

1.1 A bill for an act

1.2 relating to human services; making changes to licensing provisions, including  
1.3 data practices, disqualifications, and background study requirements; providing  
1.4 alternate supervision technology for adult foster care licensing; amending  
1.5 Minnesota Statutes 2008, sections 13.46, subdivisions 3, 4; 147C.01; 147C.05;  
1.6 147C.10; 147C.15; 147C.20; 147C.25; 147C.30; 147C.35; 147C.40; 245A.03,  
1.7 subdivision 2; 245A.04, subdivisions 5, 7; 245A.05; 245A.06, subdivision 8;  
1.8 245A.07, subdivisions 1, 3, 5; 245A.11, by adding a subdivision; 245A.1435;  
1.9 245A.16, subdivision 1; 245A.50, subdivision 5; 245C.03, subdivision 4;  
1.10 245C.04, subdivision 1; 245C.07; 245C.08; 245C.13, subdivision 2; 245C.14,  
1.11 subdivision 2; 245C.15, subdivisions 1, 2, 3, 4; 245C.22, subdivision 7; 245C.24,  
1.12 subdivisions 2, 3; 245C.25; 245C.27, subdivision 1; 245C.301; 256.045,  
1.13 subdivisions 3, 3b; 299C.61, subdivision 6; 299C.62, subdivisions 3, 4; 626.556,  
1.14 subdivisions 2, 10e, 10f; 626.557, subdivisions 9c, 12b; 626.5572, subdivision  
1.15 13; repealing Minnesota Statutes 2008, section 245C.10, subdivision 1.

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

1.17 **ARTICLE 1**

1.18 **DATA PRACTICES**

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

1.20 Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of  
1.21 services ~~and data on~~ licensees, and applicants, that is collected, maintained, used, or  
1.22 disseminated by the welfare system in an investigation, authorized by statute and relating  
1.23 to the enforcement of rules or law, is confidential data on individuals pursuant to section  
1.24 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section  
1.25 13.02, subdivision 13, and shall not be disclosed except:

1.26 (1) pursuant to section 13.05;

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

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

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

2.4 The data referred to in this subdivision shall be classified as public data upon  
2.5 its submission to an administrative law judge or court in an administrative or judicial  
2.6 proceeding. Inactive welfare investigative data shall be treated as provided in section  
2.7 13.39, subdivision 3.

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

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

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

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

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

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

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

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

3.13 (2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b,  
3.14 when any person subject to disqualification under section 245C.14 in connection with a  
3.15 license to provide family day care for children, child care center services, foster care  
3.16 for children in the provider's home, or foster care or day care services for adults in the  
3.17 provider's home is a substantiated perpetrator of maltreatment, and the substantiated  
3.18 maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator  
3.19 of maltreatment is public data. For purposes of this clause, a person is a substantiated  
3.20 perpetrator if the maltreatment determination has been upheld under section 256.045;  
3.21 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or  
3.22 facility has not timely exercised appeal rights under these sections, except as provided  
3.23 under clause (1).

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

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

4.1 (5) The following data on persons subject to disqualification under section 245C.14  
4.2 in connection with a license to provide family day care for children, child care center  
4.3 services, foster care for children in the provider's home, or foster care or day care services  
4.4 for adults in the provider's home, are public: the nature of any disqualification set  
4.5 aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the  
4.6 disqualification; the nature of any disqualification for which a variance was granted under  
4.7 sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance  
4.8 under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person  
4.9 subject to a background study under section 245C.03, subdivision 1, has successfully  
4.10 passed a background study. If a licensing sanction under section 245A.07, or a license  
4.11 denial under section 245A.05, is based on a determination that an individual subject to  
4.12 disqualification under chapter 245C is disqualified, the disqualification as a basis for the  
4.13 licensing sanction or denial is public data. As specified in clause (1), if the disqualified  
4.14 individual is the license holder or applicant, the identity of the license holder or applicant  
4.15 is public data. If the disqualified individual is an individual other than the license holder  
4.16 or applicant, the identity of the disqualified individual shall remain private data.

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

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

4.26 (c) The following are private data on individuals under section 13.02, subdivision  
4.27 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial  
4.28 data on family day care program and family foster care program applicants and licensees  
4.29 and their family members who provide services under the license.

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

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

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

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

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

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

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

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

6.1 this paragraph, the government entity making the notification shall provide a copy of the  
6.2 notice to the individual who is the subject of the notice.

6.3 (k) All not public data collected, maintained, used, or disseminated under this  
6.4 subdivision and subdivision 3 may be exchanged between the Department of Human  
6.5 Services, Licensing Division, and the Department of Corrections for purposes of  
6.6 regulating services for which the Department of Human Services and the Department  
6.7 of Corrections have regulatory authority.

6.8 **ARTICLE 2**  
6.9 **LICENSING**

6.10 Section 1. Minnesota Statutes 2008, section 147C.01, is amended to read:

6.11 **147C.01 DEFINITIONS.**

6.12 Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

6.13 Subd. 2. **Advisory council.** "Advisory council" means the Respiratory Care  
6.14 ~~Practitioner~~ Advisory Council established under section 147C.35.

6.15 Subd. 3. **Approved education program.** "Approved education program" means a  
6.16 university, college, or other postsecondary education program leading to eligibility for  
6.17 registry or certification in respiratory care, that, at the time the student completes the  
6.18 program, is accredited by a national accrediting organization approved by the board.

6.19 Subd. 4. **Board.** "Board" means the Board of Medical Practice or its designee.

6.20 Subd. 5. **Contact hour.** "Contact hour" means an instructional session of 50  
6.21 consecutive minutes, excluding coffee breaks, registration, meals without a speaker, and  
6.22 social activities.

6.23 Subd. 6. **Credential.** "Credential" means a license, ~~permit, certification, registration,~~  
6.24 or other evidence of qualification or authorization to engage in respiratory care practice in  
6.25 this state or any other state.

6.26 Subd. 7. **Credentialing examination.** "Credentialing examination" means an  
6.27 examination administered by the National Board for Respiratory Care ~~or other national~~  
6.28 ~~testing organization approved by the board,~~ its successor organization, or the Canadian  
6.29 Society for Respiratory Care for credentialing as a ~~certified respiratory therapy technician,~~  
6.30 ~~registered~~ respiratory therapist; or other title indicating an entry or advanced level  
6.31 respiratory care practitioner.

6.32 Subd. 8. **Health care facility.** "Health care facility" means a hospital as defined in  
6.33 section 144.50, subdivision 2, a medical facility as defined in section 144.561, subdivision  
6.34 1, paragraph (b), or a nursing home as defined in section 144A.01, subdivision 5, a

7.1 long-term acute care facility, a subacute care facility, an outpatient clinic, a physician's  
7.2 office, a rehabilitation facility, or a hospice.

7.3 Subd. 9. **Qualified medical direction.** "Qualified medical direction" means  
7.4 direction from a licensed physician who is on the staff or is a consultant of a health care  
7.5 facility or home care agency or home medical equipment provider and who has a special  
7.6 interest in and knowledge of the diagnosis and treatment of deficiencies, abnormalities,  
7.7 and diseases of the cardiopulmonary system.

7.8 Subd. 10. **Respiratory care.** "Respiratory care" means the provision of services  
7.9 described under section 147C.05 for the assessment, treatment, education, management,  
7.10 evaluation, and care of patients with deficiencies, abnormalities, and diseases of the  
7.11 cardiopulmonary system, ~~under the guidance of qualified medical direction~~ supervision of  
7.12 a physician and pursuant to a referral, or verbal, written, or telecommunicated order from  
7.13 a physician ~~who has medical responsibility for the patient~~, nurse practitioner, or physician  
7.14 assistant. ~~It~~ Respiratory care includes, but is not limited to, education pertaining to health  
7.15 promotion, ~~and~~ disease prevention and management, patient care, and treatment.

