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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1577**

March 1, 2007

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

A bill for an act

relating to human services; making changes to licensing provisions; modifying data practices, program administration, disaster plans, education programs, conditional license provisions, suspensions, sanctions, and contested case hearings, child care center training, family child care training requirements, vulnerable adults, maltreatment of minors, background studies, disqualifications, reconsiderations, disqualification set-asides, fair hearings, appeals, changing definitions of neglect and physical abuse; amending Minnesota Statutes 2006, sections 13.46, subdivision 4; 245A.03, subdivision 2; 245A.04, subdivision 11, by adding subdivisions; 245A.06, subdivision 4; 245A.07, subdivisions 2a, 3, by adding a subdivision; 245A.08, subdivision 2a; 245A.14, subdivision 8; 245A.144; 245A.1445; 245A.145, subdivision 1; 245A.18, subdivision 2; 245A.65, subdivision 1, by adding a subdivision; 245C.02, subdivision 16, by adding a subdivision; 245C.05, subdivision 3; 245C.07; 245C.08; 245C.09, subdivision 1; 245C.11, by adding a subdivision; 245C.13, subdivision 2; 245C.15, subdivisions 1, 2, 3, 4; 245C.16, subdivision 1; 245C.17, subdivisions 2, 3; 245C.21, subdivisions 2, 3; 245C.22, subdivisions 4, 5; 245C.24, subdivision 3; 245C.27, subdivision 1; 245C.28, subdivision 1; 626.556, subdivisions 2, 10e, 10i; 626.557, subdivisions 9c, 9d; 626.5572, subdivision 17; proposing coding for new law in Minnesota Statutes, chapter 245A; repealing Minnesota Statutes 2006, sections 245A.023; 245A.14, subdivisions 7, 9, 9a, 12, 13; 245C.06; Minnesota Rules, parts 9502.0385; 9503.0035.

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

Section 1. Minnesota Statutes 2006, section 13.46, subdivision 4, is amended to read:

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

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

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

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

(b)(1) Except as provided in paragraph (c), the following data on ~~current~~ applicants, license holders, and former licensees are public: name, address, telephone number of licensees, date of receipt of a completed application, dates of licensure, licensed capacity, type of client preferred, variances granted, record of training and education in child care and child development, type of dwelling, name and relationship of other family members, previous license history, class of license, the existence and status of complaints, and the number of serious injuries to or deaths of individuals in the licensed program as reported to the commissioner of human services, the local social services agency, or any other county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician. When a correction order or fine has been issued, a license is suspended, immediately suspended, revoked, denied, or made conditional, or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; and the status of any appeal of these actions.

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

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

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

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

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

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

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inactive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters under sections 626.556 and 626.557 may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

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

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

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

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

4.13 (i) Data on individuals collected according to licensing activities under chapters
4.14 245A and 245C, and data on individuals collected by the commissioner of human services
4.15 according to maltreatment investigations under sections 626.556 and 626.557, may be
4.16 shared with the Department of Human Rights, the Department of Health, the Department
4.17 of Corrections, the Ombudsman for Mental Health and Developmental Disabilities, and
4.18 the individual's professional regulatory board when there is reason to believe that laws or
4.19 standards under the jurisdiction of those agencies may have been violated.

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

4.30 (k) All not public data collected, maintained, used, or disseminated under this
4.31 subdivision and subdivision 3 may be exchanged between the Department of Human
4.32 Services, Licensing Division, and the Department of Corrections for purposes of
4.33 regulating services for which the Department of Human Services and the Department
4.34 of Corrections have regulatory authority.

4.35 Sec. 2. Minnesota Statutes 2006, section 245A.03, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

5.29 (12) programs operated by a school as defined in section 120A.22, subdivision 4,
5.30 whose primary purpose is to provide child care to school-age children;

5.31 (13) Head Start nonresidential programs which operate for less than 45 days in
5.32 each calendar year;

5.33 (14) noncertified boarding care homes unless they provide services for five or more
5.34 persons whose primary diagnosis is mental illness or a developmental disability;

(15) programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance;

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Minnesota Statutes 2006, section 245A.04, subdivision 11, is amended to read:

Subd. 11. **Education program; additional requirement.** (a) The education program offered in a residential or nonresidential program, except for child care, foster care, or services for adults, must be approved by the commissioner of education before the commissioner of human services may grant a license to the program.

(b) A residential program licensed by the commissioner of human services under Minnesota Rules, parts ~~9545.0905 to 9545.1125 or 9545.1400 to 9545.1480~~ 2960.0010 to 2960.0710, may serve persons through the age of 19 when:

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

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

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

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

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

Sec. 4. Minnesota Statutes 2006, section 245A.04, is amended by adding a subdivision to read:

Subd. 14. **Policies and procedures for program administration required and enforceable.** (a) The license holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under Minnesota Statutes and Minnesota Rules.

(b) The license holder shall:

(1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);

8.1 (2) document the provision of this training; and
8.2 (3) ensure that the policies and procedures are consistently implemented by program
8.3 staff.

8.4 (c) The license holder shall keep program policies and procedures readily accessible
8.5 to staff and index the policies and procedures with a table of contents or another method
8.6 approved by the commissioner.

8.7 Sec. 5. Minnesota Statutes 2006, section 245A.04, is amended by adding a subdivision
8.8 to read:

8.9 Subd. 15. **Disaster plans.** (a) The license holder shall develop a written emergency
8.10 disaster plan that includes an assessment of:

8.11 (1) the risks to the program, including natural and human-caused emergencies;

8.12 (2) the key functions of the program;

8.13 (3) personnel resources necessary to provide these key functions; and

8.14 (4) all aspects of the physical plant.

8.15 (b) The plan must:

8.16 (1) address how key functions of the program, if any, will continue after an
8.17 emergency situation ensues;

8.18 (2) specify actions that will be taken by staff and persons receiving services to
8.19 minimize the risks of harm to all persons in care;

8.20 (3) address physical plant emergencies that would make the physical plant or
8.21 material resources unavailable;

8.22 (4) address human resource emergencies caused by events, such as a pandemic flu
8.23 outbreak, that would limit the staffing resources available; and

8.24 (5) be developed in consultation with the local emergency response agency.

8.25 (c) The license holder shall review the plan with staff and persons receiving services
8.26 or their representatives at least annually.

8.27 (d) The license holder shall maintain documentation of compliance with this
8.28 subdivision.

8.29 Sec. 6. Minnesota Statutes 2006, section 245A.06, subdivision 4, is amended to read:

8.30 **Subd. 4. Notice of conditional license; reconsideration of conditional license.** If
8.31 a license is made conditional, the license holder must be notified of the order by certified
8.32 mail or personal service. If mailed, the notice must be mailed to the address shown on
8.33 the application or the last known address of the license holder. The notice must state the
8.34 reasons the conditional license was ordered and must inform the license holder of the right

to request reconsideration of the conditional license by the commissioner. The license holder may request reconsideration of the order of conditional license by notifying the commissioner by certified mail or personal service. The request must be made in writing. If sent by certified mail, the request must be postmarked and sent to the commissioner within ten calendar days after the license holder received the order. If a request is made by personal service, it must be received by the commissioner within ten calendar days after the license holder received the order. The license holder may submit with the request for reconsideration written argument or evidence in support of the request for reconsideration. A timely request for reconsideration shall stay imposition of the terms of the conditional license until the commissioner issues a decision on the request for reconsideration. If the commissioner issues a dual order of conditional license under this section and an order to pay a fine under section 245A.07, subdivision 3, the license holder has a right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The scope of the contested case hearing shall include the fine and the conditional license. In this case, a reconsideration of the conditional license will not be conducted under this section. If the license holder does not appeal the fine, the license holder does not have a right to a contested case hearing and a reconsideration of the conditional license must be conducted under this subdivision.

The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Sec. 7. Minnesota Statutes 2006, section 245A.07, subdivision 2a, is amended to read:

Subd. 2a. **Immediate suspension expedited hearing.** (a) Within five working days of receipt of the license holder's timely appeal, the commissioner shall request assignment of an administrative law judge. The request must include a proposed date, time, and place of a hearing. A hearing must be conducted by an administrative law judge within 30 calendar days of the request for assignment, unless an extension is requested by either party and granted by the administrative law judge for good cause. The commissioner shall issue a notice of hearing by certified mail or personal service at least ten working days before the hearing. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings under this subdivision shall be limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable

10.1 law or rule poses, or if the actions of other individuals or conditions in the program poses
10.2 an imminent risk of harm to the health, safety, or rights of persons served by the program.

10.3 (b) The administrative law judge shall issue findings of fact, conclusions, and a
10.4 recommendation within ten working days from the date of hearing. The parties shall have
10.5 ten calendar days to submit exceptions to the administrative law judge's report. The
10.6 record shall close at the end of the ten-day period for submission of exceptions. The
10.7 commissioner's final order shall be issued within ten working days from the close of the
10.8 record. Within 90 calendar days after a final order affirming an immediate suspension, the
10.9 commissioner shall make a determination regarding whether a final licensing sanction
10.10 shall be issued under subdivision 3. The license holder shall continue to be prohibited
10.11 from operation of the program during this 90-day period.

10.12 (c) When the final order under paragraph (b) affirms an immediate suspension, and a
10.13 final licensing sanction is issued under subdivision 3 and the license holder appeals that
10.14 sanction, the license holder continues to be prohibited from operation of the program
10.15 pending a final commissioner's order under section 245A.08, subdivision 5, regarding the
10.16 final licensing sanction.

10.17 Sec. 8. Minnesota Statutes 2006, section 245A.07, subdivision 3, is amended to read:

10.18 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may
10.19 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with
10.20 applicable laws or rules, if a license holder, a controlling individual, or an individual
10.21 living in the household where the licensed services are provided or is otherwise subject
10.22 to a background study has a disqualification which has not been set aside under section
10.23 245C.22, or if a license holder knowingly withholds relevant information from or gives
10.24 false or misleading information to the commissioner ~~in connection with an application for~~
10.25 ~~a license, in connection with the background study status of an individual, or during an~~
10.26 ~~investigation.~~ A license holder who has had a license suspended, revoked, or has been
10.27 ordered to pay a fine must be given notice of the action by certified mail or personal
10.28 service. If mailed, the notice must be mailed to the address shown on the application or
10.29 the last known address of the license holder. The notice must state the reasons the license
10.30 was suspended, revoked, or a fine was ordered.

10.31 (b) If the license was suspended or revoked, the notice must inform the license
10.32 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules,
10.33 parts 1400.8505 to 1400.8612. The license holder may appeal an order suspending or
10.34 revoking a license. The appeal of an order suspending or revoking a license must be made
10.35 in writing by certified mail or personal service. If mailed, the appeal must be postmarked

11.1 and sent to the commissioner within ten calendar days after the license holder receives
11.2 notice that the license has been suspended or revoked. If a request is made by personal
11.3 service, it must be received by the commissioner within ten calendar days after the license
11.4 holder received the order. Except as provided in subdivision 2a, paragraph (c), a timely
11.5 appeal of an order suspending or revoking a license shall stay the suspension or revocation
11.6 until the commissioner issues a final order.

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

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

11.22 (3) A license holder shall promptly notify the commissioner of human services,
11.23 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon
11.24 reinspection the commissioner determines that a violation has not been corrected as
11.25 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The
11.26 commissioner shall notify the license holder by certified mail or personal service that a
11.27 second fine has been assessed. The license holder may appeal the second fine as provided
11.28 under this subdivision.

11.29 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each
11.30 determination of maltreatment of a child under section 626.556 or the maltreatment of
11.31 a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each
11.32 occurrence of a violation of law or rule governing matters of health, safety, or supervision,
11.33 including but not limited to the provision of adequate staff-to-child or adult ratios, and
11.34 failure to submit a background study; and the license holder shall forfeit \$100 for each
11.35 occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine

12.1 above. For purposes of this section, "occurrence" means each violation identified in the
12.2 commissioner's fine order.

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

12.7 Sec. 9. Minnesota Statutes 2006, section 245A.07, is amended by adding a subdivision
12.8 to read:

12.9 Subd. 6. **Appeal of multiple sanctions.** (a) When the license holder appeals more
12.10 than one licensing action or sanction that were simultaneously issued by the commissioner,
12.11 the license holder shall specify the actions or sanctions that are being appealed.

12.12 (b) If there are different timelines prescribed in statutes for the licensing actions or
12.13 sanctions being appealed, the license holder must submit the appeal within the shortest of
12.14 those timelines specified in statutes.

12.15 (c) The appeal must be made in writing by certified mail or personal service. If
12.16 mailed, the appeal must be postmarked and sent to the commissioner within the prescribed
12.17 timeline with the first day beginning the day after the license holder receives the certified
12.18 letter. If a request is made by personal service, it must be received by the commissioner
12.19 within the prescribed timeline with the first day beginning the day after the license holder
12.20 receives the certified letter.

12.21 (d) When there are different timelines prescribed in statutes for the appeal
12.22 of licensing actions or sanctions simultaneously issued by the commissioner, the
12.23 commissioner shall specify in the notice to the license holder the timeline for appeal
12.24 as specified under paragraph (b).

