
- 12.16 (2) more than ten minutes must pass before the license holder or the license
- 12.17 holder's staff person is present on site to respond to the situation, and all of the following
- 12.18 conditions are met:
- 12.19 (i) each foster care recipient's individualized plan of care, individual service plan
- 12.20 under section 256B.092, subdivision 1b, if required, or individual resident placement
- 12.21 agreement under Minnesota Rules, part 9555.5105, subpart 19, if required, identifies the
- 12.22 maximum response time, greater than ten minutes, for a caretaker to be on site for that
- 12.23 foster care recipient;
- 12.24 (ii) the license holder has a written description of the interactive technological
- 12.25 applications that will assist a remote caretaker in communicating with and assessing the
- 12.26 needs related to care, health, and life safety of the foster care recipients;
- 12.27 (iii) the license holder documents how the remote care attendants are qualified
- 12.28 and capable of meeting the needs of the foster care recipients and assessing foster care
- 12.29 recipients' needs under item (ii) during the absence of the license holder or license holder's
- 12.30 staff person on site;
- 12.31 (iv) the license holder maintains written procedures to dispatch emergency response
- 12.32 personnel to the site in the event of an observed emergency.
- 12.33 (e) All placement agreements, individual service agreements, and plans applicable
- 12.34 to the foster care recipient must clearly state that the adult foster care license category is
- 12.35 a program without the presence of a caregiver in the residence during normal sleeping
- 12.36 hours; the protocols in place for responding to situations that present a serious risk

13.1 to health, safety, or rights of foster care recipients under paragraph (d), clause (1) or
 13.2 (2); and a signed informed consent from each foster care recipient or the person's
 13.3 legal representative documenting the person's or legal representative's agreement with
 13.4 placement in the program. If electronic monitoring technology is used in the home, the
 13.5 informed consent form must also explain the following:

13.6 (1) how any electronic monitoring is incorporated into the alternative supervision
 13.7 system;

13.8 (2) the backup system for any electronic monitoring in times of electrical outages or
 13.9 other equipment malfunctions;

13.10 (3) how staff are trained on the use of the technology;

13.11 (4) the event types and staff response times established under paragraph (d);

13.12 (5) how the license holder protects the foster care recipient's privacy related to
 13.13 electronic monitoring and related to any electronically recorded data generated by the
 13.14 monitoring system. The consent form must explain where and how the electronically
 13.15 recorded data is stored, with whom it will be shared, and how long it is retained; and

13.16 (6) the risks and benefits of the alternative overnight supervision system.

13.17 The written explanations under clauses (1) to (6) may be accomplished through
 13.18 cross-references to other policies and procedures as long as they are explained to the
 13.19 person giving consent, and the person giving consent is offered a copy.

13.20 (f) The license holder's lead county contract under section 256.0112 must clearly
 13.21 specify that this foster care service does not have on-site overnight human supervision
 13.22 present.

13.23 Sec. 11. Minnesota Statutes 2008, section 245A.1435, is amended to read:

13.24 **245A.1435 REDUCTION OF RISK OF SUDDEN INFANT DEATH**
 13.25 **SYNDROME IN LICENSED PROGRAMS.**

13.26 (a) When a license holder is placing an infant to sleep, the license holder must place
 13.27 the infant on the infant's back, unless the license holder has documentation from the
 13.28 infant's parent directing an alternative sleeping position for the infant, ~~and~~. The parent
 13.29 directive must be on a form approved by the commissioner and must include a statement
 13.30 that the parent or legal guardian has read the information provided by the Minnesota
 13.31 Sudden Infant Death Center, related to the risk of SIDS and the importance of placing an
 13.32 infant or child on the back to sleep to reduce the risk of SIDS.

13.33 (b) The license holder must place the infant in a crib ~~with~~ directly on a firm mattress

13.34 with a fitted crib sheet that fits tightly on the mattress and overlaps the mattress so it cannot

13.35 be dislodged by pulling on the corner of the sheet. The license holder must not place

14.1 pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in
14.2 the crib with the infant. The requirements of this section apply to license holders serving
14.3 infants up to and including 12 months of age. Licensed child care providers must meet the
14.4 crib requirements under section 245A.146.

14.5 Sec. 12. Minnesota Statutes 2008, section 245A.144, is amended to read:

14.6 **245A.144 SUDDEN INFANT DEATH AND SHAKEN BABY SYNDROME**
14.7 **FOR CHILD FOSTER CARE PROVIDERS.**

14.8 (a) Licensed child foster care providers that care for infants or children through five
14.9 years of age must document that before staff persons and caregivers assist in the care of
14.10 infants or children through five years of age, they are instructed on the standards in section
14.11 245A.1435 and receive training on reducing the risk of sudden infant death syndrome and
14.12 shaken baby syndrome for infants and young children. This section does not apply to
14.13 emergency relative foster care under section 245A.035. The training on reducing the risk
14.14 of sudden infant death syndrome and shaken baby syndrome may be provided as:

14.15 (1) orientation training to child foster care providers, who care for infants or children
14.16 through five years of age, under Minnesota Rules, part 2960.3070, subpart 1; or

14.17 (2) in-service training to child foster care providers, who care for infants or children
14.18 through five years of age, under Minnesota Rules, part 2960.3070, subpart 2.

14.19 (b) Training required under this section must be at least one hour in length and must
14.20 be completed at least once every five years. At a minimum, the training must address the
14.21 risk factors related to sudden infant death syndrome and shaken baby syndrome, means
14.22 of reducing the risk of sudden infant death syndrome and shaken baby syndrome, and
14.23 license holder communication with parents regarding reducing the risk of sudden infant
14.24 death syndrome and shaken baby syndrome.

14.25 (c) Training for child foster care providers must be approved by the county licensing
14.26 agency and fulfills, in part, training required under Minnesota Rules, part 2960.3070.

14.27 Sec. 13. Minnesota Statutes 2008, section 245A.1444, is amended to read:

14.28 **245A.1444 TRAINING ON RISK OF SUDDEN INFANT DEATH SYNDROME**
14.29 **AND SHAKEN BABY SYNDROME BY OTHER PROGRAMS.**

14.30 A licensed chemical dependency treatment program that serves clients with infants
14.31 or children through five years of age who sleep at the program and a licensed children's
14.32 residential facility that serves infants or children through five years of age must document
14.33 that before program staff persons or volunteers assist in the care of infants or children
14.34 through five years of age, they are instructed on the standards in section 245A.1435 and

15.1 receive training on reducing the risk of sudden infant death syndrome and shaken baby
15.2 syndrome. The training conducted under this section may be used to fulfill training
15.3 requirements under Minnesota Rules, parts 2960.0100, subpart 3; and 9530.6490, subpart
15.4 4, item B.

15.5 This section does not apply to child care centers or family child care programs
15.6 governed by sections 245A.40 and 245A.50.