7.16 Sec. 2. Minnesota Statutes 2008, section 147C.05, is amended to read:

7.17 **147C.05 SCOPE OF PRACTICE.**

7.18 (a) The practice of respiratory care by a ~~registered~~ licensed respiratory ~~care~~  
7.19 ~~practitioner~~ therapist includes, but is not limited to, the following services:

7.20 (1) providing and monitoring therapeutic administration of medical gases, aerosols,  
7.21 humidification, and pharmacological agents related to respiratory care procedures, but not  
7.22 including administration of general anesthesia;

7.23 (2) carrying out therapeutic application and monitoring of mechanical ventilatory  
7.24 support;

7.25 (3) providing cardiopulmonary resuscitation and maintenance of natural airways and  
7.26 insertion and maintenance of artificial airways;

7.27 (4) assessing and monitoring signs, symptoms, and general behavior relating to, and  
7.28 general physical response to, respiratory care treatment or evaluation for treatment and  
7.29 diagnostic testing, including determination of whether the signs, symptoms, reactions,  
7.30 behavior, or general response exhibit abnormal characteristics;

7.31 (5) obtaining physiological specimens and interpreting physiological data including:

7.32 (i) analyzing arterial and venous blood gases;

7.33 (ii) assessing respiratory secretions;

7.34 (iii) measuring ventilatory volumes, pressures, and flows;

7.35 (iv) testing pulmonary function;

- 8.1 (v) testing and studying the cardiopulmonary system; and
- 8.2 (vi) diagnostic and therapeutic testing of breathing patterns related to sleep disorders;
- 8.3 (6) assisting hemodynamic monitoring and support of the cardiopulmonary system;
- 8.4 (7) assessing and making suggestions for modifications in the treatment regimen
- 8.5 based on abnormalities, protocols, or changes in patient response to respiratory care
- 8.6 treatment;
- 8.7 (8) providing cardiopulmonary rehabilitation including respiratory-care related
- 8.8 educational components, postural drainage, chest physiotherapy, breathing exercises,
- 8.9 aerosolized administration of medications, and equipment use and maintenance;
- 8.10 (9) instructing patients and their families in techniques for the prevention, alleviation,
- 8.11 and rehabilitation of deficiencies, abnormalities, and diseases of the cardiopulmonary
- 8.12 system; and
- 8.13 (10) transcribing and implementing verbal, written, or telecommunicated orders from
- 8.14 a physician, nurse practitioner, or physician assistant ~~orders~~ for respiratory care services.

8.15 ~~(b) Patient service by a practitioner must be limited to:~~

8.16 ~~(1) services within the training and experience of the practitioner; and~~

8.17 ~~(2) services within the parameters of the laws, rules, and standards of the facilities in~~

8.18 ~~which the respiratory care practitioner practices.~~

8.19 ~~(c) Respiratory care services provided by a registered respiratory care practitioner,~~

8.20 ~~whether delivered in a health care facility or the patient's residence, must not be provided~~

8.21 ~~except upon referral from a physician.~~

8.22 (b) This section does not prohibit a respiratory therapist from performing advances

8.23 in the art and techniques of respiratory care learned through formal or specialized training

8.24 as approved by the Respiratory Care Advisory Council.

8.25 ~~(d) (c) This section does not prohibit an individual licensed or registered credentialed~~

8.26 ~~as a respiratory therapist in another state or country from providing respiratory care in an~~

8.27 ~~emergency in this state, providing respiratory care as a member of an organ harvesting~~

8.28 ~~team, or from providing respiratory care on board an ambulance as part of an ambulance~~

8.29 ~~treatment team.~~

8.30 Sec. 3. Minnesota Statutes 2008, section 147C.10, is amended to read:

8.31 **147C.10 UNLICENSED PRACTICE PROHIBITED; PROTECTED TITLES**

8.32 **AND RESTRICTIONS ON USE.**

8.33 Subdivision 1. **Protected titles.** ~~No individual may~~ A person who does not hold

8.34 a license or temporary permit under this chapter as a respiratory therapist or whose

8.35 license or permit has lapsed, been suspended, or revoked may not use the title "Minnesota



9.1 ~~registered licensed respiratory care practitioner therapist,~~ " ~~registered licensed respiratory~~  
9.2 ~~care practitioner therapist,~~ " ~~respiratory care practitioner,~~ "respiratory therapist,"  
9.3 ~~"respiratory therapy (or care) technician,"~~ "inhalation therapist," or "inhalation therapy  
9.4 technician," or use, in connection with the individual's name, the letters "~~RCP,~~" "RT" or  
9.5 "LRT" or any other titles, words, letters, abbreviations, or insignia indicating or implying  
9.6 that the individual is eligible for ~~registration licensure~~ by the state as a respiratory ~~care~~  
9.7 ~~practitioner therapist~~ unless the individual has been ~~registered licensed~~ as a respiratory  
9.8 ~~care practitioner therapist~~ according to this chapter.

9.9 Subd. 1a. **Unlicensed practice prohibited.** No person shall practice respiratory  
9.10 care unless the person is licensed as a respiratory therapist under this chapter except  
9.11 as otherwise provided under this chapter.

9.12 Subd. 2. **Other health care practitioners.** (a) ~~Nonphysician individuals practicing~~  
9.13 ~~in a health care occupation or profession are not restricted in the provision of services~~  
9.14 ~~included in section 147C.05, as long as they do not hold themselves out as respiratory care~~  
9.15 ~~practitioners by or through the use of the titles provided in subdivision 1 in association~~  
9.16 ~~with provision of these services. Nothing in this chapter shall prohibit the practice of any~~  
9.17 ~~profession or occupation licensed or registered by the state by any person duly licensed or~~  
9.18 ~~registered to practice the profession or occupation or to perform any act that falls within~~  
9.19 ~~the scope of practice of the profession or occupation.~~

9.20 (b) ~~Physician practitioners are exempt from this chapter.~~

9.21 (c) Nothing in this chapter shall be construed to require ~~registration of a respiratory~~  
9.22 ~~care license for:~~

9.23 (1) a ~~respiratory care practitioner~~ student enrolled in a respiratory therapy or  
9.24 ~~polysomnography technology~~ education program accredited by the Commission on  
9.25 Accreditation of Allied Health Education Programs, ~~its successor organization,~~ or another  
9.26 ~~nationally recognized~~ accrediting organization ~~approved by the board; and~~

9.27 (2) a respiratory ~~care practitioner~~ employed in the service of the ~~federal government~~  
9.28 ~~therapist as a member of the United States armed forces~~ while performing duties incident  
9.29 to that ~~employment~~ duty;

9.30 (3) an individual employed by a durable medical equipment provider or a home  
9.31 medical equipment provider who delivers, sets up, or maintains respiratory care  
9.32 equipment, but does not perform assessment, education, or evaluation of the patient;

9.33 (4) self-care by a patient or gratuitous care by a friend or relative who does not  
9.34 purport to be a licensed respiratory therapist; or

9.35 (5) an individual employed in a sleep lab or center as a polysomnographic  
9.36 technologist under the supervision of a licensed physician.

10.1 Subd. 3. **Penalty.** A person who violates ~~subdivision 1~~ this section is guilty of a  
10.2 gross misdemeanor.

10.3 Subd. 4. **Identification of ~~registered~~ licensed practitioners.** Respiratory ~~care~~  
10.4 ~~practitioners-registered~~ therapists licensed in Minnesota shall wear name tags that identify  
10.5 them as respiratory ~~care practitioners~~ therapists while in a professional setting. If not  
10.6 written in full, this must be designated as ~~RCP~~ "RT" or "LRT". A student attending ~~a~~ an  
10.7 accredited respiratory therapy ~~training education~~ program ~~or a tutorial intern program~~  
10.8 must be identified as a student respiratory ~~care practitioner~~ therapist. This abbreviated  
10.9 designation is Student ~~RCP~~ RT. Unregulated individuals who work in an assisting  
10.10 respiratory role under the supervision of respiratory ~~care practitioners~~ therapists must be  
10.11 identified as respiratory ~~care~~ therapy assistants or aides.