12.25 Sec. 10. Minnesota Statutes 2006, section 245A.08, subdivision 2a, is amended to read:

12.26 Subd. 2a. **Consolidated contested case hearings.** (a) When a denial of a license
12.27 under section 245A.05 or a licensing sanction under section 245A.07, subdivision 3, is
12.28 based on a disqualification for which reconsideration was requested and which was not
12.29 set aside under section 245C.22, the scope of the contested case hearing shall include
12.30 the disqualification and the licensing sanction or denial of a license, unless otherwise
12.31 specified in this subdivision. When the licensing sanction or denial of a license is based on
12.32 a determination of maltreatment under section 626.556 or 626.557, or a disqualification
12.33 for serious or recurring maltreatment which was not set aside, the scope of the contested
12.34 case hearing shall include the maltreatment determination, disqualification, and the

13.1 licensing sanction or denial of a license, unless otherwise specified in this subdivision.
13.2 In such cases, a fair hearing under section 256.045 shall not be conducted as provided
13.3 for in sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. ~~When a~~
13.4 ~~fine is based on a determination that the license holder is responsible for maltreatment~~
13.5 ~~and the fine is issued at the same time as the maltreatment determination, if the license~~
13.6 ~~holder appeals the maltreatment and fine, the scope of the contested case hearing shall~~
13.7 ~~include the maltreatment determination and fine and reconsideration of the maltreatment~~
13.8 ~~determination shall not be conducted as provided for in sections 626.556, subdivision~~
13.9 ~~10i, and 626.557, subdivision 9d.~~

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

13.14 (1) a denial of a license under section 245A.05 or a licensing sanction under section
13.15 245A.07, is based on a determination that the license holder is responsible for maltreatment
13.16 or the disqualification of a license holder is based on serious or recurring maltreatment;

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

13.19 (3) the license holder appeals the maltreatment determination or disqualification,
13.20 and denial of a license or licensing sanction. In these cases, a fair hearing shall not be
13.21 conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision
13.22 9d. The scope of the contested case hearing must include the maltreatment determination,
13.23 disqualification, and denial of a license or licensing sanction.

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

13.27 ~~(c)~~ (d) The commissioner's final order under subdivision 5 is the final agency action
13.28 on the issue of maltreatment and disqualification, including for purposes of subsequent
13.29 background studies under chapter 245C and is the only administrative appeal of the final
13.30 agency determination, specifically, including a challenge to the accuracy and completeness
13.31 of data under section 13.04.

13.32 ~~(d)~~ (e) When consolidated hearings under this subdivision involve a licensing
13.33 sanction based on a previous maltreatment determination for which the commissioner
13.34 has issued a final order in an appeal of that determination under section 256.045, or the
13.35 individual failed to exercise the right to appeal the previous maltreatment determination
13.36 under section 626.556, subdivision 10i, or 626.557, subdivision 9d, the commissioner's

14.1 order is conclusive on the issue of maltreatment. In such cases, the scope of the
 14.2 administrative law judge's review shall be limited to the disqualification and the licensing
 14.3 sanction or denial of a license. In the case of a denial of a license or a licensing sanction
 14.4 issued to a facility based on a maltreatment determination regarding an individual who is
 14.5 not the license holder or a household member, the scope of the administrative law judge's
 14.6 review includes the maltreatment determination.

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

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

14.12 (2) the disqualified subject is an individual other than the license holder and upon
 14.13 whom a background study must be conducted under section 245C.03; the hearings of
 14.14 all parties may be consolidated into a single contested case hearing upon consent of all
 14.15 parties and the administrative law judge; and

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

14.17 ~~(f) Notwithstanding section 245C.27, subdivision 1, paragraph (c);~~ (g) When a denial
 14.18 of a license under section 245A.05 or a licensing sanction under section 245A.07 is based
 14.19 on a disqualification for which reconsideration was requested and was not set aside under
 14.20 section 245C.22, and the ~~disqualification was based on a conviction or an admission to any~~
 14.21 ~~crimes listed in section 245C.15~~ individual otherwise has no hearing right under section
 14.22 245C.27, the scope of the administrative law judge's review shall include the denial or
 14.23 sanction and a determination whether the disqualification should be set aside, unless
 14.24 section 245C.24 prohibits the set-aside of the disqualification. In determining whether the
 14.25 disqualification should be set aside, the administrative law judge shall consider the factors
 14.26 under section 245C.22, subdivision 4, to determine whether the individual poses a risk of
 14.27 harm to any person receiving services from the license holder.

14.28 ~~(g)~~ (h) Notwithstanding section 245C.30, subdivision 5, when a licensing sanction
 14.29 under section 245A.07 is based on the termination of a variance under section 245C.30,
 14.30 subdivision 4, the scope of the administrative law judge's review shall include the sanction
 14.31 and a determination whether the disqualification should be set aside, unless section
 14.32 245C.24 prohibits the set-aside of the disqualification. In determining whether the
 14.33 disqualification should be set aside, the administrative law judge shall consider the factors
 14.34 under section 245C.22, subdivision 4, to determine whether the individual poses a risk of
 14.35 harm to any person receiving services from the license holder.

15.1 Sec. 11. Minnesota Statutes 2006, section 245A.14, subdivision 8, is amended to read:

15.2 Subd. 8. **Experienced aides; child care centers.** (a) An individual employed as an
15.3 aide at a child care center may work with children without being directly supervised for an
15.4 amount of time that does not exceed 25 percent of the child care center's daily hours if:

15.5 (1) a teacher is in the facility;

15.6 (2) the individual has received within the last three years first aid training ~~within~~
15.7 ~~the last three years~~ that meets the requirements under section 245A.40, subdivision 3,
15.8 and CPR training ~~within the last two years~~ that meets the requirements under section
15.9 245A.40, subdivision 4;

15.10 (3) the individual is at least 20 years old; and

15.11 (4) the individual has at least 4,160 hours of child care experience as a staff member
15.12 in a licensed child care center or as the license holder of a family day care home, 120 days
15.13 of which must be in the employment of the current company.

15.14 (b) A child care center that uses experienced aides under this subdivision must notify
15.15 parents or guardians by posting the notification in each classroom that uses experienced
15.16 aides, identifying which staff member is the experienced aide. Records of experienced
15.17 aide usage must be kept on-site and given to the commissioner upon request.

15.18 (c) A child care center may not use the experienced aide provision for one year
15.19 following two determined experienced aide violations within a one-year period.

15.20 (d) A child care center may use one experienced aide per every four full-time child
15.21 care classroom staff.

15.22 Sec. 12. **[245A.1435] REDUCTION OF RISK OF SUDDEN INFANT DEATH**
15.23 **SYNDROME IN LICENSED PROGRAMS.**

15.24 When a license holder is placing an infant to sleep, the license holder must place the
15.25 infant on the infant's back, unless the license holder has documentation from the infant's
15.26 physician directing an alternative sleeping position for the infant, and must place the infant
15.27 in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters,
15.28 sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant.
15.29 Licensed child care providers must meet the crib requirements under section 245A.146.

15.30 Sec. 13. Minnesota Statutes 2006, section 245A.144, is amended to read:

15.31 **245A.144 SUDDEN INFANT DEATH AND SHAKEN BABY SYNDROME**
15.32 **FOR CHILD FOSTER CARE PROVIDERS.**

15.33 (a) ~~License holders~~ Licensed child foster care providers that care for infants must
15.34 document that before staff persons; and caregivers, ~~and helpers~~ assist in the care of infants,

16.1 they are instructed on the standards in section 245A.1435 and receive training on reducing
 16.2 the risk of sudden infant death syndrome and shaken baby syndrome. This section does not
 16.3 apply to emergency relative foster care under section 245A.035. The training on reducing
 16.4 the risk of sudden infant death syndrome and shaken baby syndrome may be provided as:

16.5 (1) orientation training to ~~child care center staff under Minnesota Rules, part~~
 16.6 ~~9503.0035, subpart 1, and to child foster care providers, who care for infants, under~~
 16.7 ~~Minnesota Rules, part 2960.3070, subpart 1; or~~

16.8 (2) ~~initial training to family and group family child care providers under Minnesota~~
 16.9 ~~Rules, part 9502.0385, subpart 2;~~

16.10 (3) ~~(2) in-service training to child care center staff under Minnesota Rules, part~~
 16.11 ~~9503.0035, subpart 4, and to child foster care providers, who care for infants, under~~
 16.12 ~~Minnesota Rules, part 2960.3070, subpart 2; or.~~

16.13 (4) ~~ongoing training to family and group family child care providers under~~
 16.14 ~~Minnesota Rules, part 9502.0385, subpart 3.~~

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

16.21 (c) ~~Training for family and group family child care providers must be approved by~~
 16.22 ~~the county licensing agency according to Minnesota Rules, part 9502.0385.~~

16.23 (d) (c) Training for child foster care providers must be approved by the county
 16.24 licensing agency and fulfills, in part, training required under Minnesota Rules, part
 16.25 2960.3070.

16.26 Sec. 14. **[245A.1444] TRAINING ON RISK OF SUDDEN INFANT DEATH**
 16.27 **SYNDROME AND SHAKEN BABY SYNDROME BY OTHER PROGRAMS.**

16.28 A licensed chemical dependency treatment program that serves clients with infants
 16.29 who sleep at the program and a licensed children's residential facility that serves infants
 16.30 must document that before program staff persons or volunteers assist in the care of infants,
 16.31 they are instructed on the standards in section 245A.1435 and they receive training on
 16.32 reducing the risk of sudden infant death syndrome and shaken baby syndrome. The
 16.33 training conducted under this section may be used to fulfill training requirements under
 16.34 Minnesota Rules, parts 2960.0100, subpart 3; and 9530.6490, subpart 4, item B.

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

17.3 Sec. 15. Minnesota Statutes 2006, section 245A.1445, is amended to read:

17.4 **245A.1445 DANGERS OF SHAKING INFANTS AND YOUNG CHILDREN.**

17.5 The commissioner shall make available for viewing by all ~~licensed and~~ legal
17.6 nonlicensed child care providers a video presentation on the dangers associated with
17.7 shaking infants and young children. ~~The video presentation shall be part of the initial and~~
17.8 ~~annual training of licensed child care providers.~~ Legal nonlicensed child care providers
17.9 may participate at their option in a video presentation session offered under this section.
17.10 The commissioner shall provide to child care providers and interested individuals, at cost,
17.11 copies of a video approved by the commissioner of health under section 144.574 on the
17.12 dangers associated with shaking infants and young children.

17.13 Sec. 16. Minnesota Statutes 2006, section 245A.145, subdivision 1, is amended to read:

17.14 Subdivision 1. **Policies and procedures.** (a) All licensed child care providers must
17.15 develop policies and procedures for reporting suspected child maltreatment that fulfill the
17.16 requirements in section 626.556 and must develop policies and procedures for reporting
17.17 complaints about the operation of a child care program. The policies and procedures must
17.18 include the telephone numbers of the local county child protection agency for reporting
17.19 suspected maltreatment; the county licensing agency for family and group family child
17.20 care providers; and the state licensing agency for child care centers ~~for reporting other~~
17.21 ~~concerns.~~

17.22 (b) The policies and procedures required in paragraph (a) must:

17.23 (1) be provided to the parents of all children at the time of enrollment in the child
17.24 care program; and

17.25 (2) be made available upon request.

17.26 Sec. 17. Minnesota Statutes 2006, section 245A.18, subdivision 2, is amended to read:

17.27 Subd. 2. **Child passenger restraint systems; training requirement.** (a) ~~Family~~
17.28 ~~and group family child care, child care centers, child foster care, and other Programs~~
17.29 licensed by the Department of Human Services under Minnesota Rules, chapter 2960, that
17.30 serve a child or children under nine years of age must document training that fulfills the
17.31 requirements in this subdivision.

17.32 (b) Before a license holder, staff person, or caregiver, ~~or helper~~ transports a child
17.33 or children under age nine in a motor vehicle, the person transporting the child must

18.1 satisfactorily complete training on the proper use and installation of child restraint systems
18.2 in motor vehicles. Training completed under this section may be used to meet initial
18.3 or ongoing training under the following:

- 18.4 ~~(1) Minnesota Rules, part 2960.3070, subparts 1 and 2;~~
18.5 ~~(2) Minnesota Rules, part 9502.0385, subparts 2 and 3; and~~
18.6 ~~(3) Minnesota Rules, part 9503.0035, subparts 1 and 4.~~

18.7 For all providers licensed prior to July 1, 2006, the training required in this subdivision
18.8 must be obtained by December 31, 2007.

18.9 (c) Training required under this section must be at least one hour in length,
18.10 completed at orientation or initial training, and repeated at least once every five years. At
18.11 a minimum, the training must address the proper use of child restraint systems based on
18.12 the child's size, weight, and age, and the proper installation of a car seat or booster seat in
18.13 the motor vehicle used by the license holder to transport the child or children.

18.14 (d) Training under paragraph (c) must be provided by individuals who are certified
18.15 and approved by the Department of Public Safety, Office of Traffic Safety. License holders
18.16 may obtain a list of certified and approved trainers through the Department of Public
18.17 Safety Web site or by contacting the agency.

18.18 (e) Child care providers that only transport school age children as defined in section
18.19 245A.02, subdivision 16, in school buses as defined in section 169.01, subdivision 6,
18.20 clauses (1) to (4), are exempt from this subdivision.