15.7 Sec. 14. Minnesota Statutes 2008, section 245A.16, subdivision 1, is amended to read:

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

15.18 (1) dual licensure of family child care and child foster care, dual licensure of child
15.19 and adult foster care, and adult foster care and family child care;

15.20 (2) adult foster care maximum capacity;

15.21 (3) adult foster care minimum age requirement;

15.22 (4) child foster care maximum age requirement;

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

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

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

15.33 (b) County agencies must report information about disqualification reconsiderations
15.34 under sections 245C.25 and 245C.27, subdivision 2, paragraphs (a) and (b), and variances

16.1 granted under paragraph (a), clause (5), to the commissioner at least monthly in a format
16.2 prescribed by the commissioner.

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

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

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

16.8 Sec. 15. Minnesota Statutes 2008, section 245A.40, subdivision 5, is amended to read:

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

16.10 (a) License holders must document that before staff persons care for infants, they are
16.11 instructed on the standards in section 245A.1435 and receive training on reducing the risk
16.12 of sudden infant death syndrome ~~and~~. In addition, license holders must document that
16.13 before staff persons care for infants or children under school age, they receive training on
16.14 the risk of shaken baby syndrome. The training in this subdivision may be provided as
16.15 orientation training under subdivision 1 and in-service training under subdivision 7.

16.16 (b) Sudden infant death syndrome reduction training required under this subdivision
16.17 must be at least ~~one~~ one-half hour in length and must be completed at least once every
16.18 five years. At a minimum, the training must address the risk factors related to sudden
16.19 infant death syndrome ~~and shaken baby syndrome~~, means of reducing the risk of sudden
16.20 infant death syndrome ~~and shaken baby syndrome~~ in child care, and license holder
16.21 communication with parents regarding reducing the risk of sudden infant death syndrome
16.22 and shaken baby syndrome.

16.23 (c) Shaken baby syndrome training under this subdivision must be at least one-half
16.24 hour in length, and must be completed at least once every five years. At a minimum, the
16.25 training must address the risk factors related to shaken baby syndrome for infants and
16.26 young children, means to reduce the risk of shaken baby syndrome in child care, and
16.27 license holder communication with parents regarding reducing the risk of shaken baby
16.28 syndrome.

16.29 ~~(e)~~ (d) The commissioner shall make available for viewing a video presentation on
16.30 the dangers associated with shaking infants and young children. The video presentation
16.31 must be part of the orientation and annual in-service training of licensed child care ~~centers~~
16.32 center staff persons caring for children under school age. The commissioner shall provide
16.33 to child care providers and interested individuals, at cost, copies of a video approved by
16.34 the commissioner of health under section 144.574 on the dangers associated with shaking
16.35 infants and young children.

17.1 Sec. 16. Minnesota Statutes 2008, section 245A.50, subdivision 5, is amended to read:

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

17.3 (a) License holders must document that before staff persons, caregivers, and helpers
 17.4 assist in the care of infants, they are instructed on the standards in section 245A.1435 and
 17.5 receive training on reducing the risk of sudden infant death syndrome ~~and~~. In addition,
 17.6 license holders must document that before staff persons, caregivers, and helpers assist in
 17.7 the care of infants and children under school age, they receive training on reducing the
 17.8 risk of shaken baby syndrome. The training in this subdivision may be provided as initial
 17.9 training under subdivision 1 or ongoing training under subdivision 7.

17.10 (b) Sudden infant death syndrome reduction training required under this subdivision
 17.11 must be at least ~~one~~ one-half hour in length and must be completed at least once every
 17.12 five years. At a minimum, the training must address the risk factors related to sudden
 17.13 infant death syndrome ~~and shaken baby syndrome~~, means of reducing the risk of sudden
 17.14 infant death syndrome ~~and shaken baby syndrome~~ in child care, and license holder
 17.15 communication with parents regarding reducing the risk of sudden infant death syndrome
 17.16 ~~and shaken baby syndrome~~.

17.17 (c) Shaken baby syndrome training required under this subdivision must be at
 17.18 least one-half hour in length and must be completed at least once every five years. At a
 17.19 minimum, the training must address the risk factors related to shaken baby syndrome,
 17.20 means of reducing the risk of shaken baby syndrome in child care, and license holder
 17.21 communication with parents regarding reducing the risk of shaken baby syndrome.

17.22 (d) Training for family and group family child care providers must be approved
 17.23 by the county licensing agency.

17.24 ~~(d)~~ (e) The commissioner shall make available for viewing by all licensed child care
 17.25 providers a video presentation on the dangers associated with shaking infants and young
 17.26 children. The video presentation shall be part of the initial and ongoing annual training
 17.27 of licensed child care providers caring for children under school age. The commissioner
 17.28 shall provide to child care providers and interested individuals, at cost, copies of a video
 17.29 approved by the commissioner of health under section 144.574 on the dangers associated
 17.30 with shaking infants and young children.

17.31 Sec. 17. Minnesota Statutes 2008, section 245C.03, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

18.17 Sec. 18. Minnesota Statutes 2008, section 245C.04, subdivision 1, is amended to read:

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

18.21 (b) The commissioner shall conduct a background study of an individual required to
18.22 be studied under section 245C.03, subdivision 1, at reapplication for a license for adult
18.23 foster care, family adult day services, and family child care.

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

18.27 (1) registered under chapter 144D; or

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

18.31 (3) the following conditions are met:

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

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

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

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

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

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

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

19.24 (h) A license holder must provide the commissioner notice through the
19.25 commissioner's online background study system or through a letter mailed to the
19.26 commissioner when:

19.27 (1) an individual returns to a position requiring a background study following an
19.28 absence of 45 or more consecutive days; or

19.29 (2) a program, which discontinued providing licensed direct contact services for 45
19.30 or more consecutive days, again begins to provide direct contact licensed services.

19.31 The license holder shall maintain a copy of the notification provided to the
19.32 commissioner under this paragraph in the program's files.

19.33 Sec. 19. Minnesota Statutes 2008, section 245C.07, is amended to read:

19.34 **245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

20.1 (a) When a license holder, applicant, or other entity owns multiple programs or
20.2 services that are licensed by the Department of Human Services, Department of Health, or
20.3 Department of Corrections, only one background study is required for an individual who
20.4 provides direct contact services in one or more of the licensed programs or services if:

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

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

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

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

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

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

20.27 Sec. 20. Minnesota Statutes 2008, section 245C.13, subdivision 2, is amended to read:

20.28 Subd. 2. **Direct contact pending completion of background study.** The subject
20.29 of a background study may not perform any activity requiring a background study under
20.30 paragraph (b) until the commissioner has issued one of the notices under paragraph (a).

20.31 (a) Notices from the commissioner required prior to activity under paragraph (b)
20.32 include:

20.33 (1) a notice of the study results under section 245C.17 stating that:

20.34 (i) the individual is not disqualified; or

21.1 (ii) more time is needed to complete the study but the individual is not required to be
 21.2 removed from direct contact or access to people receiving services prior to completion
 21.3 of the study as provided under section 245C.17, subdivision 1, paragraph (b) or (c). The
 21.4 notice that more time is needed to complete the study must also indicate whether the
 21.5 individual is required to be under continuous direct supervision prior to completion of the
 21.6 background study;

21.7 (2) a notice that a disqualification has been set aside under section 245C.23; or

21.8 (3) a notice that a variance has been granted related to the individual under section
 21.9 245C.30.