10.12 Sec. 4. Minnesota Statutes 2008, section 147C.15, is amended to read:

10.13 **147C.15 ~~REGISTRATION~~ LICENSURE REQUIREMENTS.**

10.14 Subdivision 1. **General requirements for ~~registration~~ licensure.** To be eligible  
10.15 for ~~registration~~ a license, an applicant, with the exception of those seeking ~~registration~~  
10.16 licensure by reciprocity under subdivision 2, must:

10.17 (1) submit a completed application on forms provided by the board along with all  
10.18 fees required under section 147C.40 that includes:

10.19 (i) the applicant's name, Social Security number, home address, e-mail address, and  
10.20 telephone number, and business address and telephone number;

10.21 (ii) the name and location of the respiratory ~~care~~ therapy education program the  
10.22 applicant completed;

10.23 (iii) a list of degrees received from educational institutions;

10.24 (iv) a description of the applicant's professional training beyond the first degree  
10.25 received;

10.26 (v) the applicant's work history for the five years preceding the application, including  
10.27 the average number of hours worked per week;

10.28 (vi) a list of registrations, certifications, and licenses held in other jurisdictions;

10.29 (vii) a description of any other jurisdiction's refusal to credential the applicant;

10.30 (viii) a description of all professional disciplinary actions initiated against the  
10.31 applicant in any jurisdiction; and

10.32 (ix) any history of drug or alcohol abuse, and any misdemeanor or felony conviction;

10.33 (2) submit a certificate of completion from an approved education program;

10.34 (3) achieve a qualifying score on a credentialing examination within five years  
10.35 prior to application for registration;

11.1 (4) submit a verified copy of a valid and current credential, issued by the National  
11.2 Board for Respiratory Care or other board-approved national organization, as a certified  
11.3 respiratory ~~therapy technician~~ therapist, registered respiratory therapist, or other entry or  
11.4 advanced level respiratory ~~care practitioner~~ therapist designation;

11.5 (5) submit additional information as requested by the board, including providing  
11.6 any additional information necessary to ensure that the applicant is able to practice with  
11.7 reasonable skill and safety to the public;

11.8 (6) sign a statement that the information in the application is true and correct to the  
11.9 best of the applicant's knowledge and belief; and

11.10 (7) sign a waiver authorizing the board to obtain access to the applicant's records  
11.11 in this or any other state in which the applicant has completed an approved education  
11.12 program or engaged in the practice of respiratory ~~care~~ therapy.

11.13 Subd. 2. **Registration Licensure by reciprocity.** To be eligible for ~~registration~~  
11.14 licensure by reciprocity, the applicant must be credentialed by the National Board for  
11.15 Respiratory Care or other board-approved organization and have worked at least eight  
11.16 weeks of the previous five years as a respiratory ~~care practitioner~~ therapist and must:

11.17 (1) submit the application materials and fees as required by subdivision 1, clauses  
11.18 (1), (4), (5), (6), and (7);

11.19 (2) provide a verified copy from the appropriate government body of a current and  
11.20 unrestricted credential or license for the practice of respiratory ~~care~~ therapy in another  
11.21 jurisdiction that has initial credentialing requirements equivalent to or higher than the  
11.22 requirements in subdivision 1; and

11.23 (3) provide letters of verification from the appropriate government body in each  
11.24 jurisdiction in which the applicant holds a credential or license. Each letter must state the  
11.25 applicant's name, date of birth, credential number, date of issuance, a statement regarding  
11.26 disciplinary actions, if any, taken against the applicant, and the terms under which the  
11.27 credential was issued.

11.28 Subd. 3. **Temporary permit.** The board may issue a temporary permit to practice  
11.29 as a respiratory ~~care practitioner~~ therapist to an applicant eligible for ~~registration~~  
11.30 licensure under this section if the application for ~~registration~~ licensure is complete, all  
11.31 applicable requirements in this section have been met, and a nonrefundable fee set by  
11.32 the board has been paid. The permit remains valid only until the meeting of the board  
11.33 at which a decision is made on the respiratory ~~care practitioner's~~ therapist's application  
11.34 for ~~registration~~ licensure.

11.35 ~~Subd. 4. **Temporary registration.** The board may issue temporary registration as a~~  
11.36 ~~respiratory care practitioner for a period of one year to an applicant for registration under~~

12.1 ~~this section if the application for registration is complete, all applicable requirements~~  
12.2 ~~have been met with exception of completion of a credentialing examination, and a~~  
12.3 ~~nonrefundable fee set by the board has been paid. A respiratory care practitioner with~~  
12.4 ~~temporary registration may qualify for full registration status upon submission of verified~~  
12.5 ~~documentation that the respiratory care practitioner has achieved a qualifying score on a~~  
12.6 ~~credentialing examination within one year after receiving temporary registration status.~~  
12.7 ~~Temporary registration may not be renewed.~~

12.8 **Subd. 5. Practice limitations with temporary registration.** A respiratory care  
12.9 practitioner with temporary registration is limited to working under the direct supervision  
12.10 of a registered respiratory care practitioner or physician able to provide qualified medical  
12.11 direction. The respiratory care practitioner or physician must be present in the health care  
12.12 facility or readily available by telecommunication at the time the respiratory care services  
12.13 are being provided. A registered respiratory care practitioner may supervise no more than  
12.14 two respiratory care practitioners with temporary registration status.

12.15 **Subd. 6. Registration License expiration.** Registrations Licenses issued under this  
12.16 chapter expire annually.

12.17 **Subd. 7. Renewal.** (a) To be eligible for registration license renewal a registrant  
12.18 licensee must:

12.19 (1) annually, or as determined by the board, complete a renewal application on a  
12.20 form provided by the board;

12.21 (2) submit the renewal fee;

12.22 (3) provide evidence every two years of a total of 24 hours of continuing education  
12.23 approved by the board as described in section 147C.25; and

12.24 (4) submit any additional information requested by the board to clarify information  
12.25 presented in the renewal application. The information must be submitted within 30 days  
12.26 after the board's request, or the renewal request is nullified.

12.27 (b) Applicants for renewal who have not practiced the equivalent of eight full weeks  
12.28 during the past five years must achieve a passing score on retaking the credentialing  
12.29 examination, ~~or complete no less than eight weeks of advisory council-approved~~  
12.30 ~~supervised clinical experience having a broad base of treatment modalities and patient care.~~

12.31 **Subd. 8. Change of address.** A registrant licensee who changes addresses must  
12.32 inform the board within 30 days, in writing, of the change of address. All notices or  
12.33 other correspondence mailed to or served on a registrant licensee by the board at the  
12.34 registrant's licensee's address on file with the board shall be considered as having been  
12.35 received by the registrant licensee.

13.1 Subd. 9. **Registration License renewal notice.** At least 30 days before the  
13.2 ~~registration~~ license renewal date, the board shall send out a renewal notice to the last  
13.3 known address of the ~~registrant~~ licensee on file. The notice must include a renewal  
13.4 application and a notice of fees required for renewal. It must also inform the ~~registrant~~  
13.5 licensee that ~~registration~~ the license will expire without further action by the board if an  
13.6 application for ~~registration~~ license renewal is not received before the deadline for renewal.  
13.7 The ~~registrant's~~ licensee's failure to receive this notice shall not relieve the ~~registrant~~  
13.8 licensee of the obligation to meet the deadline and other requirements for ~~registration~~  
13.9 license renewal. Failure to receive this notice is not grounds for challenging expiration of  
13.10 ~~registered~~ licensure status.

13.11 Subd. 10. **Renewal deadline.** The renewal application and fee must be postmarked  
13.12 on or before July 1 of the year of renewal or as determined by the board. If the postmark is  
13.13 illegible, the application shall be considered timely if received by the third working day  
13.14 after the deadline.