18.21 **Sec. 18. [245A.40] CHILD CARE CENTER TRAINING REQUIREMENTS.**

18.22 Subdivision 1. **Orientation.** The child care center license holder must ensure that
18.23 every staff person and volunteer is given orientation training and successfully completes
18.24 the training before starting assigned duties. The orientation training in this subdivision
18.25 applies to volunteers who will have direct contact with or access to children and who is
18.26 not under the direct supervision of a staff person. Completion of the orientation must be
18.27 documented in the individual's personnel record. The orientation training must include
18.28 information about:

18.29 (1) the center's philosophy, child care program, and procedures for maintaining
18.30 health and safety and handling emergencies and accidents;

18.31 (2) specific job responsibilities;

18.32 (3) the behavior guidance standards in Minnesota Rules, part 9503.0055; and

18.33 (4) the reporting responsibilities in section 626.556, and Minnesota Rules, part
18.34 9503.0130.

19.1 Subd. 2. **Child growth and development training.** (a) For purposes of child care
19.2 centers, the director and all staff hired after July 1, 2006, shall complete and document
19.3 at least two hours of child growth and development training within the first year of
19.4 employment. For purposes of this subdivision, "child growth and development training"
19.5 means training in understanding how children acquire language and develop physically,
19.6 cognitively, emotionally, and socially. Training completed under this subdivision may be
19.7 used to meet the orientation training requirements under subdivision 1 and the in-service
19.8 training requirements under subdivision 7.

19.9 (b) Notwithstanding paragraph (a), individuals are exempt from this requirement if
19.10 they:

19.11 (1) have taken a three-credit college course on early childhood development within
19.12 the past five years;

19.13 (2) have received a baccalaureate or master's degree in early childhood education or
19.14 school-age child care within the past five years;

19.15 (3) are licensed in Minnesota as a prekindergarten teacher, an early childhood
19.16 educator, a kindergarten to sixth grade teacher with a prekindergarten specialty, an
19.17 early childhood special education teacher, or an elementary teacher with a kindergarten
19.18 endorsement; or

19.19 (4) have received a baccalaureate degree with a Montessori certificate within the
19.20 past five years.

19.21 Subd. 3. **First aid.** All teachers and assistant teachers in a child care center
19.22 governed by Minnesota Rules, parts 9503.0005 to 9503.0170, and at least one staff person
19.23 during field trips and when transporting children in care, must satisfactorily complete first
19.24 aid training within 90 days of the start of work, unless the training has been completed
19.25 within the previous three years. The first aid training must be repeated at least every three
19.26 years, documented in the person's personnel record and indicated on the center's staffing
19.27 chart, and provided by an individual approved as a first aid instructor. This training may
19.28 be less than eight hours.

19.29 Subd. 4. **Cardiopulmonary resuscitation.** (a) When children are present in a child
19.30 care center governed by Minnesota Rules, parts 9503.0005 to 9503.0170, at least one staff
19.31 person must be present in the center who has been trained in cardiopulmonary resuscitation
19.32 (CPR) and in the treatment of obstructed airways. The CPR training must have been
19.33 provided by an individual approved to provide CPR instruction, must be repeated at least
19.34 once every three years, and must be documented in the staff person's records.

19.35 (b) Cardiopulmonary resuscitation training may be provided for less than four hours.

20.1 (c) Persons qualified to provide cardiopulmonary resuscitation training shall include
20.2 individuals approved as cardiopulmonary resuscitation instructors.

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

20.4 (a) License holders must document that before staff persons care for infants, they are
20.5 instructed on the standards in section 245A.1435 and receive training on reducing the
20.6 risk of sudden infant death syndrome and shaken baby syndrome. The training in this
20.7 subdivision may be provided as orientation training under subdivision 1 and in-service
20.8 training under subdivision 7.

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

20.15 (c) The commissioner shall make available for viewing a video presentation on the
20.16 dangers associated with shaking infants and young children. The video presentation must
20.17 be part of the orientation and annual in-service training of licensed child care centers. The
20.18 commissioner shall provide to child care providers and interested individuals, at cost,
20.19 copies of a video approved by the commissioner of health under section 144.574 on the
20.20 dangers associated with shaking infants and young children.

20.21 **Subd. 6. Child passenger restraint systems; training requirement.** (a) A license
20.22 holder must comply with all seat belt and child passenger restraint system requirements
20.23 under section 169.685.

20.24 (b) Child care centers that serve a child or children under nine years of age must
20.25 document training that fulfills the requirements in this subdivision.

20.26 (1) Before a license holder transports a child or children under age nine in a motor
20.27 vehicle, the person placing the child or children in a passenger restraint must satisfactorily
20.28 complete training on the proper use and installation of child restraint systems in motor
20.29 vehicles. Training completed under this subdivision may be used to meet orientation
20.30 training under subdivision 1 and in-service training under subdivision 7.

20.31 (2) Training required under this subdivision must be at least one hour in length,
20.32 completed at orientation, and repeated at least once every five years. At a minimum, the
20.33 training must address the proper use of child restraint systems based on the child's size,
20.34 weight, and age, and the proper installation of a car seat or booster seat in the motor
20.35 vehicle used by the license holder to transport the child or children.

21.1 (3) Training required under this subdivision must be provided by individuals
21.2 who are certified and approved by the Department of Public Safety, Office of Traffic
21.3 Safety. License holders may obtain a list of certified and approved trainers through the
21.4 Department of Public Safety Web site or by contacting the agency.

21.5 (4) Child care providers that only transport school-age children as defined in section
21.6 245A.02, subdivision 16, in school buses as defined in section 169.01, subdivision 6,
21.7 clauses (1) to (4), are exempt from this subdivision.

21.8 Subd. 7. **In-service.** (a) A license holder must ensure that an annual in-service
21.9 training plan is developed and carried out and that it meets the requirements in clauses (1)
21.10 to (7). The in-service training plan must:

21.11 (1) be consistent with the center's child care program plan;

21.12 (2) meet the training needs of individual staff persons as specified in each staff
21.13 person's annual evaluation report;

21.14 (3) provide training, at least one-fourth of which is by a resource not affiliated
21.15 with the license holder;

21.16 (4) include Minnesota Rules, parts 9503.0005 to 9503.0170, relevant to the staff
21.17 person's position and must occur within two weeks of initial employment;

21.18 (5) provide that at least one-half of the annual in-service training completed by a staff
21.19 person each year pertains to the age of children for which the person is providing care;

21.20 (6) provide that no more than four hours of each annual in-service training
21.21 requirement relate to administration, finances, and records training for a teacher, assistant
21.22 teacher, or aide; and

21.23 (7) provide that the remainder of the in-service training requirement be met by
21.24 participation in training in child growth and development; learning environment and
21.25 curriculum; assessment and planning for individual needs; interactions with children;
21.26 families and communities; health, safety, and nutrition; and program planning and
21.27 evaluation.

21.28 (b) For purposes of this subdivision, the following terms have the meanings given
21.29 them.

21.30 (1) "Child growth and development training" has the meaning given it in subdivision
21.31 2, paragraph (a).

21.32 (2) "Learning environment and curriculum" means training in establishing an
21.33 environment that provides learning experiences to meet each child's needs, capabilities,
21.34 and interests, including early childhood education methods or theory, recreation, sports,
21.35 promoting creativity in the arts, arts and crafts methods or theory, and early childhood
21.36 special education methods or theory.

22.1 (3) "Assessment and planning for individual needs" means training in observing and
22.2 assessing what children know and can do in order to provide curriculum and instruction
22.3 that addresses their developmental and learning needs, including children with special
22.4 needs.

22.5 (4) "Interactions with children" means training in establishing supportive
22.6 relationships with children and guiding them as individuals and as part of a group,
22.7 including child study techniques and behavior guidance.

22.8 (5) "Families and communities" means training in working collaboratively with
22.9 families, agencies, and organizations to meet children's needs and to encourage the
22.10 community's involvement, including family studies and parent involvement.

22.11 (6) "Health, safety, and nutrition" means training in establishing and maintaining an
22.12 environment that ensures children's health, safety, and nourishment, including first aid,
22.13 cardiopulmonary resuscitation, child nutrition, and child abuse and neglect prevention.

22.14 (7) "Program planning and evaluation" means training in establishing, implementing,
22.15 evaluating, and enhancing program operations.

22.16 (c) The director and all program staff persons must annually complete a number of
22.17 hours of in-service training equal to at least two percent of the hours for which the director
22.18 or program staff person is annually paid, unless one of the following is applicable.

22.19 (1) A teacher at a child care center must complete one percent of working hours of
22.20 in-service training annually if the teacher:

22.21 (i) possesses a baccalaureate or master's degree in early childhood education or
22.22 school-age care;

22.23 (ii) is licensed in Minnesota as a prekindergarten teacher, an early childhood
22.24 educator, a kindergarten to sixth grade teacher with a prekindergarten specialty, an
22.25 early childhood special education teacher, or an elementary teacher with a kindergarten
22.26 endorsement; or

22.27 (iii) possesses a baccalaureate degree with a Montessori certificate.

22.28 (2) A teacher or assistant teacher at a child care center must complete one and
22.29 one-half percent of working hours of in-service training annually if the individual is:

22.30 (i) a registered nurse or licensed practical nurse with experience working with
22.31 infants;

22.32 (ii) possesses a Montessori certificate, a technical college certificate in early
22.33 childhood development, or a child development associate certificate; or

22.34 (iii) possesses an associate of arts degree in early childhood education, a
22.35 baccalaureate degree in child development, or a technical college diploma in early
22.36 childhood development.

23.1 (d) The number of required training hours may be prorated for individuals not
23.2 employed full time or for an entire year.

23.3 (e) The annual in-service training must be completed within the calendar year for
23.4 which it was required. In-service training completed by staff persons is transferable upon
23.5 a staff person's change in employment to another child care program.

23.6 (f) The license holder must ensure that, when a staff person completes in-service
23.7 training, the training is documented in the staff person's personnel record. The
23.8 documentation must include the date training was completed, the goal of the training and
23.9 topics covered, trainer's name and organizational affiliation, trainer's signed statement that
23.10 training was successfully completed, and the director's approval of the training.

23.11 **Subd. 8. Cultural dynamics and disabilities training for child care providers.**

23.12 (a) The training required of licensed child care center staff must include training in the
23.13 cultural dynamics of early childhood development and child care. The cultural dynamics
23.14 and disabilities training and skills development of child care providers must be designed
23.15 to achieve outcomes for providers of child care that include, but are not limited to:

23.16 (1) an understanding and support of the importance of culture and differences in
23.17 ability in children's identity development;

23.18 (2) understanding the importance of awareness of cultural differences and
23.19 similarities in working with children and their families;

23.20 (3) understanding and support of the needs of families and children with differences
23.21 in ability;

23.22 (4) developing skills to help children develop unbiased attitudes about cultural
23.23 differences and differences in ability;

23.24 (5) developing skills in culturally appropriate caregiving; and

23.25 (6) developing skills in appropriate caregiving for children of different abilities.

23.26 (b) Curriculum for cultural dynamics and disability training shall be approved by
23.27 the commissioner.

23.28 (c) The commissioner shall amend current rules relating to the training of the
23.29 licensed child care center staff to require cultural dynamics training. Timelines established
23.30 in the rule amendments for complying with the cultural dynamics training requirements
23.31 must be based on the commissioner's determination that curriculum materials and trainers
23.32 are available statewide.

23.33 (d) For programs caring for children with special needs, the license holder shall
23.34 ensure that any additional staff training required by the child's individual child care
23.35 program plan required under Minnesota Rules, part 9503.0065, subpart 3, is provided.

24.1 Sec. 19. **[245A.50] FAMILY CHILD CARE TRAINING REQUIREMENTS.**

24.2 Subdivision 1. **Initial training.** (a) License holders, caregivers, and substitutes must
24.3 comply with the training requirements in this section.

24.4 (b) Helpers who assist with care on a regular basis must complete six hours of
24.5 training within one year after the date of initial employment.

24.6 Subd. 2. **Child growth and development training.** (a) For purposes of family and
24.7 group family child care, the license holder and each adult caregiver who provides care
24.8 in the licensed setting for more than 30 days in any 12-month period shall complete and
24.9 document at least two hours of child growth and development training within the first year
24.10 of licensure. For purposes of this subdivision, "child growth and development training"
24.11 means training in understanding how children acquire language and develop physically,
24.12 cognitively, emotionally, and socially.

24.13 (b) Notwithstanding paragraph (a), individuals are exempt from this requirement if
24.14 they:

24.15 (1) have taken a three-credit course on early childhood development within the
24.16 past five years;

24.17 (2) have received a baccalaureate or masters degree in early childhood education or
24.18 school age child care within the past five years;

24.19 (3) are licensed in Minnesota as a prekindergarten teacher, an early childhood
24.20 educator, a kindergarten to grade 6 teacher with a prekindergarten specialty, an early
24.21 childhood special education teacher, or an elementary teacher with a kindergarten
24.22 endorsement; or

24.23 (4) have received a baccalaureate degree with a Montessori certificate within the
24.24 past five years.

24.25 Subd. 3. **First aid.** (a) When children are present in a family child care home
24.26 governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at least one staff person
24.27 must be present in the home who has been trained in first aid. The first aid training must
24.28 have been provided by an individual approved to provide first aid instruction. First aid
24.29 training may be less than eight hours and persons qualified to provide first aid training
24.30 includes individuals approved as first aid instructors.

24.31 (b) A family child care provider is exempt from the first aid training requirements
24.32 under this subdivision related to any substitute caregiver who provides less than 30 hours
24.33 of care during any 12-month period.

24.34 (c) Video training reviewed and approved by the county licensing agency satisfies
24.35 the training requirement of this subdivision.