21.10 (b) Activities prohibited prior to receipt of notice under paragraph (a) include:

21.11 (1) being issued a license;

21.12 (2) living in the household where the licensed program will be provided;

21.13 (3) providing direct contact services to persons served by a program unless the
 21.14 subject is under continuous direct supervision; or

21.15 (4) having access to persons receiving services if the background study was
 21.16 completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a),
 21.17 clause (2), (5), or (6), unless the subject is under continuous direct supervision.

21.18 Sec. 21. Minnesota Statutes 2008, section 245C.15, subdivision 1, is amended to read:

21.19 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under
 21.20 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the
 21.21 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless
 21.22 of the level of the offense, the individual has committed any of the following offenses:
 21.23 sections 243.166 (violation of predatory offender registration law); 609.185 (murder in the
 21.24 first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree);
 21.25 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a
 21.26 felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony
 21.27 offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child
 21.28 abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation);
 21.29 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated
 21.30 robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the first degree);
 21.31 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an
 21.32 unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of
 21.33 prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342 (criminal sexual
 21.34 conduct in the first degree); 609.343 (criminal sexual conduct in the second degree);
 21.35 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct

22.1 in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453
22.2 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual
22.3 conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a
22.4 child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561
22.5 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision
22.6 3, 4, or 5 (felony-level harassment; stalking); 609.855, subdivision 5 (shooting at or in a
22.7 public transit vehicle or facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause
22.8 (1) (indecent exposure involving a minor); 617.246 (use of minors in sexual performance
22.9 prohibited); or 617.247 (possession of pictorial representations of minors). An individual
22.10 also is disqualified under section 245C.14 regardless of how much time has passed since
22.11 the involuntary termination of the individual's parental rights under section 260C.301.

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

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

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

22.27 (e) If the individual studied commits one of the offenses listed in paragraph (a) that
22.28 is specified as a felony-level only offense, but the sentence or level of offense is a gross
22.29 misdemeanor or misdemeanor, the individual is disqualified, but the disqualification
22.30 look-back period for the offense is the period applicable to gross misdemeanor or
22.31 misdemeanor offenses.

22.32 Sec. 22. Minnesota Statutes 2008, section 245C.15, subdivision 2, is amended to read:

22.33 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section
22.34 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,
22.35 if any, for the offense; and (2) the individual has committed a felony-level violation

23.1 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);
23.2 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph
23.3 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);
23.4 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231
23.5 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth
23.6 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a
23.7 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of
23.8 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);
23.9 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter
23.10 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first
23.11 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury
23.12 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275
23.13 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender);
23.14 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a
23.15 witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing
23.16 stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
23.17 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree);
23.18 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary
23.19 tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery);
23.20 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by
23.21 false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled
23.22 shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82
23.23 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent
23.24 exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and
23.25 performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons
23.26 not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level
23.27 conviction involving alcohol or drug use.

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

23.32 (c) For foster care and family child care an individual is disqualified under section
23.33 245C.14 if less than 15 years has passed since the individual's voluntary termination of
23.34 the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or
23.35 260C.301, subdivision 3.

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

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

24.9 (f) When a disqualification is based on a judicial determination other than a
24.10 conviction, the disqualification period begins from the date of the court order. When a
24.11 disqualification is based on an admission, the disqualification period begins from the
24.12 date of an admission in court. When a disqualification is based on an Alford Plea, the
24.13 disqualification period begins from the date the Alford Plea is entered in court. When
24.14 a disqualification is based on a preponderance of evidence of a disqualifying act, the
24.15 disqualification date begins from the date of the dismissal, the date of discharge of the
24.16 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
24.17 date of the incident, whichever occurs last.

24.18 Sec. 23. Minnesota Statutes 2008, section 245C.15, subdivision 3, is amended to read:

24.19 Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section
24.20 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed,
24.21 if any, for the offense; and (2) the individual has committed a gross misdemeanor-level
24.22 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
24.23 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
24.24 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide
24.25 and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or
24.26 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree);
24.27 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a
24.28 vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of
24.29 persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal
24.30 abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335
24.31 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a
24.32 vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision
24.33 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house);
24.34 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child);
24.35 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into

25.1 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance
25.2 of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611
25.3 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous
25.4 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable
25.5 adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2
25.6 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction
25.7 card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene
25.8 materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful
25.9 materials; dissemination and display to minors prohibited); or violation of an order for
25.10 protection under section 518B.01, subdivision 14.

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

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

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

25.23 (e) When a disqualification is based on a judicial determination other than a
25.24 conviction, the disqualification period begins from the date of the court order. When a
25.25 disqualification is based on an admission, the disqualification period begins from the
25.26 date of an admission in court. When a disqualification is based on an Alford Plea, the
25.27 disqualification period begins from the date the Alford Plea is entered in court. When
25.28 a disqualification is based on a preponderance of evidence of a disqualifying act, the
25.29 disqualification date begins from the date of the dismissal, the date of discharge of the
25.30 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
25.31 date of the incident, whichever occurs last.

25.32 Sec. 24. Minnesota Statutes 2008, section 245C.15, subdivision 4, is amended to read:

25.33 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under
25.34 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence
25.35 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level

26.1 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
26.2 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
26.3 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide
26.4 and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree);
26.5 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224
26.6 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation
26.7 of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult);
26.8 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation
26.9 of an order for protection under 609.3232 (protective order authorized; procedures;
26.10 penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen
26.11 goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
26.12 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous
26.13 weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or
26.14 harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment);
26.15 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23
26.16 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination
26.17 and display to minors prohibited); or violation of an order for protection under section
26.18 518B.01 (Domestic Abuse Act).

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

26.21 (1) failure to make required reports under section 626.556, subdivision 3, or
26.22 626.557, subdivision 3, for incidents in which: (i) the final disposition under section
26.23 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was
26.24 recurring or serious; or

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

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

26.34 (d) An individual is disqualified under section 245C.14 if less than seven years has
26.35 passed since the discharge of the sentence imposed for an offense in any other state or

27.1 country, the elements of which are substantially similar to the elements of any of the
27.2 offenses listed in paragraphs (a) and (b).

27.3 (e) When a disqualification is based on a judicial determination other than a
27.4 conviction, the disqualification period begins from the date of the court order. When a
27.5 disqualification is based on an admission, the disqualification period begins from the
27.6 date of an admission in court. When a disqualification is based on an Alford Plea, the
27.7 disqualification period begins from the date the Alford Plea is entered in court. When
27.8 a disqualification is based on a preponderance of evidence of a disqualifying act, the
27.9 disqualification date begins from the date of the dismissal, the date of discharge of the
27.10 sentence imposed for a conviction for a disqualifying crime of similar elements, or the
27.11 date of the incident, whichever occurs last.