13.15 ~~Subd. 11. **Inactive status and return to active status.** (a) A registration may be~~  
13.16 ~~placed in inactive status upon application to the board by the registrant and upon payment~~  
13.17 ~~of an inactive status fee.~~

13.18 ~~(b) Registrants seeking restoration to active from inactive status must pay the current~~  
13.19 ~~renewal fees and all unpaid back inactive fees. They must meet the criteria for renewal~~  
13.20 ~~specified in subdivision 7, including continuing education hours equivalent to one hour for~~  
13.21 ~~each month of inactive status, prior to submitting an application to regain registered status.~~  
13.22 ~~If the inactive status extends beyond five years, a qualifying score on a credentialing~~  
13.23 ~~examination, or completion of an advisory council-approved eight-week supervised~~  
13.24 ~~clinical training experience is required. If the registrant intends to regain active registration~~  
13.25 ~~by means of eight weeks of advisory council-approved clinical training experience, the~~  
13.26 ~~registrant shall be granted temporary registration for a period of no longer than six months.~~

13.27 Subd. 12. **Registration Licensure following lapse of registration licensed status**  
13.28 **for two years or less.** For any individual whose ~~registration status~~ license has lapsed for  
13.29 two years or less, to regain ~~registration status~~ a license, the individual must:

13.30 (1) apply for ~~registration~~ license renewal according to subdivision 7;

13.31 (2) document compliance with the continuing education requirements of section  
13.32 147C.25 since the ~~registrant's~~ licensee's initial ~~registration~~ licensure or last renewal; and

13.33 (3) submit the fees required under section 147C.40 for the period not ~~registered~~  
13.34 licensed, including the fee for late renewal.

13.35 Subd. 13. **Cancellation due to nonrenewal.** The board shall not renew, reissue,  
13.36 reinstate, or restore a ~~registration~~ license that has lapsed and has not been renewed within

14.1 two annual ~~registration~~ renewal cycles starting July 1997. A ~~registrant licensee~~ whose  
14.2 ~~registration license~~ is canceled for nonrenewal must obtain a new ~~registration license~~ by  
14.3 applying for ~~registration licensure~~ and fulfilling all requirements then in existence for  
14.4 initial ~~registration licensure~~ as a respiratory ~~care practitioner~~ therapist.

14.5 Subd. 14. **Cancellation of ~~registration license~~ in good standing.** (a) A registrant  
14.6 ~~licensee~~ holding an active ~~registration license~~ as a respiratory ~~care practitioner~~ therapist in  
14.7 the state may, upon approval of the board, be granted ~~registration license~~ cancellation if  
14.8 the board is not investigating the person as a result of a complaint or information received  
14.9 or if the board has not begun disciplinary proceedings against the ~~registrant licensee~~.  
14.10 Such action by the board shall be reported as a cancellation of ~~registration a license~~ in  
14.11 good standing.

14.12 (b) A ~~registrant licensee~~ who receives board approval for ~~registration license~~  
14.13 cancellation is not entitled to a refund of any ~~registration licensure~~ fees paid for the  
14.14 ~~registration license~~ year in which cancellation of the ~~registration license~~ occurred.

14.15 (c) To obtain ~~registration a license~~ after cancellation, a ~~registrant licensee~~ must  
14.16 obtain a new ~~registration license~~ by applying for ~~registration licensure~~ and fulfilling the  
14.17 requirements then in existence for obtaining initial ~~registration licensure~~ as a respiratory  
14.18 ~~care practitioner~~ therapist.

14.19 Sec. 5. Minnesota Statutes 2008, section 147C.20, is amended to read:

14.20 **147C.20 BOARD ACTION ON APPLICATIONS FOR ~~REGISTRATION~~**  
14.21 **LICENSURE.**

14.22 (a) The board shall act on each application for ~~registration licensure~~ according  
14.23 to paragraphs (b) to (d).

14.24 (b) The board shall determine if the applicant meets the requirements for ~~registration~~  
14.25 ~~licensure~~ under section 147C.15. The board or advisory council may investigate  
14.26 information provided by an applicant to determine whether the information is accurate  
14.27 and complete.

14.28 (c) The board shall notify each applicant in writing of action taken on the application,  
14.29 the grounds for denying ~~registration licensure~~ if ~~registration licensure~~ is denied, and the  
14.30 applicant's right to review under paragraph (d).

14.31 (d) Applicants denied ~~registration licensure~~ may make a written request to the  
14.32 board, within 30 days of the board's notice, to appear before the advisory council or its  
14.33 designee and for the advisory council to review the board's decision to deny the applicant's  
14.34 ~~registration licensure~~. After reviewing the denial, the advisory council shall make a

15.1 recommendation to the board as to whether the denial shall be affirmed. Each applicant is  
15.2 allowed only one request for review per yearly ~~registration~~ licensure period.

15.3 Sec. 6. Minnesota Statutes 2008, section 147C.25, is amended to read:

15.4 **147C.25 CONTINUING EDUCATION REQUIREMENTS.**

15.5 Subdivision 1. **Number of required contact hours.** Two years after the date  
15.6 of initial ~~registration~~ licensure, and every two years thereafter, a ~~registrant~~ licensee  
15.7 applying for ~~registration~~ license renewal must complete a minimum of 24 contact hours  
15.8 of board-approved continuing education in the two years preceding ~~registration~~ license  
15.9 renewal and attest to completion of continuing education requirements by reporting to  
15.10 the board.

15.11 Subd. 2. **Approved programs.** The board shall approve continuing education  
15.12 programs that have been approved for continuing education credit by the American  
15.13 Association of Respiratory Care or the Minnesota Society for Respiratory Care or their  
15.14 successor organizations. The board shall also approve programs substantially related to  
15.15 respiratory ~~care~~ therapy that are sponsored by an accredited university or college, medical  
15.16 school, state or national medical association, national medical specialty society, or that are  
15.17 approved for continuing education credit by the Minnesota Board of Nursing.

15.18 Subd. 3. **Approval of continuing education programs.** The board shall also  
15.19 approve continuing education programs that do not meet the requirements of subdivision 2  
15.20 but that meet the following criteria:

15.21 (1) the program content directly relates to the practice of respiratory ~~care~~ therapy;

15.22 (2) each member of the program faculty is knowledgeable in the subject matter as  
15.23 demonstrated by a degree from an accredited education program, verifiable experience in  
15.24 the field of respiratory ~~care~~ therapy, special training in the subject matter, or experience  
15.25 teaching in the subject area;

15.26 (3) the program lasts at least one contact hour;

15.27 (4) there are specific, measurable, written objectives, consistent with the program,  
15.28 describing the expected outcomes for the participants; and

15.29 (5) the program sponsor has a mechanism to verify participation and maintains  
15.30 attendance records for three years.

15.31 Subd. 4. **Hospital, health care facility, or medical company in-services.** Hospital,  
15.32 health care facility, or medical company in-service programs may qualify for continuing  
15.33 education credits provided they meet the requirements of this section.

16.1 Subd. 5. **Accumulation of contact hours.** A ~~registrant~~ licensee may not apply  
16.2 contact hours acquired in one two-year reporting period to a future continuing education  
16.3 reporting period.

16.4 Subd. 6. **Verification of continuing education credits.** The board shall periodically  
16.5 select a random sample of ~~registrants~~ licensees and require those ~~registrants~~ licensees to  
16.6 supply the board with evidence of having completed the continuing education to which  
16.7 they attested. Documentation may come directly from the ~~registrant~~ licensee or from state  
16.8 or national organizations that maintain continuing education records.

16.9 Subd. 7. **Restriction on continuing education topics.** A ~~registrant~~ licensee may  
16.10 apply no more than a combined total of eight hours of continuing education in the areas  
16.11 of management, risk management, personal growth, and educational techniques to a  
16.12 two-year reporting period.

16.13 Subd. 8. **Credit for credentialing examination.** A ~~registrant~~ licensee may fulfill  
16.14 the continuing education requirements for a two-year reporting period by achieving a  
16.15 qualifying score on one of the credentialing examinations or a specialty credentialing  
16.16 examination of the National Board for Respiratory Care or another board-approved testing  
16.17 organization. A ~~registrant~~ licensee may achieve 12 hours of continuing education credit  
16.18 by completing a National Board for Respiratory Care or other board-approved testing  
16.19 organization's specialty examination.

16.20 Sec. 7. Minnesota Statutes 2008, section 147C.30, is amended to read:

16.21 **147C.30 DISCIPLINE; REPORTING.**

16.22 For purposes of this chapter, ~~registered licensed~~ respiratory ~~care practitioners~~  
16.23 therapists and applicants are subject to the provisions of sections 147.091 to 147.162.