25.1 **Subd. 4. Cardiopulmonary resuscitation.** (a) When children are present in a family
25.2 child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at least
25.3 one staff person must be present in the home who has been trained in cardiopulmonary
25.4 resuscitation (CPR) and in the treatment of obstructed airways. The CPR training must
25.5 have been provided by an individual approved to provide CPR instruction, must be
25.6 repeated at least once every three years, and must be documented in the staff person's
25.7 records.

25.8 (b) A family child care provider is exempt from the CPR training requirement in
25.9 this subdivision related to any substitute caregiver who provides less than 30 hours of
25.10 care during any 12-month period.

25.11 (c) Video training reviewed and approved by the county licensing agency satisfies
25.12 the training requirement of this subdivision.

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

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

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

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

25.27 (d) The commissioner shall make available for viewing by all licensed child care
25.28 providers a video presentation on the dangers associated with shaking infants and young
25.29 children. The video presentation shall be part of the initial and ongoing training of
25.30 licensed child care providers. The commissioner shall provide to child care providers and
25.31 interested individuals, at cost, copies of a video approved by the commissioner of health
25.32 under section 144.574 on the dangers associated with shaking infants and young children.

25.33 **Subd. 6. Child passenger restraint systems; training requirement.** (a) A license
25.34 holder must comply with all seat belt and child passenger restraint system requirements
25.35 under section 169.685.

26.1 (b) Family and group family child care programs licensed by the Department of
26.2 Human Services that serve a child or children under nine years of age must document
26.3 training that fulfills the requirements in this subdivision.

26.4 (1) Before a license holder, staff person, caregiver, or helper transports a child or
26.5 children under age nine in a motor vehicle, the person placing the child or children in a
26.6 passenger restraint must satisfactorily complete training on the proper use and installation
26.7 of child restraint systems in motor vehicles. Training completed under this subdivision
26.8 may be used to meet initial training under subdivision 1, or ongoing training under
26.9 subdivision 7.

26.10 (2) Training required under this subdivision must be at least one hour in length,
26.11 completed at initial training, and repeated at least once every five years. At a minimum,
26.12 the training must address the proper use of child restraint systems based on the child's
26.13 size, weight, and age, and the proper installation of a car seat or booster seat in the motor
26.14 vehicle used by the license holder to transport the child or children.

26.15 (3) Training under this subdivision must be provided by individuals who are certified
26.16 and approved by the Department of Public Safety, Office of Traffic Safety. License holders
26.17 may obtain a list of certified and approved trainers through the Department of Public
26.18 Safety Web site or by contacting the agency.

26.19 (c) Child care providers that only transport school age children as defined in section
26.20 245A.02, subdivision 16, in school buses, as defined in section 169.01, subdivision 6,
26.21 clauses (1) to (4), are exempt from this subdivision.

26.22 **Subd. 7. Training requirements for family and group family child care.**
26.23 For purposes of family and group family child care, the license holder and each
26.24 primary caregiver must complete eight hours of training each year. For purposes of
26.25 this subdivision, a primary caregiver is an adult caregiver who provides services in the
26.26 licensed setting for more than 30 days in any 12-month period. Ongoing training subjects
26.27 must be selected from the following areas:

26.28 (1) "child growth and development training" has the meaning given in subdivision 2,
26.29 paragraph (a);

26.30 (2) "learning environment and curriculum" includes training in establishing an
26.31 environment and providing activities that provide learning experiences to meet each
26.32 child's needs, capabilities, and interests;

26.33 (3) "assessment and planning for individual needs" includes training in observing and
26.34 assessing what children know and can do in order to provide curriculum and instruction
26.35 that addresses their developmental and learning needs, including children with special
26.36 needs and bilingual children or children for whom English is not their primary language;

27.1 (4) "interactions with children" includes training in establishing supportive
27.2 relationships with children, guiding them as individuals and as part of a group;

27.3 (5) "families and communities" includes training in working collaboratively with
27.4 families and agencies or organizations to meet children's needs and to encourage the
27.5 community's involvement;

27.6 (6) "health, safety, and nutrition" includes training in establishing and maintaining an
27.7 environment that ensures children's health, safety, and nourishment, including child abuse,
27.8 maltreatment, prevention, and reporting; home and fire safety; child injury prevention;
27.9 communicable disease prevention and control; First Aid; and CPR; and

27.10 (7) "program planning and evaluation" includes training in establishing,
27.11 implementing, evaluating, and enhancing program operations.

27.12 Subd. 8. **Other required training requirements.** (a) The training required of
27.13 family and group family child care providers and staff must include training in the cultural
27.14 dynamics of early childhood development and child care. The cultural dynamics and
27.15 disabilities training and skills development of child care providers must be designed to
27.16 achieve outcomes for providers of child care that include, but are not limited to:

27.17 (1) an understanding and support of the importance of culture and differences in
27.18 ability in children's identity development;

27.19 (2) understanding the importance of awareness of cultural differences and
27.20 similarities in working with children and their families;

27.21 (3) understanding and support of the needs of families and children with differences
27.22 in ability;

27.23 (4) developing skills to help children develop unbiased attitudes about cultural
27.24 differences and differences in ability;

27.25 (5) developing skills in culturally appropriate caregiving; and

27.26 (6) developing skills in appropriate caregiving for children of different abilities.

27.27 The commissioner shall approve the curriculum for cultural dynamics and disability
27.28 training.

27.29 (b) The provider must meet the training requirement in section 245A.14, subdivision
27.30 11, paragraph (a), clause (4), to be eligible to allow a child cared for at the family child
27.31 care or group family child care home to use the swimming pool located at the home.

27.32 Sec. 20. Minnesota Statutes 2006, section 245A.65, subdivision 1, is amended to read:

27.33 Subdivision 1. **License holder requirements.** All license holders serving vulnerable
27.34 adults shall establish and enforce written policies and procedures related to suspected or
27.35 alleged maltreatment, and shall orient clients and mandated reporters who are under

28.1 the control of the license holder to these procedures, as defined in section 626.5572,
28.2 subdivision 16.

28.3 (a) License holders must establish policies and procedures allowing but not
28.4 mandating the internal reporting of alleged or suspected maltreatment. License holders
28.5 shall ensure that the policies and procedures on internal reporting:

28.6 (1) meet all the requirements identified for the optional internal reporting policies
28.7 and procedures in section 626.557, subdivision 4a; and

28.8 (2) identify the primary and secondary person or position to whom internal reports
28.9 may be made and the primary and secondary person or position responsible for forwarding
28.10 internal reports to the common entry point as defined in section 626.5572, subdivision 5.
28.11 The secondary person must be involved when there is reason to believe that the primary
28.12 person was involved in the alleged or suspected maltreatment.

28.13 (b) The license holder shall:

28.14 (1) establish and maintain policies and procedures to ensure that an internal review
28.15 is completed and that corrective action is taken as necessary to protect the health and
28.16 safety of vulnerable adults when the facility has reason to know that an internal or
28.17 external report of alleged or suspected maltreatment has been made. The review must
28.18 include an evaluation of whether related policies and procedures were followed, whether
28.19 the policies and procedures were adequate, whether there is a need for additional staff
28.20 training, whether the reported event is similar to past events with the vulnerable adults
28.21 or the services involved, and whether there is a need for ~~any further~~ corrective action
28.22 ~~to be taken~~ by the facility license holder to protect the health and safety of vulnerable
28.23 adults; Based on the results of this review, the license holder must develop, document,
28.24 and implement a corrective action plan designed to correct current lapses and prevent
28.25 future lapses in performance by individuals or the license holder. When a license holder
28.26 holds multiple licenses, the review completed under this paragraph must evaluate whether
28.27 similar problems have occurred in the other licensed settings and, if so, the corrective
28.28 action plan must be implemented across those licensed settings;

28.29 (2) identify the primary and secondary person or position who will ensure that, when
28.30 required, internal reviews are completed. The secondary person shall be involved when
28.31 there is reason to believe that the primary person was involved in the alleged or suspected
28.32 maltreatment; and

28.33 (3) document and make internal reviews accessible to the commissioner upon the
28.34 commissioner's request.

28.35 (c) The license holder shall provide an orientation to the internal and external
28.36 reporting procedures to all persons receiving services. The orientation shall include the

29.1 telephone number for the license holder's common entry point as defined in section
29.2 626.5572, subdivision 5. If applicable, the person's legal representative must be notified of
29.3 the orientation. The program shall provide this orientation for each new person within 24
29.4 hours of admission, or for persons who would benefit more from a later orientation, the
29.5 orientation may take place within 72 hours.

29.6 (d) The license holder shall post a copy of the internal and external reporting policies
29.7 and procedures, including the telephone number of the common entry point as defined
29.8 in section 626.5572, subdivision 5, in a prominent location in the program and have it
29.9 available upon request to mandated reporters, persons receiving services, and the person's
29.10 legal representatives.

29.11 Sec. 21. Minnesota Statutes 2006, section 245A.65, is amended by adding a
29.12 subdivision to read:

29.13 Subd. 1a. **Determination of vulnerable adult status.** (a) A license holder that
29.14 provides services to adults who are excluded from the definition of vulnerable adult under
29.15 section 626.5572, subdivision 21, clause (2), must determine whether the person is a
29.16 vulnerable adult under section 626.5572, subdivision 21, clause (4). This determination
29.17 must be made within 24 hours of:

29.18 (1) admission to the licensed program; and

29.19 (2) any incident that:

29.20 (i) was reported under section 626.557; or

29.21 (ii) would have been required to be reported under section 626.557, if one or more of
29.22 the adults involved in the incident had been vulnerable adults.

29.23 (b) Upon determining that a person receiving services is a vulnerable adult under
29.24 section 626.5572, subdivision 21, clause (4), all requirements relative to vulnerable adults
29.25 under section 626.557 and chapter 245A must be met by the license holder.

29.26 Sec. 22. **[245A.66] REQUIREMENTS; MALTREATMENT OF MINORS.**

29.27 Except for family child care and child foster care license holders, license holders
29.28 serving children shall:

29.29 (1) establish and maintain policies and procedures to ensure that an internal review
29.30 is completed and that corrective action is taken as necessary to protect the health and
29.31 safety of children in care when the facility has reason to know that an internal or external
29.32 report of alleged or suspected maltreatment has been made. The review must include
29.33 an evaluation of whether:

29.34 (i) related policies and procedures were followed;

- 30.1 (ii) the policies and procedures were adequate;
30.2 (iii) there is a need for additional staff training;
30.3 (iv) the reported event is similar to past events with the children or the services
30.4 involved; and
30.5 (v) there is a need for corrective action by the license holder to protect the health and
30.6 safety of children in care.

30.7 Based on the results of this review, the license holder must develop, document, and
30.8 implement a corrective action plan designed to correct current lapses and prevent future
30.9 lapses in performance by individuals or the license holder. When a license holder holds
30.10 multiple licenses, the review completed under this paragraph must evaluate whether
30.11 similar problems have occurred in the other licensed settings and, if so, the corrective
30.12 action plan must be implemented across those licensed settings;

30.13 (2) identify the primary and secondary person or position who will ensure that, when
30.14 required, internal reviews are completed. The secondary person shall be involved when
30.15 there is reason to believe that the primary person was involved in the alleged or suspected
30.16 maltreatment; and

30.17 (3) document and make internal reviews accessible to the commissioner upon the
30.18 commissioner's request.

30.19 Sec. 23. Minnesota Statutes 2006, section 245C.02, is amended by adding a
30.20 subdivision to read:

30.21 Subd. 9a. **Conviction.** "Conviction" has the meaning given in section 609.02,
30.22 subdivision 5.

30.23 Sec. 24. Minnesota Statutes 2006, section 245C.02, subdivision 16, is amended to read:

30.24 Subd. 16. **Recurring maltreatment.** "Recurring maltreatment" means ~~more than~~
30.25 ~~one incident of maltreatment for which~~ there is a preponderance of evidence that the
30.26 maltreatment occurred and that the subject was responsible for the maltreatment; when:

30.27 (1) there is more than one incident of maltreatment; or

30.28 (2) there is one maltreatment determination which involved more than one victim.

30.29 Notwithstanding clause (2), maltreatment is not recurring if the commissioner
30.30 determines there is preponderance of evidence that the subject was the victim of domestic
30.31 assault at the time of the incident for which the subject was found responsible for neglect
30.32 of more than one child under section 626.556, subdivision 2, paragraph (c), clause (2).

30.33 Sec. 25. Minnesota Statutes 2006, section 245C.05, subdivision 3, is amended to read:

31.1 Subd. 3. **Additional information from individual studied.** (a) For purposes of
31.2 completing the background study, the commissioner may request ~~additional information~~
31.3 ~~of the individual, such as~~ the individual's Social Security number or race. The individual
31.4 is not required to provide this information to the commissioner.

31.5 (b) The commissioner may also require additional information if the commissioner
31.6 determines the information is necessary to complete the background study. Failure to
31.7 provide the required information may result in a disqualification pursuant to section
31.8 245C.09.