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

27.14 Sec. 25. Minnesota Statutes 2008, section 245C.24, subdivision 2, is amended to read:

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

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

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

28.1 Sec. 26. Minnesota Statutes 2008, section 245C.24, subdivision 3, is amended to read:

28.2 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may
28.3 not set aside the disqualification of an individual in connection with a license to provide
28.4 family child care for children, foster care for children in the provider's home, or foster
28.5 care or day care services for adults in the provider's home if: (1) less than ten years
28.6 has passed since the discharge of the sentence imposed, if any, for the offense; or (2)
28.7 when disqualified based on a preponderance of evidence determination under section
28.8 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section 245C.14,
28.9 subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the
28.10 individual committed the act or admitted to committing the act, whichever is later; and
28.11 (3) the individual has committed a violation of any of the following offenses: sections
28.12 609.165 (felon ineligible to possess firearm); criminal vehicular homicide or criminal
28.13 vehicular operation causing death under 609.21 (criminal vehicular homicide and injury);
28.14 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or
28.15 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit
28.16 of a gang); 609.713 (terroristic threats); 609.235 (use of drugs to injure or to facilitate
28.17 crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the
28.18 second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first-degree or
28.19 first-degree tampering with a witness); burglary in the first or second degree under 609.582
28.20 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns
28.21 and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor harassment;
28.22 stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree);
28.23 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance
28.24 crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled
28.25 substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree
28.26 assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons
28.27 confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a
28.28 vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial
28.29 exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction);
28.30 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree);
28.31 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree);
28.32 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses
28.33 under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material
28.34 to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor
28.35 offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense
28.36 under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under

29.1 609.377 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct
29.2 against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

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

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

29.11 Sec. 27. Minnesota Statutes 2008, section 245C.25, is amended to read:

29.12 **245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT**
29.13 **DETERMINATION AND DISQUALIFICATION.**

29.14 (a) If an individual is disqualified on the basis of a determination of maltreatment
29.15 under section 626.556 or 626.557, which was serious or recurring, and the individual
29.16 requests reconsideration of the maltreatment determination under section 626.556,
29.17 subdivision 10i, or 626.557, subdivision 9d, and also requests reconsideration of
29.18 the disqualification under section 245C.21, the commissioner shall consolidate the
29.19 reconsideration of the maltreatment determination and the disqualification into a single
29.20 reconsideration.

29.21 (b) For maltreatment and disqualification determinations made by county agencies,
29.22 the county agency shall conduct the consolidated reconsideration. If the county agency
29.23 has disqualified an individual on multiple bases, one of which is a county maltreatment
29.24 determination for which the individual has a right to request reconsideration, the county
29.25 shall conduct the reconsideration of all disqualifications.

29.26 (c) If the county has previously conducted a consolidated reconsideration under
29.27 paragraph (b) of a maltreatment determination and a disqualification based on serious or
29.28 recurring maltreatment, and the county subsequently disqualifies the individual based
29.29 on that determination, the county shall conduct the reconsideration of the subsequent
29.30 disqualification. The scope of the subsequent disqualification shall be limited to whether
29.31 the individual poses a risk of harm in accordance with section 245C.22, subdivision 4. If
29.32 the commissioner subsequently disqualifies the individual in connection with a child foster
29.33 care license based on the county's previous maltreatment determination, the commissioner
29.34 shall conduct the reconsideration of the subsequent disqualification.

30.1 Sec. 28. Minnesota Statutes 2008, section 245C.27, subdivision 1, is amended to read:

30.2 Subdivision 1. **Fair hearing when disqualification is not set aside.** (a) If the
30.3 commissioner does not set aside a disqualification of an individual under section
30.4 245C.22 who is disqualified on the basis of a preponderance of evidence that the
30.5 individual committed an act or acts that meet the definition of any of the crimes listed in
30.6 section 245C.15; for a determination under section 626.556 or 626.557 of substantiated
30.7 maltreatment that was serious or recurring under section 245C.15; or for failure to make
30.8 required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant
30.9 to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request
30.10 a fair hearing under section 256.045, unless the disqualification is deemed conclusive
30.11 under section 245C.29.

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

30.16 (c) Except as provided under paragraph (e), if the individual was disqualified
30.17 based on a conviction ~~or of,~~ admission to, or Alford Plea to any crimes listed in section
30.18 245C.15, subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision
30.19 8, the reconsideration decision under section 245C.22 is the final agency determination
30.20 for purposes of appeal by the disqualified individual and is not subject to a hearing under
30.21 section 256.045. If the individual was disqualified based on a judicial determination, that
30.22 determination is treated the same as a conviction for purposes of appeal.

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

30.25 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a
30.26 disqualification of an individual who was disqualified based on both a preponderance
30.27 of evidence and a conviction or admission, the individual may request a fair hearing
30.28 under section 256.045, unless the disqualifications are deemed conclusive under section
30.29 245C.29. The scope of the hearing conducted under section 256.045 with regard to the
30.30 disqualification based on a conviction or admission shall be limited solely to whether the
30.31 individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case,
30.32 the reconsideration decision under section 245C.22 is not the final agency decision for
30.33 purposes of appeal by the disqualified individual.

30.34 Sec. 29. Minnesota Statutes 2008, section 256.045, subdivision 3, is amended to read:

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

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

31.8 (2) any patient or relative aggrieved by an order of the commissioner under section
31.9 252.27;

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

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

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

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

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

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

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

31.26 (10) except as provided under chapter 245C, an individual disqualified under
31.27 sections 245C.14 and 245C.15, which has not been set aside under sections 245C.22
31.28 and 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the
31.29 evidence that the individual has committed an act or acts that meet the definition of any of
31.30 the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports
31.31 required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings
31.32 regarding a maltreatment determination under clause (4) or (9) and a disqualification under
31.33 this clause in which the basis for a disqualification is serious or recurring maltreatment,
31.34 which has not been set aside under sections 245C.22 and 245C.23, shall be consolidated
31.35 into a single fair hearing. In such cases, the scope of review by the human services referee
31.36 shall include both the maltreatment determination and the disqualification. The failure to

32.1 exercise the right to an administrative reconsideration shall not be a bar to a hearing under
32.2 this section if federal law provides an individual the right to a hearing to dispute a finding
32.3 of maltreatment. Individuals and organizations specified in this section may contest the
32.4 specified action, decision, or final disposition before the state agency by submitting a
32.5 written request for a hearing to the state agency within 30 days after receiving written
32.6 notice of the action, decision, or final disposition, or within 90 days of such written notice
32.7 if the applicant, recipient, patient, or relative shows good cause why the request was
32.8 not submitted within the 30-day time limit.