16.24 Sec. 8. Minnesota Statutes 2008, section 147C.35, is amended to read:

16.25 **147C.35 RESPIRATORY CARE ~~PRACTITIONER~~ ADVISORY COUNCIL.**

16.26 Subdivision 1. **Membership.** The board shall appoint a seven-member Respiratory  
16.27 Care ~~Practitioner~~ Advisory Council consisting of two public members as defined in section  
16.28 214.02, three ~~registered licensed~~ respiratory ~~care practitioners~~ therapists, and two licensed  
16.29 physicians with expertise in respiratory care.

16.30 Subd. 2. **Organization.** The advisory council shall be organized and administered  
16.31 under section 15.059.

16.32 Subd. 3. **Duties.** The advisory council shall:

16.33 (1) advise the board regarding standards for respiratory ~~care practitioners~~ therapists;



- 17.1 (2) provide for distribution of information regarding respiratory ~~care practitioner~~  
17.2 therapy standards;
- 17.3 (3) advise the board on enforcement of sections 147.091 to 147.162;
- 17.4 (4) review applications and recommend granting or denying ~~registration licensure~~  
17.5 or ~~registration~~ license renewal;
- 17.6 (5) advise the board on issues related to receiving and investigating complaints,  
17.7 conducting hearings, and imposing disciplinary action in relation to complaints against  
17.8 respiratory ~~care practitioners~~ therapists;
- 17.9 (6) advise the board regarding approval of continuing education programs using the  
17.10 criteria in section 147C.25, subdivision 3; and
- 17.11 (7) perform other duties authorized for advisory councils by chapter 214, as directed  
17.12 by the board.

17.13 Sec. 9. Minnesota Statutes 2008, section 147C.40, is amended to read:

17.14 **147C.40 FEES.**

17.15 Subdivision 1. **Fees.** The board shall adopt rules setting:

- 17.16 (1) ~~registration licensure~~ fees;
- 17.17 (2) renewal fees;
- 17.18 (3) late fees;
- 17.19 (4) inactive status fees; and
- 17.20 (5) fees for temporary permits; ~~and~~
- 17.21 ~~(6) fees for temporary registration.~~

17.22 Subd. 2. **Proration of fees.** The board may prorate the initial annual ~~registration~~  
17.23 license fee. All ~~registrants~~ licensees are required to pay the full fee upon ~~registration~~  
17.24 license renewal.

17.25 Subd. 3. **Penalty fee for late renewals.** An application for ~~registration~~ license  
17.26 renewal submitted after the deadline must be accompanied by a late fee in addition to the  
17.27 required fees.

17.28 Subd. 4. **Nonrefundable fees.** All of the fees in subdivision 1 are nonrefundable.

17.29 Sec. 10. Minnesota Statutes 2008, section 245A.03, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

18.24 (12) programs operated by a school as defined in section 120A.22, subdivision 4,  
18.25 YMCA as defined in section 315.44, YWCA as defined in section 315.44, or JCC as  
18.26 defined in section 315.51, whose primary purpose is to provide child care to school-age  
18.27 children;

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

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

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

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

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

19.4 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter  
19.5 4630;

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

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

19.10 (21) unrelated individuals who provide out-of-home respite care services to persons  
19.11 with developmental disabilities from a single related family for no more than 90 days in a  
19.12 12-month period and the respite care services are for the temporary relief of the person's  
19.13 family or legal representative;

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

19.16 (23) community support services programs as defined in section 245.462, subdivision  
19.17 6, and family community support services as defined in section 245.4871, subdivision 17;

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

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

19.22 (26) chemical dependency or substance abuse treatment activities of licensed  
19.23 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart  
19.24 15, when the treatment activities are not paid for by the consolidated chemical dependency  
19.25 treatment fund; or

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

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

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

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

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

20.4 Sec. 11. Minnesota Statutes 2008, section 245A.04, subdivision 5, is amended to read:

20.5 Subd. 5. **Commissioner's right of access.** When the commissioner is exercising the  
20.6 powers conferred by this chapter and ~~section~~ sections 245.69, 626.556, and 626.557, the  
20.7 commissioner must be given access to the physical plant and grounds where the program  
20.8 is provided, documents and records, including records maintained in electronic format,  
20.9 persons served by the program, and staff whenever the program is in operation and the  
20.10 information is relevant to inspections or investigations conducted by the commissioner.  
20.11 The commissioner must be given access without prior notice and as often as the  
20.12 commissioner considers necessary if the commissioner is conducting an investigation of  
20.13 allegations of maltreatment or other violation of applicable laws or rules. In conducting  
20.14 inspections, the commissioner may request and shall receive assistance from other state,  
20.15 county, and municipal governmental agencies and departments. The applicant or license  
20.16 holder shall allow the commissioner to photocopy, photograph, and make audio and video  
20.17 tape recordings during the inspection of the program at the commissioner's expense. The  
20.18 commissioner shall obtain a court order or the consent of the subject of the records or the  
20.19 parents or legal guardian of the subject before photocopying hospital medical records.

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

20.24 Sec. 12. Minnesota Statutes 2008, section 245A.04, subdivision 7, is amended to read:

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

- 20.28 (1) the name of the license holder;
- 20.29 (2) the address of the program;
- 20.30 (3) the effective date and expiration date of the license;
- 20.31 (4) the type of license;
- 20.32 (5) the maximum number and ages of persons that may receive services from the  
20.33 program; and
- 20.34 (6) any special conditions of licensure.

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

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

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

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

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

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

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

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

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

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

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

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

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

21.32 (g) For purposes of reimbursement for meals only, under the Child and Adult Care  
21.33 Food Program, Code of Federal Regulations, title 7, subtitle B, chapter II, subchapter A,  
21.34 part 226, relocation within the same county by a licensed family day care provider, shall  
21.35 be considered an extension of the license for a period of no more than 30 calendar days or

22.1 until the new license is issued, whichever occurs first, provided the county agency has  
22.2 determined the family day care provider meets licensure requirements at the new location.

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

22.7 Sec. 13. Minnesota Statutes 2008, section 245A.05, is amended to read:

22.8 **245A.05 DENIAL OF APPLICATION.**

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

22.10 (1) fails to comply with applicable laws or rules, ~~or~~

22.11 (2) knowingly withholds relevant information from or gives false or misleading  
22.12 information to the commissioner in connection with an application for a license or during  
22.13 an investigation;

22.14 (3) has a disqualification that has not been set aside under section 245C.22 and no  
22.15 variance has been granted;

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

22.19 (5) is associated with an individual who received a background study under section  
22.20 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to  
22.21 children or vulnerable adults, and who has a disqualification that has not been set aside  
22.22 under section 245C.22, and no variance has been granted.

22.23 (b) An applicant whose application has been denied by the commissioner must  
22.24 be given notice of the denial. Notice must be given by certified mail or personal  
22.25 service. The notice must state the reasons the application was denied and must inform  
22.26 the applicant of the right to a contested case hearing under chapter 14 and Minnesota  
22.27 Rules, parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying  
22.28 the commissioner in writing by certified mail or personal service ~~within 20 calendar~~  
22.29 ~~days after receiving notice that the application was denied. If mailed, the appeal must be~~  
22.30 postmarked and sent to the commissioner within 20 calendar days after the applicant  
22.31 received the notice of denial. If an appeal request is made by personal service, it must  
22.32 be received by the commissioner within 20 calendar days after the applicant received the  
22.33 notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's  
22.34 denial of an application.

23.1 Sec. 14. Minnesota Statutes 2008, section 245A.06, subdivision 8, is amended to read:

23.2 Subd. 8. **Requirement to post correction order.** (a) For licensed family child  
23.3 care providers and child care centers, upon receipt of any correction order or order of  
23.4 conditional license issued by the commissioner under this section, and notwithstanding  
23.5 a pending request for reconsideration of the correction order or order of conditional  
23.6 license by the license holder, the license holder shall post the correction order or order of  
23.7 conditional license in a place that is conspicuous to the people receiving services and all  
23.8 visitors to the facility for two years.