31.9 Sec. 26. Minnesota Statutes 2006, section 245C.07, is amended to read:

31.10 **245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

31.11 (a) When a license holder, applicant, or other entity owns multiple ~~facilities~~
31.12 programs or services that are licensed by the Department of Human Services, Department
31.13 of Health, or Department of Corrections, only one background study is required for an
31.14 individual who provides direct contact services in one or more of the licensed ~~facilities~~
31.15 programs or services if:

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

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

31.23 (b) When a background study is being initiated by a licensed ~~facility~~ program
31.24 or service or a foster care provider that is also registered under chapter 144D, a study
31.25 subject affiliated with multiple licensed ~~facilities~~ programs or services may attach to the
31.26 background study form a cover letter indicating the additional ~~facilities'~~ names of the
31.27 programs or services, addresses, and background study identification numbers.

31.28 When the commissioner receives a notice, the commissioner shall notify each
31.29 ~~facility~~ program or service identified by the background study subject of the study results.

31.30 The background study notice the commissioner sends to the subsequent agencies
31.31 shall satisfy those ~~facilities'~~ programs' or services' responsibilities for initiating a
31.32 background study on that individual.

32.1 Sec. 27. Minnesota Statutes 2006, section 245C.08, is amended to read:

32.2 **245C.08 BACKGROUND STUDY; INFORMATION COMMISSIONER**
32.3 **REVIEWS.**

32.4 Subdivision 1. **Background studies conducted by commissioner of human**
32.5 **services.** (a) For a background study conducted by the commissioner, the commissioner
32.6 shall review:

32.7 (1) information related to names of substantiated perpetrators of maltreatment of
32.8 vulnerable adults that has been received by the commissioner as required under section
32.9 626.557, subdivision 9c, paragraph (i);

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

32.13 (3) information from juvenile courts as required in subdivision 4 for individuals
32.14 listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and

32.15 (4) information from the Bureau of Criminal Apprehension.

32.16 (b) Notwithstanding expungement by a court, the commissioner may consider
32.17 information obtained under paragraph (a), clauses (3) and (4), unless the commissioner
32.18 received notice of the petition for expungement and the court order for expungement is
32.19 directed specifically to the commissioner.

32.20 Subd. 2. **Background studies conducted by a county or private agency.** (a) For
32.21 a background study conducted by a county or private agency for child foster care, adult
32.22 foster care, and family child care homes, the commissioner shall review:

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

32.25 (2) information from juvenile courts as required in subdivision 4 for individuals
32.26 listed in section 245C.03, subdivision 1, clauses (2), (5), and (6); and

32.27 (3) information from the Bureau of Criminal Apprehension; and,

32.28 ~~(4) arrest and investigative records maintained by the Bureau of Criminal~~
32.29 ~~Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, the~~
32.30 ~~National Criminal Records Repository, and criminal records from other states.~~

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

32.34 (c) Notwithstanding expungement by a court, the county or private agency may
32.35 consider information obtained under paragraph (a), clauses (3) and (4), unless the

33.1 commissioner received notice of the petition for expungement and the court order for
33.2 expungement is directed specifically to the commissioner.

33.3 Subd. 3. **Arrest and investigative information.** (a) For any background study
33.4 completed under this section, if the commissioner has reasonable cause to believe the
33.5 information is pertinent to the disqualification of an individual, the commissioner also
33.6 may review arrest and investigative information from:

- 33.7 (1) the Bureau of Criminal Apprehension;
- 33.8 (2) the commissioner of health;
- 33.9 (3) a county attorney;
- 33.10 (4) a county sheriff;
- 33.11 (5) a county agency;
- 33.12 (6) a local chief of police;
- 33.13 (7) other states;
- 33.14 (8) the courts; ~~or~~
- 33.15 (9) the Federal Bureau of Investigation;
- 33.16 (10) the National Criminal Records Repository; and
- 33.17 (11) criminal records from other states.

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

33.23 Subd. 4. **Juvenile court records.** (a) The commissioner shall review records
33.24 from the juvenile courts for an individual studied under section 245C.03, subdivision 1,
33.25 clauses (2) and (5).

33.26 (b) For individuals studied under section 245C.03, subdivision 1, clauses (1), (3),
33.27 (4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner shall review
33.28 records from the juvenile courts when the commissioner has reasonable cause.

33.29 (c) The juvenile courts shall help with the study by giving the commissioner existing
33.30 juvenile court records on individuals described in section 245C.03, subdivision 1, clauses
33.31 (2), (5), and (6), relating to delinquency proceedings held within either the five years
33.32 immediately preceding the background study or the five years immediately preceding the
33.33 individual's 18th birthday, whichever time period is longer.

33.34 (d) For purposes of this chapter, a finding that a delinquency petition is proven in
33.35 juvenile court shall be considered a conviction in state district court.

34.1 (e) ~~The commissioner shall destroy juvenile court records obtained under this~~
34.2 ~~subdivision when the subject of the records reaches age 23.~~ Juvenile courts shall provide
34.3 orders of involuntary and voluntary termination of parental rights under section 260C.301
34.4 to the commissioner upon request for purposes of conducting a background study under
34.5 this chapter.

34.6 Sec. 28. Minnesota Statutes 2006, section 245C.09, subdivision 1, is amended to read:

34.7 Subdivision 1. **Disqualification; licensing action.** An applicant's, license holder's,
34.8 or other entity's failure or refusal to cooperate with the commissioner, including failure
34.9 to provide additional information required under section 245C.05, is reasonable cause
34.10 to disqualify a subject, deny a license application, or immediately suspend or revoke
34.11 a license or registration.

34.12 Sec. 29. Minnesota Statutes 2006, section 245C.11, is amended by adding a subdivision
34.13 to read:

34.14 Subd. 4. **Background study.** A county agency may accept a background study
34.15 completed by the commissioner under this chapter in place of the background study
34.16 required under section 245A.16, subdivision 3, for educational programs that train
34.17 individuals by providing direct contact services in licensed programs.

34.18 Sec. 30. Minnesota Statutes 2006, section 245C.13, subdivision 2, is amended to read:

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

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

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

34.25 (i) the individual is not disqualified; or

34.26 (ii) more time is needed to complete the study but the individual is not required to be
34.27 removed from direct contact or access to people receiving services prior to completion of
34.28 the study as provided under section ~~245A.17~~ 245C.17, subdivision 1, paragraph (b) or (c);

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

34.30 (3) a notice that a variance has been granted related to the individual under section
34.31 245C.30.

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

34.33 (1) being issued a license;

- 35.1 (2) living in the household where the licensed program will be provided;
- 35.2 (3) providing direct contact services to persons served by a program unless the
- 35.3 subject is under continuous direct supervision; or
- 35.4 (4) having access to persons receiving services if the background study was
- 35.5 completed under section 144.057, subdivision 1, or 245C.03, subdivision 1, paragraph (a),
- 35.6 clause (2), (5), or (6), unless the subject is under continuous direct supervision.

35.7 Sec. 31. Minnesota Statutes 2006, section 245C.15, subdivision 1, is amended to read:

35.8 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under

35.9 section 245C.14 if: (1) regardless of how much time has passed since the discharge

35.10 of the sentence imposed, if any, for the offense; and (2) unless otherwise specified,

35.11 regardless of the level of the offense, the individual has committed any of the following

35.12 offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second

35.13 degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree);

35.14 609.205 (manslaughter in the second degree); 609.221 or 609.222 (assault in the first

35.15 or second degree); a felony offense under sections 609.2242 and 609.2243 (domestic

35.16 assault), spousal abuse, child abuse or neglect, or a crime against children; 609.2247

35.17 (domestic assault by strangulation); 609.228 (great bodily harm caused by distribution

35.18 of drugs); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.2661 (murder of an

35.19 unborn child in the first degree); 609.2662 (murder of an unborn child in the second

35.20 degree); 609.2663 (murder of an unborn child in the third degree); 609.322 (solicitation,

35.21 inducement, and promotion of prostitution); a felony offense under 609.324, subdivision

35.22 1 (other prohibited acts); 609.342 (criminal sexual conduct in the first degree); 609.343

35.23 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the

35.24 third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451 (criminal

35.25 sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct); 609.352

35.26 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony offense

35.27 under 609.377 (malicious punishment of a child); a felony offense under 609.378 (neglect

35.28 or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision 1e

35.29 (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level harassment; stalking);

35.30 609.855, subdivision 5 (shooting at or in a public transit vehicle or facility); 617.246

35.31 (use of minors in sexual performance prohibited); or 617.247 (possession of pictorial

35.32 representations of minors). An individual also is disqualified under section 245C.14

35.33 regardless of how much time has passed since the involuntary termination of the

35.34 individual's parental rights under section 260C.301.

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

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

(d) When a disqualification is based on a judicial determination other than a conviction, the disqualification period begins from the date of the court order. When a disqualification is based on an admission, the disqualification period begins from the date of an admission in court. When a disqualification is based on a preponderance of evidence of a disqualifying act, the disqualification date begins from the date of the dismissal, the date of discharge of the sentence imposed for a conviction for a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

Sec. 32. Minnesota Statutes 2006, section 245C.15, subdivision 2, is amended to read:

Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275 (attempt to coerce); ~~repeat offenses under 609.3451 (criminal sexual conduct in the fifth degree)~~; 609.466 (medical assistance fraud); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree); 609.582 (burglary);

37.1 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.625 (aggravated
37.2 forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged check); 609.635
37.3 (obtaining signature by false pretense); 609.66 (dangerous weapons); 609.67 (machine
37.4 guns and short-barreled shotguns); 609.687 (adulteration); 609.71 (riot); 609.713
37.5 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card
37.6 fraud); repeat offenses under 617.23 (indecent exposure; penalties); repeat offenses under
37.7 617.241 (obscene materials and performances; distribution and exhibition prohibited;
37.8 penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs; controlled
37.9 substance); or a felony-level conviction involving alcohol or drug use.

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

37.14 (c) For foster care and family child care an individual is disqualified under section
37.15 245C.14 if less than 15 years has passed since the individual's voluntary termination of
37.16 the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or
37.17 260C.301, subdivision 3.

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

37.22 (e) If the individual studied ~~is convicted~~ commits one of one of the felonies offenses
37.23 listed in paragraph (a), but the sentence or level of offense is a gross misdemeanor or
37.24 misdemeanor disposition, the individual is disqualified but the disqualification lookback
37.25 period for the ~~conviction offense~~ offense is the period applicable to the gross misdemeanor or
37.26 misdemeanor disposition.

37.27 (f) When a disqualification is based on a judicial determination other than a
37.28 conviction, the disqualification period begins from the date of the court order. When a
37.29 disqualification is based on an admission, the disqualification period begins from the date
37.30 of an admission in court. When a disqualification is based on a preponderance of evidence
37.31 of a disqualifying act, the disqualification date begins from the date of the dismissal, the
37.32 date of discharge of the sentence imposed for a conviction for a disqualifying crime of
37.33 similar elements, or the date of the incident, whichever occurs last.

37.34 Sec. 33. Minnesota Statutes 2006, section 245C.15, subdivision 3, is amended to read:

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully obtaining assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide and injury); 609.224 (assault in the fifth degree); 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house); ~~609.3451 (criminal sexual conduct in the fifth degree)~~; 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); repeat offenses under 617.23 (indecent exposure); 617.241 (obscene materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14.

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

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

(d) ~~If the defendant is convicted of one of the gross misdemeanors~~ individual studied commits one of the offenses listed in paragraph (a), but the sentence or level of offense is

39.1 a misdemeanor disposition, the individual is disqualified but the disqualification lookback
39.2 period for the ~~conviction~~ offense is the period applicable to misdemeanors.

39.3 (e) When a disqualification is based on a judicial determination other than a
39.4 conviction, the disqualification period begins from the date of the court order. When a
39.5 disqualification is based on an admission, the disqualification period begins from the date
39.6 of an admission in court. When a disqualification is based on a preponderance of evidence
39.7 of a disqualifying act, the disqualification date begins from the date of the dismissal, the
39.8 date of discharge of the sentence imposed for a conviction for a disqualifying crime of
39.9 similar elements, or the date of the incident, whichever occurs last.

39.10 Sec. 34. Minnesota Statutes 2006, section 245C.15, subdivision 4, is amended to read:

39.11 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under
39.12 section 245C.14 if: (1) less than seven years has passed since the discharge of the
39.13 sentence imposed, if any, for the offense; and (2) the individual has committed a
39.14 misdemeanor-level violation of any of the following offenses: sections 256.98 (wrongfully
39.15 obtaining assistance); 268.182 (false representation; concealment of facts); 393.07,
39.16 subdivision 10, paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal
39.17 vehicular homicide and injury); 609.224 (assault in the fifth degree); 609.2242 (domestic
39.18 assault); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure to report
39.19 maltreatment of a vulnerable adult); 609.2672 (assault of an unborn child in the third
39.20 degree); 609.27 (coercion); violation of an order for protection under 609.3232 (protective
39.21 order authorized; procedures; penalties); 609.466 (medical assistance fraud); 609.52
39.22 (theft); 609.525 (bringing stolen goods into Minnesota); 609.527 (identity theft); 609.53
39.23 (receiving stolen property); 609.535 (issuance of dishonored checks); 609.611 (insurance
39.24 fraud); 609.66 (dangerous weapons); 609.665 (spring guns); 609.746 (interference with
39.25 privacy); 609.79 (obscene or harassing telephone calls); 609.795 (letter, telegram, or
39.26 package; opening; harassment); 609.82 (fraud in obtaining credit); 609.821 (financial
39.27 transaction card fraud); 617.23 (indecent exposure; penalties); 617.293 (harmful materials;
39.28 dissemination and display to minors prohibited); or violation of an order for protection
39.29 under section 518B.01 (Domestic Abuse Act).