32.9 (b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or
32.10 (10), is the only administrative appeal to the final agency determination specifically,
32.11 including a challenge to the accuracy and completeness of data under section 13.04.
32.12 Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment
32.13 that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing
32.14 homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a
32.15 contested case proceeding under the provisions of chapter 14. Hearings requested under
32.16 paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after
32.17 July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is
32.18 only available when there is no juvenile court or adult criminal action pending. If such
32.19 action is filed in either court while an administrative review is pending, the administrative
32.20 review must be suspended until the judicial actions are completed. If the juvenile court
32.21 action or criminal charge is dismissed or the criminal action overturned, the matter may be
32.22 considered in an administrative hearing.

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

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

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

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

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

33.7 Sec. 30. Minnesota Statutes 2008, section 256.045, subdivision 3b, is amended to read:

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

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

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

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

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

33.21 (b) If the disqualification is affirmed, the state human services referee shall
33.22 determine whether the individual poses a risk of harm in accordance with the requirements
33.23 of section ~~245C.16~~ 245C.22, and whether the disqualification should be set aside or not set
33.24 aside. In determining whether the disqualification should be set aside, the human services
33.25 referee shall consider all of the characteristics that cause the individual to be disqualified,
33.26 including those characteristics that were not subject to review under paragraph (a), in
33.27 order to determine whether the individual poses a risk of harm. A decision to set aside
33.28 a disqualification that is the subject of the hearing constitutes a determination that the
33.29 individual does not pose a risk of harm and that the individual may provide direct contact
33.30 services in the individual program specified in the set aside. If a determination that the
33.31 information relied upon to disqualify an individual was correct and is conclusive under
33.32 section 245C.29, and the individual is subsequently disqualified under section 245C.14,
33.33 the individual has a right to again request reconsideration on the risk of harm under section
33.34 245C.21. Subsequent determinations regarding risk of harm are not subject to another
33.35 hearing under this section.

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

34.9 Sec. 31. **[256.364] LICENSE; PERMIT.**

34.10 Notwithstanding any law to the contrary, a municipality shall not require a massage
 34.11 therapist to obtain a license or permit when the therapist is working for or an employee of
 34.12 a medical professional licensed under chapter 147 or 148.

34.13 Sec. 32. Minnesota Statutes 2008, section 256B.0943, subdivision 4, is amended to
 34.14 read:

34.15 Subd. 4. **Provider entity certification.** (a) Effective July 1, 2003, the commissioner
 34.16 shall establish an initial provider entity application and certification process and
 34.17 recertification process to determine whether a provider entity has an administrative
 34.18 and clinical infrastructure that meets the requirements in subdivisions 5 and 6. The
 34.19 commissioner shall recertify a provider entity at least every three years. The commissioner
 34.20 shall establish a process for decertification of a provider entity that no longer meets the
 34.21 requirements in this section. The county, tribe, and the commissioner shall be mutually
 34.22 responsible and accountable for the county's, tribe's, and state's part of the certification,
 34.23 recertification, and decertification processes.

34.24 (b) For purposes of this section, a provider entity must be:

34.25 (1) an Indian health services facility or a facility owned and operated by a tribe or
 34.26 tribal organization operating as a 638 facility under Public Law 93-638 certified by the
 34.27 state;

34.28 (2) a county-operated entity certified by the state; or

34.29 (3) a noncounty entity ~~recommended for certification by the provider's host county~~
 34.30 ~~and~~ certified by the state.

34.31 Sec. 33. Minnesota Statutes 2008, section 256B.0943, subdivision 6, is amended to
 34.32 read:

35.1 Subd. 6. **Provider entity clinical infrastructure requirements.** (a) To be
35.2 an eligible provider entity under this section, a provider entity must have a clinical
35.3 infrastructure that utilizes diagnostic assessment, an individualized treatment plan,
35.4 service delivery, and individual treatment plan review that are culturally competent,
35.5 child-centered, and family-driven to achieve maximum benefit for the client. The provider
35.6 entity must review, and update as necessary, the clinical policies and procedures every
35.7 three years and must distribute the policies and procedures to staff initially and upon
35.8 each subsequent update.

35.9 (b) The clinical infrastructure written policies and procedures must include policies
35.10 and procedures for:

35.11 (1) providing or obtaining a client's diagnostic assessment that identifies acute and
35.12 chronic clinical disorders, co-occurring medical conditions, sources of psychological
35.13 and environmental problems, ~~and~~ including a functional assessment. The functional
35.14 assessment component must clearly summarize the client's individual strengths and needs;

35.15 (2) developing an individual treatment plan that is:

35.16 (i) based on the information in the client's diagnostic assessment;

35.17 (ii) developed no later than the end of the first psychotherapy session after the
35.18 completion of the client's diagnostic assessment by the mental health professional who
35.19 provides the client's psychotherapy;

35.20 (iii) developed through a child-centered, family-driven planning process that
35.21 identifies service needs and individualized, planned, and culturally appropriate
35.22 interventions that contain specific treatment goals and objectives for the client and the
35.23 client's family or foster family;

35.24 (iv) reviewed at least once every 90 days and revised, if necessary; and

35.25 (v) signed by the client or, if appropriate, by the client's parent or other person
35.26 authorized by statute to consent to mental health services for the client;

35.27 (3) developing an individual behavior plan that documents services to be provided
35.28 by the mental health behavioral aide. The individual behavior plan must include:

35.29 (i) detailed instructions on the service to be provided;

35.30 (ii) time allocated to each service;

35.31 (iii) methods of documenting the child's behavior;

35.32 (iv) methods of monitoring the child's progress in reaching objectives; and

35.33 (v) goals to increase or decrease targeted behavior as identified in the individual
35.34 treatment plan;

35.35 (4) clinical supervision of the mental health practitioner and mental health behavioral
35.36 aide. A mental health professional must document the clinical supervision the professional

36.1 provides by cosigning individual treatment plans and making entries in the client's record
36.2 on supervisory activities. Clinical supervision does not include the authority to make or
36.3 terminate court-ordered placements of the child. A clinical supervisor must be available
36.4 for urgent consultation as required by the individual client's needs or the situation. Clinical
36.5 supervision may occur individually or in a small group to discuss treatment and review
36.6 progress toward goals. The focus of clinical supervision must be the client's treatment
36.7 needs and progress and the mental health practitioner's or behavioral aide's ability to
36.8 provide services;

36.9 (4a) CTSS certified provider entities providing day treatment programs must meet
36.10 the conditions in items (i) to (iii):

36.11 (i) the supervisor must be present and available on the premises more than 50
36.12 percent of the time in a five-working-day period during which the supervisee is providing
36.13 a mental health service;

36.14 (ii) the diagnosis and the client's individual treatment plan or a change in the
36.15 diagnosis or individual treatment plan must be made by or reviewed, approved, and signed
36.16 by the supervisor; and

36.17 (iii) every 30 days, the supervisor must review and sign the record ~~of~~ indicating the
36.18 supervisor has reviewed the client's care for all activities in the preceding 30-day period;

36.19 (4b) for all other services provided under CTSS, clinical supervision standards
36.20 provided in items (i) to (iii) must be used:

36.21 (i) medical assistance shall reimburse a mental health practitioner who maintains a
36.22 consulting relationship with a mental health professional who accepts full professional
36.23 responsibility ~~and is present on site for at least one observation during the first 12 hours~~
36.24 ~~in which the mental health practitioner provides the individual, family, or group skills~~
36.25 ~~training to the child or the child's family;~~

36.26 (ii) ~~thereafter~~, the mental health professional is required to be present on site for
36.27 observation as clinically appropriate when the mental health practitioner is providing
36.28 individual, family, or group skills training to the child or the child's family; and

36.29 (iii) when conducted, the observation must be a minimum of one clinical unit. The
36.30 on-site presence of the mental health professional must be documented in the child's record
36.31 and signed by the mental health professional who accepts full professional responsibility;

36.32 (5) providing direction to a mental health behavioral aide. For entities that employ
36.33 mental health behavioral aides, the clinical supervisor must be employed by the provider
36.34 entity or other certified children's therapeutic supports and services provider entity to
36.35 ensure necessary and appropriate oversight for the client's treatment and continuity
36.36 of care. The mental health professional or mental health practitioner giving direction

37.1 must begin with the goals on the individualized treatment plan, and instruct the mental
37.2 health behavioral aide on how to construct therapeutic activities and interventions that
37.3 will lead to goal attainment. The professional or practitioner giving direction must also
37.4 instruct the mental health behavioral aide about the client's diagnosis, functional status,
37.5 and other characteristics that are likely to affect service delivery. Direction must also
37.6 include determining that the mental health behavioral aide has the skills to interact with
37.7 the client and the client's family in ways that convey personal and cultural respect and
37.8 that the aide actively solicits information relevant to treatment from the family. The aide
37.9 must be able to clearly explain the activities the aide is doing with the client and the
37.10 activities' relationship to treatment goals. Direction is more didactic than is supervision
37.11 and requires the professional or practitioner providing it to continuously evaluate the
37.12 mental health behavioral aide's ability to carry out the activities of the individualized
37.13 treatment plan and the individualized behavior plan. When providing direction, the
37.14 professional or practitioner must:

37.15 (i) review progress notes prepared by the mental health behavioral aide for accuracy
37.16 and consistency with diagnostic assessment, treatment plan, and behavior goals and the
37.17 professional or practitioner must approve and sign the progress notes;

37.18 (ii) identify changes in treatment strategies, revise the individual behavior plan,
37.19 and communicate treatment instructions and methodologies as appropriate to ensure
37.20 that treatment is implemented correctly;

37.21 (iii) demonstrate family-friendly behaviors that support healthy collaboration among
37.22 the child, the child's family, and providers as treatment is planned and implemented;

37.23 (iv) ensure that the mental health behavioral aide is able to effectively communicate
37.24 with the child, the child's family, and the provider; and

37.25 (v) record the results of any evaluation and corrective actions taken to modify the
37.26 work of the mental health behavioral aide;

37.27 (6) providing service delivery that implements the individual treatment plan and
37.28 meets the requirements under subdivision 9; and

37.29 (7) individual treatment plan review. The review must determine the extent to which
37.30 the services have met the goals and objectives in the previous treatment plan. The review
37.31 must assess the client's progress and ensure that services and treatment goals continue to
37.32 be necessary and appropriate to the client and the client's family or foster family. Revision
37.33 of the individual treatment plan does not require a new diagnostic assessment unless the
37.34 client's mental health status has changed markedly. The updated treatment plan must be
37.35 signed by the client, if appropriate, and by the client's parent or other person authorized by
37.36 statute to give consent to the mental health services for the child.

38.1 Sec. 34. Minnesota Statutes 2008, section 256B.0943, subdivision 9, is amended to
38.2 read:

38.3 Subd. 9. **Service delivery criteria.** (a) In delivering services under this section, a
38.4 certified provider entity must ensure that:

38.5 (1) each individual provider's caseload size permits the provider to deliver services
38.6 to both clients with severe, complex needs and clients with less intensive needs. The
38.7 provider's caseload size should reasonably enable the provider to play an active role in
38.8 service planning, monitoring, and delivering services to meet the client's and client's
38.9 family's needs, as specified in each client's individual treatment plan;

38.10 (2) site-based programs, including day treatment and preschool programs, provide
38.11 staffing and facilities to ensure the client's health, safety, and protection of rights, and that
38.12 the programs are able to implement each client's individual treatment plan;

38.13 (3) a day treatment program is provided to a group of clients by a multidisciplinary
38.14 team under the clinical supervision of a mental health professional. The day treatment
38.15 program must be provided in and by: (i) an outpatient hospital accredited by the Joint
38.16 Commission on Accreditation of Health Organizations and licensed under sections
38.17 144.50 to 144.55; (ii) a community mental health center under section 245.62; and (iii)
38.18 an entity that is under contract with the county board to operate a program that meets
38.19 the requirements of sections 245.4712, subdivision 2, and 245.4884, subdivision 2,
38.20 and Minnesota Rules, parts 9505.0170 to 9505.0475. The day treatment program must
38.21 stabilize the client's mental health status while developing and improving the client's
38.22 independent living and socialization skills. The goal of the day treatment program must
38.23 be to reduce or relieve the effects of mental illness and provide training to enable the
38.24 client to live in the community. The program must be available at least one day a week
38.25 for a ~~three-hour~~ two-hour time block. The ~~three-hour~~ two-hour time block must include
38.26 at least one hour, ~~but no more than two hours~~, of individual or group psychotherapy.
38.27 ~~The remainder of the three-hour time block may include recreation therapy, socialization~~
38.28 ~~therapy, or independent living skills therapy, but only if the therapies are included in the~~
38.29 ~~client's individual treatment plan~~ The structured treatment program may include individual
38.30 or group psychotherapy and recreation therapy, socialization therapy, or independent
38.31 living skills therapy, if included in the client's individual treatment plan. Day treatment
38.32 programs are not part of inpatient or residential treatment services; and

38.33 (4) a preschool program is a structured treatment program offered to a child who
38.34 is at least 33 months old, but who has not yet reached the first day of kindergarten, by a
38.35 preschool multidisciplinary team in a day program licensed under Minnesota Rules, parts
38.36 9503.0005 to 9503.0175. The program must be available at least one day a week for a

39.1 minimum two-hour time block. The structured treatment program may include individual
39.2 or group psychotherapy and recreation therapy, socialization therapy, or independent
39.3 living skills therapy, if included in the client's individual treatment plan.