23.9 (b) Except as set forth under section 245C.301, paragraph (d), when the correction  
23.10 order or order of conditional license is accompanied by a maltreatment investigation  
23.11 memorandum prepared under section 626.556 or 626.557, the investigation memoranda  
23.12 must be posted with the correction order or order of conditional license.

23.13 Sec. 15. Minnesota Statutes 2008, section 245A.07, subdivision 1, is amended to read:

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

23.21 (b) If a license holder appeals the suspension or revocation of a license and the  
23.22 license holder continues to operate the program pending a final order on the appeal, and  
23.23 the license expires during this time period, the commissioner shall issue the license holder  
23.24 a temporary provisional license. The temporary provisional license is effective on the date  
23.25 issued and expires on the date that a final order is issued. Unless otherwise specified by  
23.26 the commissioner, variances in effect on the date of the license sanction under appeal  
23.27 continue under the temporary provisional license. If a license holder fails to comply  
23.28 with applicable law or rule while operating under a temporary provisional license, the  
23.29 commissioner may impose sanctions under this section and section 245A.06, and may  
23.30 terminate any prior variance. If the license holder prevails on the appeal and the effective  
23.31 period of the previous license has expired, a new license shall be issued to the license  
23.32 holder upon payment of any fee required under section 245A.10. The effective date of the  
23.33 new license shall be retroactive to the date the license would have shown had no sanction  
23.34 been initiated. The expiration date shall be the expiration date of that license had no  
23.35 license sanction been initiated.

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24.1 (c) If a license holder is under investigation and the license is due to expire  
24.2 before completion of the investigation, the program shall be issued a new license upon  
24.3 completion of the reapplication requirements. Upon completion of the investigation, a  
24.4 licensing sanction may be imposed against the new license under this section, section  
24.5 245A.06, or 245A.08.

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

24.10 Sec. 16. Minnesota Statutes 2008, section 245A.07, subdivision 3, is amended to read:

24.11 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may  
24.12 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with  
24.13 applicable laws or rules, if a license holder, a controlling individual, or an individual  
24.14 living in the household where the licensed services are provided or is otherwise subject  
24.15 to a background study has a disqualification which has not been set aside under section  
24.16 245C.22, or if a license holder knowingly withholds relevant information from or gives  
24.17 false or misleading information to the commissioner in connection with an application  
24.18 for a license, in connection with the background study status of an individual, during an  
24.19 investigation, or regarding compliance with applicable laws or rules. A license holder  
24.20 who has had a license suspended, revoked, or has been ordered to pay a fine must be  
24.21 given notice of the action by certified mail or personal service. If mailed, the notice  
24.22 must be mailed to the address shown on the application or the last known address of the  
24.23 license holder. The notice must state the reasons the license was suspended, revoked, or  
24.24 a fine was ordered.

24.25 (b) If the license was suspended or revoked, the notice must inform the license  
24.26 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts  
24.27 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking  
24.28 a license. The appeal of an order suspending or revoking a license must be made in writing  
24.29 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to  
24.30 the commissioner within ten calendar days after the license holder receives notice that the  
24.31 license has been suspended or revoked. If a request is made by personal service, it must be  
24.32 received by the commissioner within ten calendar days after the license holder received  
24.33 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits  
24.34 a timely appeal of an order suspending or revoking a license ~~shall stay the suspension or~~



25.1 ~~revocation~~, the license holder may continue to operate until the commissioner issues a  
25.2 final order on the suspension or revocation.

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

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

25.18 (3) A license holder shall promptly notify the commissioner of human services,  
25.19 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon  
25.20 reinspection the commissioner determines that a violation has not been corrected as  
25.21 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The  
25.22 commissioner shall notify the license holder by certified mail or personal service that a  
25.23 second fine has been assessed. The license holder may appeal the second fine as provided  
25.24 under this subdivision.

25.25 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for  
25.26 each determination of maltreatment of a child under section 626.556 or the maltreatment  
25.27 of a vulnerable adult under section 626.557 for which the license holder is determined  
25.28 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),  
25.29 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each  
25.30 occurrence of a violation of law or rule governing matters of health, safety, or supervision,  
25.31 including but not limited to the provision of adequate staff-to-child or adult ratios, and  
25.32 failure to ~~submit a~~ comply with background study requirements under chapter 245C; and  
25.33 the license holder shall forfeit \$100 for each occurrence of a violation of law or rule  
25.34 other than those subject to a \$1,000 or \$200 fine above. For purposes of this section,  
25.35 "occurrence" means each violation identified in the commissioner's fine order. Fines  
25.36 assessed against a license holder that holds a license to provide the residential-based

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26.1 habilitation services, as defined under section 245B.02, subdivision 20, and a license to  
26.2 provide foster care, may be assessed against both licenses for the same occurrence, but  
26.3 the combined amount of the fines shall not exceed the amount specified in this clause  
26.4 for that occurrence.

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

26.9 Sec. 17. Minnesota Statutes 2008, section 245A.07, subdivision 5, is amended to read:

26.10 Subd. 5. **Requirement to post licensing order or fine.** (a) For licensed family child  
26.11 care providers and child care centers, upon receipt of any order of license suspension,  
26.12 temporary immediate suspension, fine, or revocation issued by the commissioner under  
26.13 this section, and notwithstanding a pending appeal of the order of license suspension,  
26.14 temporary immediate suspension, fine, or revocation by the license holder, the license  
26.15 holder shall post the order of license suspension, temporary immediate suspension, fine, or  
26.16 revocation in a place that is conspicuous to the people receiving services and all visitors to  
26.17 the facility for two years.

26.18 (b) Except as set forth under section 245C.301, paragraph (d), when the order of  
26.19 license suspension, temporary immediate suspension, fine, or revocation is accompanied  
26.20 by a maltreatment investigation memorandum prepared under section 626.556 or 626.557,  
26.21 the investigation memoranda must be posted with the order of license suspension,  
26.22 temporary immediate suspension, fine, or revocation.

26.23 Sec. 18. Minnesota Statutes 2008, section 245A.11, is amended by adding a  
26.24 subdivision to read:

26.25 **Subd. 7a. Alternate overnight supervision technology; adult foster care license.**

26.26 (a) The commissioner may grant an applicant or license holder an adult foster care license  
26.27 for a residence that does not have a caregiver in the residence during normal sleeping  
26.28 hours as required under Minnesota Rules, part 9555.5105, subpart 37, item B, but uses  
26.29 monitoring technology to alert the license holder when an incident occurs that may  
26.30 jeopardize the health, safety, or rights of a foster care recipient. The applicant or license  
26.31 holder must comply with all other requirements under Minnesota Rules, parts 9555.5105  
26.32 to 9555.6265, and the requirements under this subdivision. The license printed by the  
26.33 commissioner must state in bold and large font:

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

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

27.3 (b) Applications for a license under this section must be submitted directly to  
27.4 the Department of Human Services licensing division. The licensing division must  
27.5 immediately notify the host county and lead county contract agency and the host county  
27.6 licensing agency. The licensing division must collaborate with the county licensing  
27.7 agency in the review of the application and the licensing of the program.

27.8 (c) Before a license is issued by the commissioner, and for the duration of the  
27.9 license, the applicant or license holder must establish, maintain, and document the  
27.10 implementation of written policies and procedures addressing the requirements in  
27.11 paragraphs (d) through (f).

27.12 (d) The applicant or license holder must have policies and procedures that:

27.13 (1) establish characteristics of target populations that will be admitted into the home,  
27.14 and characteristics of populations that will not be accepted into the home;

27.15 (2) explain the discharge process when a foster care recipient requires overnight  
27.16 supervision or other services that cannot be provided by the license holder due to the  
27.17 limited hours that the license holder is on-site;

27.18 (3) describe the types of events to which the program will respond with a physical  
27.19 presence when those events occur in the home during time when staff are not on-site, and  
27.20 how the license holder's response plan meets the requirements in paragraph (e), clause  
27.21 (1) or (2);

27.22 (4) establish a process for documenting a review of the implementation and  
27.23 effectiveness of the response protocol for the response required under paragraph (e),  
27.24 clause (1) or (2). The documentation must include:

27.25 (i) a description of the triggering incident;

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

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

27.28 (iv) whether the response met the resident's needs;

27.29 (v) whether the existing policies and response protocols were followed; and

27.30 (vi) whether the existing policies and protocols are adequate or need modification.