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

39.32 (1) failure to make required reports under section 626.556, subdivision 3, or
39.33 626.557, subdivision 3, for incidents in which: (i) the final disposition under section
39.34 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was
39.35 recurring or serious; or

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

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

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

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

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

40.23 Sec. 35. Minnesota Statutes 2006, section 245C.16, subdivision 1, is amended to read:

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

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

- 40.31 (1) the recency of the disqualifying characteristic;
40.32 (2) the recency of discharge from probation for the crimes;
40.33 (3) the number of disqualifying characteristics;
40.34 (4) the intrusiveness or violence of the disqualifying characteristic;
40.35 (5) the vulnerability of the victim involved in the disqualifying characteristic;

41.1 (6) the similarity of the victim to the persons served by the program where the
41.2 individual studied will have direct contact; ~~and~~

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

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

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

41.12 (d) If the commissioner has reason to believe, based on arrest information or an
41.13 active maltreatment investigation, that an individual poses an imminent risk of harm to
41.14 persons receiving services, the commissioner may order that the person be continuously
41.15 supervised or immediately removed pending the conclusion of the maltreatment
41.16 investigation or criminal proceedings.

41.17 Sec. 36. Minnesota Statutes 2006, section 245C.17, subdivision 2, is amended to read:

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

41.21 (1) the information causing disqualification;

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

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

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

41.29 (5) the commissioner's determination of the individual's immediate risk of harm
41.30 under section 245C.16.

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

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

42.6 Sec. 37. Minnesota Statutes 2006, section 245C.17, subdivision 3, is amended to read:

42.7 Subd. 3. **Disqualification notification.** (a) The commissioner shall notify an
42.8 applicant, license holder, or other entity as provided in this chapter who is not the subject
42.9 of the study:

42.10 (1) that the commissioner has found information that disqualifies the individual
42.11 studied from being in a position allowing direct contact with, or ~~from~~ access to, ~~persons~~
42.12 people served by the program; and

42.13 (2) the commissioner's determination of the individual's risk of harm under section
42.14 245C.16.

42.15 (b) If the commissioner determines under section 245C.16 that an individual studied
42.16 poses an imminent risk of harm to persons served by the program where the individual
42.17 studied will have direct contact with, or access to, people served by the program, the
42.18 commissioner shall order the license holder to immediately remove the individual studied
42.19 from any position allowing direct contact with, or access to, people served by the program.

42.20 (c) If the commissioner determines under section 245C.16 that an individual studied
42.21 poses a risk of harm that requires continuous, direct supervision, the commissioner shall
42.22 order the applicant, license holder, or other entities as provided in this chapter to:

42.23 (1) immediately remove the individual studied from any position allowing direct
42.24 contact with, or access to, people receiving services; or

42.25 (2) before allowing the disqualified individual to ~~provide~~ be in a position allowing
42.26 direct contact with, or access to, people receiving services, the applicant, license holder, or
42.27 other entity, as provided in this chapter, must:

42.28 (i) obtain from the disqualified individual a copy of the individual's notice of
42.29 disqualification from the commissioner that explains the reason for disqualification;

42.30 (ii) ensure that the individual studied is under continuous, direct supervision when
42.31 ~~providing~~ in a position allowing direct contact with, or access to, people receiving
42.32 services during the period in which the individual may request a reconsideration of the
42.33 disqualification under section 245C.21; and

42.34 (iii) ensure that the disqualified individual requests reconsideration within 30 days
42.35 of receipt of the notice of disqualification.

(d) If the commissioner determines under section 245C.16 that an individual studied does not pose a risk of harm that requires continuous, direct supervision, the commissioner shall order the applicant, license holder, or other entities as provided in this chapter to:

(1) immediately remove the individual studied from any position allowing direct contact with, or access to, people receiving services; or

(2) before allowing the disqualified individual to ~~provide~~ be in any position allowing direct contact with, or access to, people receiving services, the applicant, license holder, or other entity as provided in this chapter must:

(i) obtain from the disqualified individual a copy of the individual's notice of disqualification from the commissioner that explains the reason for disqualification; and

(ii) ensure that the disqualified individual requests reconsideration within 15 days of receipt of the notice of disqualification.

(e) The commissioner shall not notify the applicant, license holder, or other entity as provided in this chapter of the information contained in the subject's background study unless:

(1) the basis for the disqualification is failure to cooperate with the background study or substantiated maltreatment under section 626.556 or 626.557;

(2) the Data Practices Act under chapter 13 provides for release of the information; or

(3) the individual studied authorizes the release of the information.

Sec. 38. Minnesota Statutes 2006, section 245C.21, subdivision 2, is amended to read:

Subd. 2. Time frame for requesting reconsideration. (a) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the disqualified individual must submit the request for a reconsideration within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification. Upon showing that the information under subdivision 3 cannot be obtained within 30 days, the disqualified individual may request additional time, not to exceed 30 days, to obtain the information.

(b) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (3), the disqualified individual must submit the request for reconsideration within 15 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for

44.1 reconsideration must be postmarked and sent to the commissioner within 15 calendar days
44.2 of the individual's receipt of the notice of disqualification. If a request for reconsideration
44.3 is made by personal service, it must be received by the commissioner within 15 calendar
44.4 days after the individual's receipt of the notice of disqualification.

44.5 (c) An individual who was determined to have maltreated a child under section
44.6 626.556 or a vulnerable adult under section 626.557, and who is disqualified on the basis of
44.7 serious or recurring maltreatment, may request a reconsideration of both the maltreatment
44.8 and the disqualification determinations. The request must be submitted within 30 calendar
44.9 days of the individual's receipt of the notice of disqualification. If mailed, the request for
44.10 reconsideration must be postmarked and sent to the commissioner within 30 calendar days
44.11 of the individual's receipt of the notice of disqualification. If a request for reconsideration
44.12 is made by personal service, it must be received by the commissioner within 30 calendar
44.13 days after the individual's receipt of the notice of disqualification.

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

44.18 (1) a denial of a license under section 245A.05, or a licensing sanction under section
44.19 245A.07, is based on a determination that the license holder is responsible for maltreatment
44.20 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

44.29 Sec. 39. Minnesota Statutes 2006, section 245C.21, subdivision 3, is amended to read:

44.30 Subd. 3. **~~Information Disqualified individuals must provide when requesting~~**
44.31 **~~reconsideration; information for reconsideration.~~** (a) The disqualified individual
44.32 requesting reconsideration must submit information showing that:

44.33 (1) the information the commissioner relied upon in determining the underlying
44.34 conduct that gave rise to the disqualification is incorrect;

45.1 (2) for maltreatment, the information the commissioner relied upon in determining
45.2 that maltreatment was serious or recurring is incorrect; or

45.3 (3) the subject of the study does not pose a risk of harm to any person served by the
45.4 applicant, license holder, or other entities as provided in this chapter, by addressing the
45.5 information required under section 245C.22, subdivision 4.

45.6 (b) In order to determine the individual's risk of harm, the commissioner may require
45.7 additional information from the disqualified individual as part of the reconsideration
45.8 process. If the individual fails to provide the required information, the commissioner
45.9 may deny the individual's request.

45.10 Sec. 40. Minnesota Statutes 2006, section 245C.22, subdivision 4, is amended to read:

45.11 Subd. 4. **Risk of harm; set aside.** (a) The commissioner may set aside the
45.12 disqualification if the commissioner finds that the individual has submitted sufficient
45.13 information to demonstrate that the individual does not pose a risk of harm to any person
45.14 served by the applicant, license holder, or other entities as provided in this chapter.

45.15 (b) In determining whether the individual has met the burden of proof by
45.16 demonstrating the individual does not pose a risk of harm, the commissioner shall consider:

45.17 (1) the nature, severity, and consequences of the event or events that led to the
45.18 disqualification;

45.19 (2) whether there is more than one disqualifying event;

45.20 (3) the age and vulnerability of the victim at the time of the event;

45.21 (4) the harm suffered by the victim;

45.22 (5) vulnerability of persons served by the program;

45.23 (6) the similarity between the victim and persons served by the program;

45.24 ~~(6)~~ (7) the time elapsed without a repeat of the same or similar event;

45.25 ~~(7)~~ (8) documentation of successful completion by the individual studied of training
45.26 or rehabilitation pertinent to the event; and

45.27 ~~(8)~~ (9) any other information relevant to reconsideration.

45.28 (c) If the individual requested reconsideration on the basis that the information
45.29 relied upon to disqualify the individual was incorrect or inaccurate and the commissioner
45.30 determines that the information relied upon to disqualify the individual is correct, the
45.31 commissioner must also determine if the individual poses a risk of harm to persons
45.32 receiving services in accordance with paragraph (b).

45.33 Sec. 41. Minnesota Statutes 2006, section 245C.22, subdivision 5, is amended to read:

46.1 Subd. 5. **Scope of set aside.** If the commissioner sets aside a disqualification under
46.2 this section, the disqualified individual remains disqualified, but may hold a license and
46.3 have direct contact with or access to persons receiving services. The commissioner's set
46.4 aside of a disqualification is limited solely to the licensed program, applicant, or agency
46.5 specified in the set aside notice under section 245C.23, unless otherwise specified in the
46.6 notice. For personal care provider organizations, the commissioner's set-aside may further
46.7 be limited to a specific individual who is receiving services.

46.8 Sec. 42. Minnesota Statutes 2006, section 245C.24, subdivision 3, is amended to read:

46.9 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may
46.10 not set aside the disqualification of an individual in connection with a license to provide
46.11 family child care for children, foster care for children in the provider's home, or foster
46.12 care or day care services for adults in the provider's home if: (1) less than ten years has
46.13 passed since the discharge of the sentence imposed, if any, for the offense; or (2) when
46.14 disqualified based on a preponderance of evidence determination under section ~~245A.14~~
46.15 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section ~~245A.14~~
46.16 245C.14, subdivision 1, paragraph (a), clause (1), and less than ten years has passed since
46.17 the individual committed the act or admitted to committing the act, whichever is later; and
46.18 (3) the individual has committed a violation of any of the following offenses: sections
46.19 609.165 (felon ineligible to possess firearm); criminal vehicular homicide under 609.21
46.20 (criminal vehicular homicide and injury); 609.215 (aiding suicide or aiding attempted
46.21 suicide); felony violations under 609.223 or 609.2231 (assault in the third or fourth
46.22 degree); 609.229 (crimes committed for benefit of a gang); 609.713 (terroristic threats);
46.23 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple robbery); 609.255
46.24 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot); 609.498,
46.25 subdivision 1 or 1b (aggravated first degree or first degree tampering with a witness);
46.26 burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous
46.27 weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns);
46.28 609.749, subdivision 2 (gross misdemeanor harassment; stalking); 152.021 or 152.022
46.29 (controlled substance crime in the first or second degree); 152.023, subdivision 1, clause
46.30 (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third degree);
46.31 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth
46.32 degree); 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against
46.33 a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of
46.34 residents or patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal
46.35 neglect of a vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult);

609.234 (failure to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree); 609.268 (injury or death of an unborn child in the commission of a crime); 617.293 (disseminating or displaying harmful material to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under 609.377 (malicious punishment of a child); ~~or~~ 609.72, subdivision 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

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

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

Sec. 43. Minnesota Statutes 2006, section 245C.27, subdivision 1, is amended to read:

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

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

(c) Except as provided under paragraph (e), if the individual was disqualified based on a conviction or admission to any crimes listed in section 245C.15, subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision 8, the reconsideration

48.1 decision under section 245C.22 is the final agency determination for purposes of appeal
 48.2 by the disqualified individual and is not subject to a hearing under section 256.045. If
 48.3 the individual was disqualified based on a judicial determination, that determination is
 48.4 treated the same as a conviction for purposes of appeal.

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

48.7 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a
 48.8 disqualification of an individual who was disqualified based on both a preponderance
 48.9 of evidence and a conviction or admission, the individual may request a fair hearing
 48.10 under section 256.045, unless the disqualifications are deemed conclusive under section
 48.11 245C.29. The scope of the hearing conducted under section 256.045 with regard to the
 48.12 disqualification based on a conviction or admission shall be limited solely to whether the
 48.13 individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case,
 48.14 the reconsideration decision under section 245C.22 is not the final agency decision for
 48.15 purposes of appeal by the disqualified individual.

48.16 Sec. 44. Minnesota Statutes 2006, section 245C.28, subdivision 1, is amended to read:

48.17 Subdivision 1. **License holder.** (a) If a maltreatment determination or a
 48.18 disqualification for which reconsideration was requested and which was not set aside is
 48.19 the basis for a denial of a license under section 245A.05 or a licensing sanction under
 48.20 section 245A.07, the license holder has the right to a contested case hearing under chapter
 48.21 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The license holder must submit
 48.22 the appeal under section 245A.05 or 245A.07, subdivision 3.