39.4 (b) A provider entity must deliver the service components of children's therapeutic
39.5 services and supports in compliance with the following requirements:

39.6 (1) individual, family, and group psychotherapy must be delivered as specified in
39.7 Minnesota Rules, part 9505.0323;

39.8 (2) individual, family, or group skills training must be provided by a mental health
39.9 professional or a mental health practitioner who has a consulting relationship with a
39.10 mental health professional who accepts full professional responsibility for the training;

39.11 (3) crisis assistance must be time-limited and designed to resolve or stabilize crisis
39.12 through arrangements for direct intervention and support services to the child and the
39.13 child's family. Crisis assistance must utilize resources designed to address abrupt or
39.14 substantial changes in the functioning of the child or the child's family as evidenced by
39.15 a sudden change in behavior with negative consequences for well being, a loss of usual
39.16 coping mechanisms, or the presentation of danger to self or others;

39.17 (4) medically necessary services that are provided by a mental health behavioral
39.18 aide must be designed to improve the functioning of the child and support the family in
39.19 activities of daily and community living. A mental health behavioral aide must document
39.20 the delivery of services in written progress notes. The mental health behavioral aide
39.21 must implement goals in the treatment plan for the child's emotional disturbance that
39.22 allow the child to acquire developmentally and therapeutically appropriate daily living
39.23 skills, social skills, and leisure and recreational skills through targeted activities. These
39.24 activities may include:

39.25 (i) assisting a child as needed with skills development in dressing, eating, and
39.26 toileting;

39.27 (ii) assisting, monitoring, and guiding the child to complete tasks, including
39.28 facilitating the child's participation in medical appointments;

39.29 (iii) observing the child and intervening to redirect the child's inappropriate behavior;

39.30 (iv) assisting the child in using age-appropriate self-management skills as related
39.31 to the child's emotional disorder or mental illness, including problem solving, decision
39.32 making, communication, conflict resolution, anger management, social skills, and
39.33 recreational skills;

39.34 (v) implementing deescalation techniques as recommended by the mental health
39.35 professional;

40.1 (vi) implementing any other mental health service that the mental health professional
40.2 has approved as being within the scope of the behavioral aide's duties; or

40.3 (vii) assisting the parents to develop and use parenting skills that help the child
40.4 achieve the goals outlined in the child's individual treatment plan or individual behavioral
40.5 plan. Parenting skills must be directed exclusively to the child's treatment; and

40.6 (5) direction of a mental health behavioral aide must include the following:

40.7 (i) a total of one hour of on-site observation by a mental health professional during
40.8 the first 12 hours of service provided to a child;

40.9 (ii) ongoing on-site observation by a mental health professional or mental health
40.10 practitioner for at least a total of one hour during every 40 hours of service provided
40.11 to a child; and

40.12 (iii) immediate accessibility of the mental health professional or mental health
40.13 practitioner to the mental health behavioral aide during service provision.

40.14 Sec. 35. Minnesota Statutes 2008, section 626.556, subdivision 2, is amended to read:

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

40.17 (a) "Family assessment" means a comprehensive assessment of child safety, risk
40.18 of subsequent child maltreatment, and family strengths and needs that is applied to a
40.19 child maltreatment report that does not allege substantial child endangerment. Family
40.20 assessment does not include a determination as to whether child maltreatment occurred
40.21 but does determine the need for services to address the safety of family members and the
40.22 risk of subsequent maltreatment.

40.23 (b) "Investigation" means fact gathering related to the current safety of a child
40.24 and the risk of subsequent maltreatment that determines whether child maltreatment
40.25 occurred and whether child protective services are needed. An investigation must be used
40.26 when reports involve substantial child endangerment, and for reports of maltreatment in
40.27 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to
40.28 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
40.29 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
40.30 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

- 41.1 (1) egregious harm as defined in section 260C.007, subdivision 14;
- 41.2 (2) sexual abuse as defined in paragraph (d);
- 41.3 (3) abandonment under section 260C.301, subdivision 2;
- 41.4 (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the
- 41.5 child's physical or mental health, including a growth delay, which may be referred to as
- 41.6 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- 41.7 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
- 41.8 609.195;
- 41.9 (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- 41.10 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
- 41.11 609.223;
- 41.12 (8) solicitation, inducement, and promotion of prostitution under section 609.322;
- 41.13 (9) criminal sexual conduct under sections 609.342 to 609.3451;
- 41.14 (10) solicitation of children to engage in sexual conduct under section 609.352;
- 41.15 (11) malicious punishment or neglect or endangerment of a child under section
- 41.16 609.377 or 609.378;
- 41.17 (12) use of a minor in sexual performance under section 617.246; or
- 41.18 (13) parental behavior, status, or condition which mandates that the county attorney
- 41.19 file a termination of parental rights petition under section 260C.301, subdivision 3,
- 41.20 paragraph (a).
- 41.21 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
- 41.22 child's care, by a person who has a significant relationship to the child, as defined in
- 41.23 section 609.341, or by a person in a position of authority, as defined in section 609.341,
- 41.24 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
- 41.25 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
- 41.26 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
- 41.27 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
- 41.28 abuse also includes any act which involves a minor which constitutes a violation of
- 41.29 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
- 41.30 threatened sexual abuse.
- 41.31 (e) "Person responsible for the child's care" means (1) an individual functioning
- 41.32 within the family unit and having responsibilities for the care of the child such as a
- 41.33 parent, guardian, or other person having similar care responsibilities, or (2) an individual
- 41.34 functioning outside the family unit and having responsibilities for the care of the child
- 41.35 such as a teacher, school administrator, other school employees or agents, or other lawful
- 41.36 custodian of a child having either full-time or short-term care responsibilities including,

42.1 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,
42.2 and coaching.

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

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

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

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

42.16 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
42.17 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
42.18 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

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

42.27 (6) prenatal exposure to a controlled substance, as defined in section 253B.02,
42.28 subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal
42.29 symptoms in the child at birth, results of a toxicology test performed on the mother at
42.30 delivery or the child at birth, or medical effects or developmental delays during the child's
42.31 first year of life that medically indicate prenatal exposure to a controlled substance;

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

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

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

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

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

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

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

43.19 (3) shaking a child under age three;

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

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

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

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

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

43.31 (9) unreasonable physical confinement or restraint not permitted under section
43.32 609.379, including but not limited to tying, caging, or chaining; or

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

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

44.4 (i) "Facility" means:

44.5 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
44.6 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
44.7 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

44.8 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
44.9 124D.10; or

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

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

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

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

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

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

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

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

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

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

44.35 (o) Persons who conduct assessments or investigations under this section shall take
44.36 into account accepted child-rearing practices of the culture in which a child participates

45.1 and accepted teacher discipline practices, which are not injurious to the child's health,
45.2 welfare, and safety.

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

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

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

45.10 Sec. 36. Minnesota Statutes 2008, section 626.556, subdivision 10e, is amended to
45.11 read:

45.12 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family
45.13 assessment or the investigation within 45 days of the receipt of a report. The conclusion of
45.14 the assessment or investigation may be extended to permit the completion of a criminal
45.15 investigation or the receipt of expert information requested within 45 days of the receipt
45.16 of the report.

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

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

45.23 (d) If the commissioner of education conducts an assessment or investigation,
45.24 the commissioner shall determine whether maltreatment occurred and what corrective
45.25 or protective action was taken by the school facility. If a determination is made that
45.26 maltreatment has occurred, the commissioner shall report to the employer, the school
45.27 board, and any appropriate licensing entity the determination that maltreatment occurred
45.28 and what corrective or protective action was taken by the school facility. In all other cases,
45.29 the commissioner shall inform the school board or employer that a report was received,
45.30 the subject of the report, the date of the initial report, the category of maltreatment alleged
45.31 as defined in paragraph (f), the fact that maltreatment was not determined, and a summary
45.32 of the specific reasons for the determination.