27.31 When no physical presence response is completed for a three-month period, the  
27.32 license holder's written policies and procedures must require a physical presence response  
27.33 drill to be conducted for which the effectiveness of the response protocol under paragraph  
27.34 (e), clause (1) or (2) will be reviewed and documented as required under this clause; and

28.1 (5) establish that emergency and nonemergency phone numbers are posted in a  
28.2 prominent location in a common area of the home where they can be easily observed by a  
28.3 person responding to an incident who is not otherwise affiliated with the home.

28.4 (e) The license holder must document and include in the license application which  
28.5 response alternative under clause (1) or (2) is in place for responding to situations that  
28.6 present a serious risk to the health, safety, or rights of people receiving foster care services  
28.7 in the home:

28.8 (1) response alternative (1) requires only the technology to provide an electronic  
28.9 notification or alert to the license holder that an event is underway that requires a response.  
28.10 Under this alternative, no more than ten minutes will pass before the license holder will be  
28.11 physically present on-site to respond to the situation; or

28.12 (2) response alternative (2) requires the electronic notification and alert system  
28.13 under alternative (1), but more than ten minutes may pass before the license holder is  
28.14 present on-site to respond to the situation. Under alternative (2), all of the following  
28.15 conditions are met:

28.16 (i) the license holder has a written description of the interactive technological  
28.17 applications that will assist the license holder in communicating with and assessing the  
28.18 needs related to care, health, and safety of the foster care recipients. This interactive  
28.19 technology must permit the license holder to remotely assess the well being of the foster  
28.20 care recipient without requiring the initiation or participation by the foster care recipient.  
28.21 Requiring the foster care recipient to initiate a telephone call or answer a telephone call  
28.22 does not meet this requirement;

28.23 (ii) the license holder documents how the remote license holder is qualified and  
28.24 capable of meeting the needs of the foster care recipients and assessing foster care  
28.25 recipients' needs during the absence of the license holder on site;

28.26 (iii) the license holder maintains written procedures to dispatch emergency response  
28.27 personnel to the site in the event of an identified emergency; and

28.28 (iv) each foster care recipient's individualized plan of care, individual service plan  
28.29 under section 256B.092, subdivision 1b, if required, or individual resident placement  
28.30 agreement under Minnesota Rules, part 9555.5105, subpart 19, if required, identifies the  
28.31 maximum response time, which may be greater than ten minutes, for the license holder  
28.32 to be on-site for that foster care recipient.

28.33 (f) All placement agreements, individual service agreements, and plans applicable  
28.34 to the foster care recipient must clearly state that the adult foster care license category is  
28.35 a program without the presence of a caregiver in the residence during normal sleeping  
28.36 hours; the protocols in place for responding to situations that present a serious risk

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

29.6 (1) how any electronic monitoring is incorporated into the alternative supervision  
29.7 system;

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

29.10 (3) how the license holder is trained on the use of the technology;

29.11 (4) the event types and license holder response times established under paragraph (e);

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

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

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

29.20 (g) Nothing in this section requires the applicant or license holder to develop or  
29.21 maintain separate or duplicative policies, procedures, documentation, consent forms, or  
29.22 individual plans that may be required for other licensing standards, if the requirements of  
29.23 this section are incorporated into those documents.

29.24 (h) The commissioner may grant variances to the requirements of this section  
29.25 according to section 245A.04, subdivision 9.

29.26 (i) For the purposes of paragraphs (c) through (h), license holder has the meaning  
29.27 given under section 245A.02, subdivision 9, and additionally includes all staff, volunteers,  
29.28 and contractors affiliated with the license holder.

29.29 Sec. 19. Minnesota Statutes 2008, section 245A.1435, is amended to read:

29.30 **245A.1435 REDUCTION OF RISK OF SUDDEN INFANT DEATH**  
29.31 **SYNDROME IN LICENSED PROGRAMS.**

29.32 (a) When a license holder is placing an infant to sleep, the license holder must place  
29.33 the infant on the infant's back, unless the license holder has documentation from the  
29.34 infant's parent directing an alternative sleeping position for the infant, ~~and~~. The parent  
29.35 directive must be on a form approved by the commissioner and must include a statement

30.1 that the parent or legal guardian has read the information provided by the Minnesota  
30.2 Sudden Infant Death Center, related to the risk of SIDS and the importance of placing an  
30.3 infant or child on the back to sleep to reduce the risk of SIDS.

30.4 (b) The license holder must place the infant in a crib ~~with~~ directly on a firm mattress  
30.5 with a fitted crib sheet that fits tightly on the mattress and overlaps the mattress so it cannot  
30.6 be dislodged by pulling on the corner of the sheet. The license holder must not place  
30.7 pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in  
30.8 the crib with the infant. The requirements of this section apply to license holders serving  
30.9 infants up to and including 12 months of age. Licensed child care providers must meet the  
30.10 crib requirements under section 245A.146.

30.11 Sec. 20. Minnesota Statutes 2008, section 245A.16, subdivision 1, is amended to read:

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

30.22 (1) dual licensure of family child care and child foster care, dual licensure of child  
30.23 and adult foster care, and adult foster care and family child care;

30.24 (2) adult foster care maximum capacity;

30.25 (3) adult foster care minimum age requirement;

30.26 (4) child foster care maximum age requirement;

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

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

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

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

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

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

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

31.13 Sec. 21. Minnesota Statutes 2008, section 245A.50, subdivision 5, is amended to read:

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

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

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

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

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

31.34 Sec. 22. Minnesota Statutes 2008, section 245C.04, subdivision 1, is amended to read:

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

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

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

32.10           (1) registered under chapter 144D; or

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

32.14           (3) the following conditions are met:

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

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

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

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

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

32.35           (f) Applicants for licensure, license holders, and other entities as provided in this  
32.36 chapter must submit completed background study forms to the commissioner before



33.1 individuals specified in section 245C.03, subdivision 1, begin positions allowing direct  
33.2 contact in any licensed program.

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

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

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

33.11 (2) a program that discontinued providing licensed direct contact services for 45 or  
33.12 more consecutive days begins to provide direct contact licensed services again.

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

33.15 Sec. 23. Minnesota Statutes 2008, section 245C.07, is amended to read:

33.16 **245C.07 STUDY SUBJECT AFFILIATED WITH MULTIPLE FACILITIES.**

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

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

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

33.28 (b) When a license holder maintains background study compliance for multiple  
33.29 licensed programs according to paragraph (a), and one or more of the licensed programs  
33.30 closes, the license holder shall immediately notify the commissioner which staff will be  
33.31 transferred to an active license so that the background studies can be electronically paired  
33.32 with the license holder's active program.

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

34.1 form a cover letter indicating the additional names of the programs or services, addresses,  
34.2 and background study identification numbers.

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

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

34.8 Sec. 24. Minnesota Statutes 2008, section 245C.08, is amended to read:

34.9 **245C.08 BACKGROUND STUDY; COMMISSIONER REVIEWS.**

34.10 Subdivision 1. **Background studies conducted by ~~commissioner~~ Department of**  
34.11 **Human Services.** (a) For a background study conducted by the ~~commissioner~~ Department  
34.12 of Human Services, the commissioner shall review:

34.13 (1) information related to names of substantiated perpetrators of maltreatment of  
34.14 vulnerable adults that has been received by the commissioner as required under section  
34.15 626.557, subdivision 9c, paragraph (i);

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

34.19 (3) information from juvenile courts as required in subdivision 4 for individuals listed  
34.20 in section 245C.03, subdivision 1, ~~clauses (2), (5), and (6)~~ when there is reasonable cause;

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

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

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

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

34.29 (ii) information from national crime information databases, when the background  
34.30 study ~~object~~ subject is 18 years of age or older.