48.23 (b) ~~The license holder must submit the appeal in accordance with section 245A.05 or~~
 48.24 ~~245A.07, subdivision 3.~~ As provided under section 245A.08, subdivision 2a, if the denial
 48.25 of a license or licensing sanction is based on a disqualification for which reconsideration
 48.26 was requested and was not set-aside, the scope of the consolidated contested case hearing
 48.27 must include:

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

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

48.31 (c) ~~If the disqualification was based on a determination of substantiated serious or~~
 48.32 ~~recurring maltreatment under section 626.556 or 626.557, the appeal must be submitted~~
 48.33 ~~in accordance with sections 245A.07, subdivision 3, and 626.556, subdivision 10i, or~~
 48.34 ~~626.557, subdivision 9d.~~ As provided for under section 245A.08, subdivision 2a, if the
 48.35 denial of a license or licensing sanction is based on a determination of maltreatment under

49.1 section 626.556 or 626.557, or a disqualification for serious or recurring maltreatment
49.2 which was not set-aside, the scope of the contested case hearing must include:

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

49.5 (2) the disqualification, if the disqualification is not conclusive under section
49.6 245C.29; and

49.7 (3) the licensing sanction or denial of a license. In such cases, a fair hearing must not
49.8 be conducted under section 256.045. If the disqualification was based on a determination
49.9 of substantiated serious or recurring maltreatment under section 626.556 or 626.557, the
49.10 appeal must be submitted under sections 245A.07, subdivision 3, and 626.556, subdivision
49.11 10i, or 626.557, subdivision 9d.

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

49.16 (1) a denial of a license under section 245A.05, or a licensing sanction under section
49.17 245A.07, is based on a determination that the license holder is responsible for maltreatment
49.18 or the disqualification of a license holder based on serious or recurring maltreatment; and

49.19 (2) the license holder appeals the maltreatment determination, disqualification, and
49.20 denial of a license or licensing sanction. Under section 245A.08, subdivision 2a, the scope
49.21 of the consolidated contested case hearing must include the maltreatment determination,
49.22 disqualification, and denial of a license or licensing sanction.

49.23 Sec. 45. Minnesota Statutes 2006, section 626.556, subdivision 2, is amended to read:

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

49.26 (a) "Family assessment" means a comprehensive assessment of child safety, risk
49.27 of subsequent child maltreatment, and family strengths and needs that is applied to a
49.28 child maltreatment report that does not allege substantial child endangerment. Family
49.29 assessment does not include a determination as to whether child maltreatment occurred
49.30 but does determine the need for services to address the safety of family members and the
49.31 risk of subsequent maltreatment.

49.32 (b) "Investigation" means fact gathering related to the current safety of a child
49.33 and the risk of subsequent maltreatment that determines whether child maltreatment
49.34 occurred and whether child protective services are needed. An investigation must be used
49.35 when reports involve substantial child endangerment, and for reports of maltreatment in

50.1 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to
50.2 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
50.3 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
50.4 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

50.5 (c) "Substantial child endangerment" means a person responsible for a child's care, a
50.6 person who has a significant relationship to the child as defined in section 609.341, or a
50.7 person in a position of authority as defined in section 609.341, who by act or omission
50.8 commits or attempts to commit an act against a child under their care that constitutes
50.9 any of the following:

- 50.10 (1) egregious harm as defined in section 260C.007, subdivision 14;
- 50.11 (2) sexual abuse as defined in paragraph (d);
- 50.12 (3) abandonment under section 260C.301, subdivision 2;
- 50.13 (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the
50.14 child's physical or mental health, including a growth delay, which may be referred to as
50.15 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
- 50.16 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
50.17 609.195;
- 50.18 (6) manslaughter in the first or second degree under section 609.20 or 609.205;
- 50.19 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
50.20 609.223;
- 50.21 (8) solicitation, inducement, and promotion of prostitution under section 609.322;
- 50.22 (9) criminal sexual conduct under sections 609.342 to 609.3451;
- 50.23 (10) solicitation of children to engage in sexual conduct under section 609.352;
- 50.24 (11) malicious punishment or neglect or endangerment of a child under section
50.25 609.377 or 609.378;
- 50.26 (12) use of a minor in sexual performance under section 617.246; or
- 50.27 (13) parental behavior, status, or condition which mandates that the county attorney
50.28 file a termination of parental rights petition under section 260C.301, subdivision 3,
50.29 paragraph (a).

50.30 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
50.31 child's care, by a person who has a significant relationship to the child, as defined in
50.32 section 609.341, or by a person in a position of authority, as defined in section 609.341,
50.33 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
50.34 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
50.35 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
50.36 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual

51.1 abuse also includes any act which involves a minor which constitutes a violation of
51.2 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
51.3 threatened sexual abuse.

51.4 (e) "Person responsible for the child's care" means (1) an individual functioning
51.5 within the family unit and having responsibilities for the care of the child such as a
51.6 parent, guardian, or other person having similar care responsibilities, or (2) an individual
51.7 functioning outside the family unit and having responsibilities for the care of the child
51.8 such as a teacher, school administrator, other school employees or agents, or other lawful
51.9 custodian of a child having either full-time or short-term care responsibilities including,
51.10 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,
51.11 and coaching.

51.12 (f) "Neglect" means:

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

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

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

51.24 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
51.25 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
51.26 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

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

51.35 (6) prenatal exposure to a controlled substance, as defined in section 253B.02,
51.36 subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal

52.1 symptoms in the child at birth, results of a toxicology test performed on the mother at
52.2 delivery or the child at birth, or medical effects or developmental delays during the child's
52.3 first year of life that medically indicate prenatal exposure to a controlled substance;

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

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

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

52.13 (g) "Physical abuse" means any physical injury, mental injury, or threatened injury,
52.14 inflicted by a person responsible for the child's care on a child other than by accidental
52.15 means, or any physical or mental injury that cannot reasonably be explained by the child's
52.16 history of injuries, or any aversive or deprivation procedures, or regulated interventions,
52.17 that have not been authorized under section 121A.67 or 245.825. "Accidental" means a
52.18 sudden, unforeseen, and unexpected occurrence or event which:

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

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

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

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

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

52.32 (3) shaking a child under age three;

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

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

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

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

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

53.8 (9) unreasonable physical confinement or restraint not permitted under section
53.9 609.379, including but not limited to tying, caging, or chaining; or

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

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

53.15 (i) "Facility" means:

53.16 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
53.17 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
53.18 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

53.19 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
53.20 124D.10; or

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

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

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

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

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

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

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

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

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

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

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

54.15 Sec. 46. Minnesota Statutes 2006, section 626.556, subdivision 10e, is amended to
54.16 read:

54.17 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family
54.18 assessment or the investigation within 45 days of the receipt of a report. The conclusion of
54.19 the assessment or investigation may be extended to permit the completion of a criminal
54.20 investigation or the receipt of expert information requested within 45 days of the receipt
54.21 of the report.

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

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

54.28 (d) If the commissioner of education conducts an assessment or investigation,
54.29 the commissioner shall determine whether maltreatment occurred and what corrective
54.30 or protective action was taken by the school facility. If a determination is made that
54.31 maltreatment has occurred, the commissioner shall report to the employer, the school
54.32 board, and any appropriate licensing entity the determination that maltreatment occurred
54.33 and what corrective or protective action was taken by the school facility. In all other cases,
54.34 the commissioner shall inform the school board or employer that a report was received,
54.35 the subject of the report, the date of the initial report, the category of maltreatment alleged

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

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

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

- 55.11 (1) physical abuse as defined in subdivision 2, paragraph (g);
- 55.12 (2) neglect as defined in subdivision 2, paragraph (f);
- 55.13 (3) sexual abuse as defined in subdivision 2, paragraph (d);
- 55.14 (4) mental injury as defined in subdivision 2, paragraph (m); or
- 55.15 (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

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

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

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

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

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

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

56.8 (3) whether the facility or individual followed professional standards in exercising
56.9 professional judgment.

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

56.16 Sec. 47. Minnesota Statutes 2006, section 626.556, subdivision 10i, is amended to read:

56.17 Subd. 10i. **Administrative reconsideration of final determination of**
56.18 **~~maltreatment and disqualification based on serious or recurring maltreatment;~~**
56.19 **review panel.** (a) Administrative reconsideration is not applicable in family assessments
56.20 since no determination concerning maltreatment is made. For investigations, except as
56.21 provided under paragraph (e), an individual or facility that the commissioner of human
56.22 services, a local social service agency, or the commissioner of education determines
56.23 has maltreated a child, an interested person acting on behalf of the child, regardless of
56.24 the determination, who contests the investigating agency's final determination regarding
56.25 maltreatment, may request the investigating agency to reconsider its final determination
56.26 regarding maltreatment. The request for reconsideration must be submitted in writing
56.27 to the investigating agency within 15 calendar days after receipt of notice of the final
56.28 determination regarding maltreatment or, if the request is made by an interested person
56.29 who is not entitled to notice, within 15 days after receipt of the notice by the parent or
56.30 guardian of the child. If mailed, the request for reconsideration must be postmarked and
56.31 sent to the investigating agency within 15 calendar days of the individual's or facility's
56.32 receipt of the final determination. If the request for reconsideration is made by personal
56.33 service, it must be received by the investigating agency within 15 calendar days after the
56.34 individual's or facility's receipt of the final determination. Effective January 1, 2002, an
56.35 individual who was determined to have maltreated a child under this section and who was

57.1 disqualified on the basis of serious or recurring maltreatment under sections 245C.14
57.2 and 245C.15, may request reconsideration of the maltreatment determination and the
57.3 disqualification. The request for reconsideration of the maltreatment determination and
57.4 the disqualification must be submitted within 30 calendar days of the individual's receipt
57.5 of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the
57.6 request for reconsideration of the maltreatment determination and the disqualification
57.7 must be postmarked and sent to the investigating agency within 30 calendar days of the
57.8 individual's receipt of the maltreatment determination and notice of disqualification. If
57.9 the request for reconsideration is made by personal service, it must be received by the
57.10 investigating agency within 30 calendar days after the individual's receipt of the notice
57.11 of disqualification.

57.12 (b) Except as provided under paragraphs (e) and (f), if the investigating agency
57.13 denies the request or fails to act upon the request within 15 working days after receiving
57.14 the request for reconsideration, the person or facility entitled to a fair hearing under section
57.15 256.045 may submit to the commissioner of human services or the commissioner of
57.16 education a written request for a hearing under that section. Section 256.045 also governs
57.17 hearings requested to contest a final determination of the commissioner of education. For
57.18 reports involving maltreatment of a child in a facility, an interested person acting on behalf
57.19 of the child may request a review by the Child Maltreatment Review Panel under section
57.20 256.022 if the investigating agency denies the request or fails to act upon the request or
57.21 if the interested person contests a reconsidered determination. The investigating agency
57.22 shall notify persons who request reconsideration of their rights under this paragraph.
57.23 The request must be submitted in writing to the review panel and a copy sent to the
57.24 investigating agency within 30 calendar days of receipt of notice of a denial of a request
57.25 for reconsideration or of a reconsidered determination. The request must specifically
57.26 identify the aspects of the agency determination with which the person is dissatisfied.

57.27 (c) If, as a result of a reconsideration or review, the investigating agency changes
57.28 the final determination of maltreatment, that agency shall notify the parties specified in
57.29 subdivisions 10b, 10d, and 10f.

57.30 (d) Except as provided under paragraph (f), if an individual or facility contests the
57.31 investigating agency's final determination regarding maltreatment by requesting a fair
57.32 hearing under section 256.045, the commissioner of human services shall assure that the
57.33 hearing is conducted and a decision is reached within 90 days of receipt of the request for
57.34 a hearing. The time for action on the decision may be extended for as many days as the
57.35 hearing is postponed or the record is held open for the benefit of either party.

58.1 (e) Effective January 1, 2002, if an individual was disqualified under sections
58.2 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was
58.3 serious or recurring, and the individual has requested reconsideration of the maltreatment
58.4 determination under paragraph (a) and requested reconsideration of the disqualification
58.5 under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and
58.6 reconsideration of the disqualification shall be consolidated into a single reconsideration.
58.7 If reconsideration of the maltreatment determination is denied or the disqualification
58.8 is not set aside under sections 245C.21 to 245C.27, the individual may request a fair
58.9 hearing under section 256.045. If an individual requests a fair hearing on the maltreatment
58.10 determination and the disqualification, the scope of the fair hearing shall include both the
58.11 maltreatment determination and the disqualification.

58.12 (f) Effective January 1, 2002, if a maltreatment determination or a disqualification
58.13 based on serious or recurring maltreatment is the basis for a denial of a license under
58.14 section 245A.05 or a licensing sanction under section 245A.07, the license holder has the
58.15 right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505
58.16 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the
58.17 contested case hearing shall include the maltreatment determination, disqualification,
58.18 and licensing sanction or denial of a license. In such cases, a fair hearing regarding the
58.19 maltreatment determination and disqualification shall not be conducted under ~~paragraph~~
58.20 ~~(b). When a fine is based on a determination that the license holder is responsible for~~
58.21 ~~maltreatment and the fine is issued at the same time as the maltreatment determination, if~~
58.22 ~~the license holder appeals the maltreatment and fine, reconsideration of the maltreatment~~
58.23 ~~determination shall not be conducted under this section~~ section 256.045. Except for
58.24 family child care and child foster care, reconsideration of a maltreatment determination
58.25 as provided under this subdivision, and reconsideration of a disqualification as provided
58.26 under section 245C.22, shall also not be conducted when:

58.27 (1) a denial of a license under section 245A.05 or a licensing sanction under section
58.28 245A.07, is based on a determination that the license holder is responsible for maltreatment
58.29 or the disqualification of a license holder based on serious or recurring maltreatment;

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

58.32 (3) the license holder appeals the maltreatment determination or disqualification, and
58.33 denial of a license or licensing sanction.