45.33 (e) When maltreatment is determined in an investigation involving a facility,
45.34 the investigating agency shall also determine whether the facility or individual was
45.35 responsible, or whether both the facility and the individual were responsible for the

46.1 maltreatment using the mitigating factors in paragraph (i). Determinations under this
46.2 subdivision must be made based on a preponderance of the evidence and are private data
46.3 on individuals or nonpublic data as maintained by the commissioner of education.

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

46.6 (1) physical abuse as defined in subdivision 2, paragraph (g);

46.7 (2) neglect as defined in subdivision 2, paragraph (f);

46.8 (3) sexual abuse as defined in subdivision 2, paragraph (d);

46.9 (4) mental injury as defined in subdivision 2, paragraph (m); or

46.10 (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

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

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

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

46.27 (1) whether the actions of the facility or the individual caregivers were according to,
46.28 and followed the terms of, an erroneous physician order, prescription, individual care plan,
46.29 or directive; however, this is not a mitigating factor when the facility or caregiver was
46.30 responsible for the issuance of the erroneous order, prescription, individual care plan, or
46.31 directive or knew or should have known of the errors and took no reasonable measures to
46.32 correct the defect before administering care;

46.33 (2) comparative responsibility between the facility, other caregivers, and
46.34 requirements placed upon an employee, including the facility's compliance with related
46.35 regulatory standards and the adequacy of facility policies and procedures, facility training,

47.1 an individual's participation in the training, the caregiver's supervision, and facility staffing
47.2 levels and the scope of the individual employee's authority and discretion; and

47.3 (3) whether the facility or individual followed professional standards in exercising
47.4 professional judgment.

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

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

47.16 Sec. 37. Minnesota Statutes 2008, section 626.556, subdivision 10f, is amended to read:

47.17 Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion
47.18 of a family assessment, the local welfare agency shall notify the parent or guardian
47.19 of the child of the need for services to address child safety concerns or significant risk
47.20 of subsequent child maltreatment. The local welfare agency and the family may also
47.21 jointly agree that family support and family preservation services are needed. Within ten
47.22 working days of the conclusion of an investigation, the local welfare agency or agency
47.23 responsible for assessing or investigating the report shall notify the parent or guardian
47.24 of the child, the person determined to be maltreating the child, and if applicable, the
47.25 director of the facility, of the determination and a summary of the specific reasons for
47.26 the determination. When the investigation involves a child foster care setting that is
47.27 monitored by a private licensing agency under section 245A.16, the local welfare agency
47.28 responsible for assessing or investigating the report shall notify the private licensing
47.29 agency of the determination and shall provide a summary of the specific reasons for
47.30 the determination. The notice to the private licensing agency must include identifying
47.31 private data, but not the identity of the reporter of maltreatment. The notice must also
47.32 include a certification that the information collection procedures under subdivision 10,
47.33 paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to
47.34 obtain access to other private data on the subject collected, created, or maintained under
47.35 this section. In addition, the notice shall include the length of time that the records will be

48.1 kept under subdivision 11c. The investigating agency shall notify the parent or guardian
48.2 of the child who is the subject of the report, and any person or facility determined to
48.3 have maltreated a child, of their appeal or review rights under this section or section
48.4 256.022. The notice must also state that a finding of maltreatment may result in denial of a
48.5 license application or background study disqualification under chapter 245C related to
48.6 employment or services that are licensed by the Department of Human Services under
48.7 chapter 245A, the Department of Health under chapter 144 or 144A, the Department of
48.8 Corrections under section 241.021, and from providing services related to an unlicensed
48.9 personal care provider organization under chapter 256B.

48.10 Sec. 38. Minnesota Statutes 2008, section 626.557, subdivision 9c, is amended to read:

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

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

48.18 (c) When determining whether the facility or individual is the responsible party for
48.19 substantiated maltreatment or whether both the facility and the individual are responsible
48.20 for substantiated maltreatment, the lead agency shall consider at least the following
48.21 mitigating factors:

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

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

48.34 (3) whether the facility or individual followed professional standards in exercising
48.35 professional judgment.

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

49.6 (e) The lead agency shall complete its final disposition within 60 calendar days. If
49.7 the lead agency is unable to complete its final disposition within 60 calendar days, the lead
49.8 agency shall notify the following persons provided that the notification will not endanger
49.9 the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable
49.10 adult's legal guardian, when known, if the lead agency knows them to be aware of the
49.11 investigation; and (2) the facility, where applicable. The notice shall contain the reason for
49.12 the delay and the projected completion date. If the lead agency is unable to complete its
49.13 final disposition by a subsequent projected completion date, the lead agency shall again
49.14 notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead
49.15 agency knows them to be aware of the investigation, and the facility, where applicable,
49.16 of the reason for the delay and the revised projected completion date provided that the
49.17 notification will not endanger the vulnerable adult or hamper the investigation. A lead
49.18 agency's inability to complete the final disposition within 60 calendar days or by any
49.19 projected completion date does not invalidate the final disposition.

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

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

49.34 ~~(g)~~ (h) The lead agency shall routinely provide investigation memoranda for
49.35 substantiated reports to the appropriate licensing boards. These reports must include
49.36 the names of substantiated perpetrators. The lead agency may not provide investigative

50.1 memoranda for inconclusive or false reports to the appropriate licensing boards unless the
 50.2 lead agency's investigation gives reason to believe that there may have been a violation of
 50.3 the applicable professional practice laws. If the investigation memorandum is provided
 50.4 to a licensing board, the subject of the investigation memorandum shall be notified and
 50.5 receive a summary of the investigative findings.

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

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

50.12 Sec. 39. Minnesota Statutes 2008, section 626.5572, subdivision 13, is amended to
 50.13 read:

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

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

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

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

50.26 Sec. 40. **REVISOR'S INSTRUCTION.**

50.27 In Minnesota Statutes, the revisor of statutes shall correct the internal cross-reference
 50.28 to "section 245C.03, subdivision 1, clauses (3) and (4)" in section 245C.03, subdivision 4,
 50.29 by inserting "paragraph (a)," after "subdivision 1,". The revisor of statutes shall correct
 50.30 the internal cross-reference to "section 245C.03, subdivision 1, clauses (2), (5), and (6)" in
 50.31 section 245C.14, subdivision 2, by inserting "paragraph (a)," after "subdivision 1,".

50.32 Sec. 41. **REPEALER.**

50.33 Minnesota Statutes 2008, section 245C.10, subdivision 1, is repealed.

APPENDIX
Repealed Minnesota Statutes: H1750-2

245C.10 BACKGROUND STUDY; FEES.

Subdivision 1. **Subject of background study.** No applicant, license holder, or individual who is the subject of a background study shall pay any fees required to conduct the study.