58.34 If the disqualified subject is an individual other than the license holder and upon
58.35 whom a background study must be conducted under chapter 245C, the hearings of all

59.1 parties may be consolidated into a single contested case hearing upon consent of all parties
59.2 and the administrative law judge.

59.3 (g) For purposes of this subdivision, "interested person acting on behalf of the
59.4 child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult
59.5 stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been
59.6 determined to be the perpetrator of the maltreatment.

59.7 Sec. 48. Minnesota Statutes 2006, section 626.557, subdivision 9c, is amended to read:

59.8 Subd. 9c. **Lead agency; notifications, dispositions, and determinations.** (a)

59.9 Upon request of the reporter, the lead agency shall notify the reporter that it has received
59.10 the report, and provide information on the initial disposition of the report within five
59.11 business days of receipt of the report, provided that the notification will not endanger the
59.12 vulnerable adult or hamper the investigation.

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

59.15 (c) When determining whether the facility or individual is the responsible party for
59.16 substantiated maltreatment or whether both the facility and the individual are responsible
59.17 for substantiated maltreatment, the lead agency shall consider at least the following
59.18 mitigating factors:

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

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

59.31 (3) whether the facility or individual followed professional standards in exercising
59.32 professional judgment.

59.33 (d) The lead agency shall complete its final disposition within 60 calendar days. If
59.34 the lead agency is unable to complete its final disposition within 60 calendar days, the lead
59.35 agency shall notify the following persons provided that the notification will not endanger

the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable adult's legal guardian, when known, if the lead agency knows them to be aware of the investigation and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead agency is unable to complete its final disposition by a subsequent projected completion date, the lead agency shall again notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. A lead agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

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

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

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

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

61.1 (i) The lead agency must provide to the commissioner of human services its final
61.2 dispositions, including the names of all substantiated perpetrators. The commissioner of
61.3 human services shall establish records to retain the names of substantiated perpetrators.

61.4 Sec. 49. Minnesota Statutes 2006, section 626.557, subdivision 9d, is amended to read:

61.5 Subd. 9d. **Administrative reconsideration of final disposition of maltreatment**
61.6 **and disqualification based on serious or recurring maltreatment; review panel.**

61.7 (a) Except as provided under paragraph (e), any individual or facility which a lead
61.8 agency determines has maltreated a vulnerable adult, or the vulnerable adult or an
61.9 interested person acting on behalf of the vulnerable adult, regardless of the lead agency's
61.10 determination, who contests the lead agency's final disposition of an allegation of
61.11 maltreatment, may request the lead agency to reconsider its final disposition. The request
61.12 for reconsideration must be submitted in writing to the lead agency within 15 calendar
61.13 days after receipt of notice of final disposition or, if the request is made by an interested
61.14 person who is not entitled to notice, within 15 days after receipt of the notice by the
61.15 vulnerable adult or the vulnerable adult's legal guardian. If mailed, the request for
61.16 reconsideration must be postmarked and sent to the lead agency within 15 calendar
61.17 days of the individual's or facility's receipt of the final disposition. If the request for
61.18 reconsideration is made by personal service, it must be received by the lead agency
61.19 within 15 calendar days of the individual's or facility's receipt of the final disposition. An
61.20 individual who was determined to have maltreated a vulnerable adult under this section
61.21 and who was disqualified on the basis of serious or recurring maltreatment under sections
61.22 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and
61.23 the disqualification. The request for reconsideration of the maltreatment determination
61.24 and the disqualification must be submitted in writing within 30 calendar days of the
61.25 individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17.
61.26 If mailed, the request for reconsideration of the maltreatment determination and the
61.27 disqualification must be postmarked and sent to the lead agency within 30 calendar days of
61.28 the individual's receipt of the notice of disqualification. If the request for reconsideration
61.29 is made by personal service, it must be received by the lead agency within 30 calendar
61.30 days after the individual's receipt of the notice of disqualification.

61.31 (b) Except as provided under paragraphs (e) and (f), if the lead agency denies the
61.32 request or fails to act upon the request within 15 working days after receiving the request
61.33 for reconsideration, the person or facility entitled to a fair hearing under section 256.045,
61.34 may submit to the commissioner of human services a written request for a hearing
61.35 under that statute. The vulnerable adult, or an interested person acting on behalf of the

62.1 vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review
62.2 Panel under section 256.021 if the lead agency denies the request or fails to act upon the
62.3 request, or if the vulnerable adult or interested person contests a reconsidered disposition.
62.4 The lead agency shall notify persons who request reconsideration of their rights under this
62.5 paragraph. The request must be submitted in writing to the review panel and a copy sent
62.6 to the lead agency within 30 calendar days of receipt of notice of a denial of a request for
62.7 reconsideration or of a reconsidered disposition. The request must specifically identify the
62.8 aspects of the agency determination with which the person is dissatisfied.

62.9 (c) If, as a result of a reconsideration or review, the lead agency changes the final
62.10 disposition, it shall notify the parties specified in subdivision 9c, paragraph (d).

62.11 (d) For purposes of this subdivision, "interested person acting on behalf of the
62.12 vulnerable adult" means a person designated in writing by the vulnerable adult to act
62.13 on behalf of the vulnerable adult, or a legal guardian or conservator or other legal
62.14 representative, a proxy or health care agent appointed under chapter 145B or 145C,
62.15 or an individual who is related to the vulnerable adult, as defined in section 245A.02,
62.16 subdivision 13.

62.17 (e) If an individual was disqualified under sections 245C.14 and 245C.15, on
62.18 the basis of a determination of maltreatment, which was serious or recurring, and
62.19 the individual has requested reconsideration of the maltreatment determination under
62.20 paragraph (a) and reconsideration of the disqualification under sections 245C.21 to
62.21 245C.27, reconsideration of the maltreatment determination and requested reconsideration
62.22 of the disqualification shall be consolidated into a single reconsideration. If reconsideration
62.23 of the maltreatment determination is denied or if the disqualification is not set aside under
62.24 sections 245C.21 to 245C.27, the individual may request a fair hearing under section
62.25 256.045. If an individual requests a fair hearing on the maltreatment determination and
62.26 the disqualification, the scope of the fair hearing shall include both the maltreatment
62.27 determination and the disqualification.

62.28 (f) If a maltreatment determination or a disqualification based on serious or recurring
62.29 maltreatment is the basis for a denial of a license under section 245A.05 or a licensing
62.30 sanction under section 245A.07, the license holder has the right to a contested case hearing
62.31 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for
62.32 under section 245A.08, the scope of the contested case hearing ~~shall~~ must include the
62.33 maltreatment determination, disqualification, and licensing sanction or denial of a license.
62.34 In such cases, a fair hearing ~~shall~~ must not be conducted under paragraph (b). ~~When a fine~~
62.35 ~~is based on a determination that the license holder is responsible for maltreatment and~~
62.36 ~~the fine is issued at the same time as the maltreatment determination, if the license holder~~

63.1 ~~appeals the maltreatment and fine, reconsideration of the maltreatment determination shall~~
63.2 ~~not be conducted under this section.~~ section 256.045. Except for family child care and
63.3 child foster care, reconsideration of a maltreatment determination under this subdivision,
63.4 and reconsideration of a disqualification under section 245C.22, must not be conducted
63.5 when:

63.6 (1) a denial of a license under section 245A.05, or a licensing sanction under section
63.7 245A.07, is based on a determination that the license holder is responsible for maltreatment
63.8 or the disqualification of a license holder based on serious or recurring maltreatment;

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

63.11 (3) the license holder appeals the maltreatment determination or disqualification, and
63.12 denial of a license or licensing sanction.

63.13 If the disqualified subject is an individual other than the license holder and upon
63.14 whom a background study must be conducted under chapter 245C, the hearings of all
63.15 parties may be consolidated into a single contested case hearing upon consent of all parties
63.16 and the administrative law judge.

63.17 (g) Until August 1, 2002, an individual or facility that was determined by the
63.18 commissioner of human services or the commissioner of health to be responsible for
63.19 neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August
63.20 1, 2001, that believes that the finding of neglect does not meet an amended definition of
63.21 neglect may request a reconsideration of the determination of neglect. The commissioner
63.22 of human services or the commissioner of health shall mail a notice to the last known
63.23 address of individuals who are eligible to seek this reconsideration. The request for
63.24 reconsideration must state how the established findings no longer meet the elements of
63.25 the definition of neglect. The commissioner shall review the request for reconsideration
63.26 and make a determination within 15 calendar days. The commissioner's decision on this
63.27 reconsideration is the final agency action.

63.28 (1) For purposes of compliance with the data destruction schedule under subdivision
63.29 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as
63.30 a result of a reconsideration under this paragraph, the date of the original finding of a
63.31 substantiated maltreatment must be used to calculate the destruction date.

63.32 (2) For purposes of any background studies under chapter 245C, when a
63.33 determination of substantiated maltreatment has been changed as a result of a
63.34 reconsideration under this paragraph, any prior disqualification of the individual under
63.35 chapter 245C that was based on this determination of maltreatment shall be rescinded,
63.36 and for future background studies under chapter 245C the commissioner must not use the

64.1 previous determination of substantiated maltreatment as a basis for disqualification or as a
64.2 basis for referring the individual's maltreatment history to a health-related licensing board
64.3 under section 245C.31.

64.4 Sec. 50. Minnesota Statutes 2006, section 626.5572, subdivision 17, is amended to
64.5 read:

64.6 Subd. 17. **Neglect.** "Neglect" means:

64.7 (a) The failure or omission by a caregiver to supply a vulnerable adult with care or
64.8 services, including but not limited to, food, clothing, shelter, health care, or supervision
64.9 which is:

64.10 (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or
64.11 mental health or safety, considering the physical and mental capacity or dysfunction of
64.12 the vulnerable adult; and

64.13 (2) which is not the result of an accident or therapeutic conduct.

64.14 (b) The absence or likelihood of absence of care or services, including but not
64.15 limited to, food, clothing, shelter, health care, or supervision necessary to maintain the
64.16 physical and mental health of the vulnerable adult which a reasonable person would deem
64.17 essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering
64.18 the physical or mental capacity or dysfunction of the vulnerable adult.

64.19 (c) For purposes of this section, a vulnerable adult is not neglected for the sole
64.20 reason that:

64.21 (1) the vulnerable adult or a person with authority to make health care decisions for
64.22 the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A,
64.23 or sections 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent,
64.24 consistent with that authority and within the boundary of reasonable medical practice, to
64.25 any therapeutic conduct, including any care, service, or procedure to diagnose, maintain,
64.26 or treat the physical or mental condition of the vulnerable adult, or, where permitted under
64.27 law, to provide nutrition and hydration parenterally or through intubation; this paragraph
64.28 does not enlarge or diminish rights otherwise held under law by:

64.29 (i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an
64.30 involved family member, to consent to or refuse consent for therapeutic conduct; or

64.31 (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

64.32 (2) the vulnerable adult, a person with authority to make health care decisions for the
64.33 vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means
64.34 or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu

65.1 of medical care, provided that this is consistent with the prior practice or belief of the
65.2 vulnerable adult or with the expressed intentions of the vulnerable adult;

65.3 (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or
65.4 emotional dysfunction or undue influence, engages in consensual sexual contact with:

65.5 (i) a person including a facility staff person when a consensual sexual personal
65.6 relationship existed prior to the caregiving relationship; or

65.7 (ii) a personal care attendant, regardless of whether the consensual sexual personal
65.8 relationship existed prior to the caregiving relationship; or

65.9 (4) an individual makes an error in the provision of therapeutic conduct to a
65.10 vulnerable adult which does not result in injury or harm which reasonably requires
65.11 medical or mental health care; or

65.12 (5) an individual makes an error in the provision of therapeutic conduct to a
65.13 vulnerable adult that results in injury or harm, which reasonably requires the care of a
65.14 physician, and:

65.15 (i) the necessary care is provided in a timely fashion as dictated by the condition
65.16 of the vulnerable adult;

65.17 (ii) if after receiving care, the health status of the vulnerable adult can be reasonably
65.18 expected, as determined by the attending physician, to be restored to the vulnerable adult's
65.19 preexisting condition;

65.20 (iii) the error is not part of a pattern of errors by the individual;

65.21 (iv) if in a facility, the error is immediately reported as required under section
65.22 626.557, and recorded internally in the facility;

65.23 (v) if in a facility, the facility identifies and takes corrective action and implements
65.24 measures designed to reduce the risk of further occurrence of this error and similar
65.25 errors; and

65.26 (vi) if in a facility, the actions required under items (iv) and (v) are sufficiently
65.27 documented for review and evaluation by the facility and any applicable licensing,
65.28 certification, and ombudsman agency.

65.29 (d) Nothing in this definition requires a caregiver, if regulated, to provide services
65.30 in excess of those required by the caregiver's license, certification, registration, or other
65.31 regulation.

65.32 (e) If the findings of an investigation by a lead agency result in a determination of
65.33 substantiated maltreatment for the sole reason that the actions required of a facility under
65.34 paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject
65.35 to a correction order. An individual will not be found to have neglected or maltreated the
65.36 vulnerable adult based solely on the facility's not having taken the actions required under

66.1 paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's
66.2 determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

66.3 Sec. 51. **REPEALER.**

66.4 (a) Minnesota Statutes 2006, sections 245A.023; 245A.14, subdivisions 7, 9, 9a, 12,
66.5 and 13; and 245C.06, are repealed.

66.6 (b) Minnesota Rules, parts 9502.0385; and 9503.0035, are repealed.