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

35.1 Subd. 2. **Background studies conducted by a county agency.** (a) For a background  
35.2 study conducted by a county agency for adult foster care, family adult day services, and  
35.3 family child care services, the commissioner shall review:

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

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

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

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

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

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

35.16 (c) Notwithstanding expungement by a court, the county agency may consider  
35.17 information obtained under paragraph (a), clause (3), unless the commissioner received  
35.18 notice of the petition for expungement and the court order for expungement is directed  
35.19 specifically to the commissioner.

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

35.24 (1) the Bureau of Criminal Apprehension;

35.25 (2) the commissioner of health;

35.26 (3) a county attorney;

35.27 (4) a county sheriff;

35.28 (5) a county agency;

35.29 (6) a local chief of police;

35.30 (7) other states;

35.31 (8) the courts;

35.32 (9) the Federal Bureau of Investigation;

35.33 (10) the National Criminal Records Repository; and

35.34 (11) criminal records from other states.

35.35 (b) The commissioner is not required to conduct more than one review of a subject's  
35.36 records from the Federal Bureau of Investigation if a review of the subject's criminal

36.1 history with the Federal Bureau of Investigation has already been completed by the  
36.2 commissioner and there has been no break in the subject's affiliation with the license  
36.3 holder who initiated the background study.

36.4 Subd. 4. **Juvenile court records.** (a) For a background study conducted by the  
36.5 Department of Human Services, the commissioner shall review records from the juvenile  
36.6 courts for an individual studied under section 245C.03, subdivision 1, ~~clauses (2) and (5)~~  
36.7 when the commissioner has reasonable cause.

36.8 (b) ~~For individuals studied under section 245C.03, subdivision 1, clauses (1), (3),~~  
36.9 ~~(4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner shall review~~  
36.10 ~~records from the juvenile courts~~ a background study conducted by a county agency, the  
36.11 commissioner shall review records from the juvenile courts for individuals listed in section  
36.12 245C.03, subdivision 1, who are ages 13 through 23 living in the household where the  
36.13 licensed services will be provided. The commissioner shall also review records from  
36.14 juvenile courts for any other individual listed under section 245C.03, subdivision 1, when  
36.15 the commissioner has reasonable cause.

36.16 (c) The juvenile courts shall help with the study by giving the commissioner existing  
36.17 juvenile court records relating to delinquency proceedings held on individuals described  
36.18 in section 245C.03, subdivision 1, ~~clauses (2), (5), and (6), relating to delinquency~~  
36.19 ~~proceedings held within either the five years immediately preceding the background study~~  
36.20 ~~or the five years immediately preceding the individual's 18th birthday, whichever time~~  
36.21 ~~period is longer~~ when requested pursuant to this subdivision.

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

36.24 (e) Juvenile courts shall provide orders of involuntary and voluntary termination of  
36.25 parental rights under section 260C.301 to the commissioner upon request for purposes of  
36.26 conducting a background study under this chapter.

36.27 Sec. 25. Minnesota Statutes 2008, section 245C.13, subdivision 2, is amended to read:

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

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

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

36.34 (i) the individual is not disqualified; or

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

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

37.8 (3) a notice that a variance has been granted related to the individual under section  
37.9 245C.30.

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

37.11 (1) being issued a license;

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

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

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

37.18 Sec. 26. Minnesota Statutes 2008, section 245C.15, subdivision 1, is amended to read:

37.19 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under  
37.20 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the  
37.21 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless  
37.22 of the level of the offense, the individual has committed any of the following offenses:  
37.23 sections 243.166 (violation of predatory offender registration law); 609.185 (murder in the  
37.24 first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree);  
37.25 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a  
37.26 felony offense under 609.221 or 609.222 (assault in the first or second degree); a felony  
37.27 offense under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child  
37.28 abuse or neglect, or a crime against children; 609.2247 (domestic assault by strangulation);  
37.29 609.228 (great bodily harm caused by distribution of drugs); 609.245 (aggravated  
37.30 robbery); 609.25 (kidnapping); 609.2661 (murder of an unborn child in the first degree);  
37.31 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an  
37.32 unborn child in the third degree); 609.322 (solicitation, inducement, and promotion of  
37.33 prostitution); 609.324, subdivision 1 (other prohibited acts); 609.342 (criminal sexual  
37.34 conduct in the first degree); 609.343 (criminal sexual conduct in the second degree);  
37.35 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct

38.1 in the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453  
38.2 (criminal sexual predatory conduct); 609.352 (solicitation of children to engage in sexual  
38.3 conduct); 609.365 (incest); a felony offense under 609.377 (malicious punishment of a  
38.4 child); a felony offense under 609.378 (neglect or endangerment of a child); 609.561  
38.5 (arson in the first degree); 609.66, subdivision 1e (drive-by shooting); 609.749, subdivision  
38.6 3, 4, or 5 (felony-level harassment; stalking); 609.855, subdivision 5 (shooting at or in a  
38.7 public transit vehicle or facility); 617.23, subdivision 2, clause (1), or subdivision 3, clause  
38.8 (1) (indecent exposure involving a minor); 617.246 (use of minors in sexual performance  
38.9 prohibited); or 617.247 (possession of pictorial representations of minors). An individual  
38.10 also is disqualified under section 245C.14 regardless of how much time has passed since  
38.11 the involuntary termination of the individual's parental rights under section 260C.301.

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

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

38.18 (d) When a disqualification is based on a judicial determination other than a  
38.19 conviction, the disqualification period begins from the date of the court order. When a  
38.20 disqualification is based on an admission, the disqualification period begins from the  
38.21 date of an admission in court. When a disqualification is based on an Alford Plea, the  
38.22 disqualification period begins from the date the Alford Plea is entered in court. When  
38.23 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
38.24 disqualification date begins from the date of the dismissal, the date of discharge of the  
38.25 sentence imposed for a conviction for a disqualifying crime of similar elements, or the  
38.26 date of the incident, whichever occurs last.

38.27 (e) If the individual studied commits one of the offenses listed in paragraph (a) that  
38.28 is specified as a felony-level only offense, but the sentence or level of offense is a gross  
38.29 misdemeanor or misdemeanor, the individual is disqualified, but the disqualification  
38.30 look-back period for the offense is the period applicable to gross misdemeanor or  
38.31 misdemeanor offenses.

38.32 Sec. 27. Minnesota Statutes 2008, section 245C.15, subdivision 2, is amended to read:

38.33 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section  
38.34 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,  
38.35 if any, for the offense; and (2) the individual has committed a felony-level violation

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39.1 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);  
39.2 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph  
39.3 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);  
39.4 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231  
39.5 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth  
39.6 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a  
39.7 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of  
39.8 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);  
39.9 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter  
39.10 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first  
39.11 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury  
39.12 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275  
39.13 (attempt to coerce); 609.466 (medical assistance fraud); 609.498, subdivision 1 or 1b  
39.14 (aggravated first-degree or first-degree tampering with a witness); 609.52 (theft); 609.521  
39.15 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527  
39.16 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored  
39.17 checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree);  
39.18 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud);  
39.19 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged  
39.20 check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons);  
39.21 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71  
39.22 (riot); 609.713 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial  
39.23 transaction card fraud); 617.23 (indecent exposure), not involving a minor; repeat  
39.24 offenses under 617.241 (obscene materials and performances; distribution and exhibition  
39.25 prohibited; penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs;  
39.26 controlled substance); or a felony-level conviction involving alcohol or drug use.

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

39.31 (c) For foster care and family child care an individual is disqualified under section  
39.32 245C.14 if less than 15 years has passed since the individual's voluntary termination of  
39.33 the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or  
39.34 260C.301, subdivision 3.

39.35 (d) An individual is disqualified under section 245C.14 if less than 15 years has  
39.36 passed since the discharge of the sentence imposed for an offense in any other state or

40.1 country, the elements of which are substantially similar to the elements of the offenses  
40.2 listed in paragraph (a).

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

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

40.16 Sec. 28. Minnesota Statutes 2008, section 245C.15, subdivision 3, is amended to read:

40.17 Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section  
40.18 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed,  
40.19 if any, for the offense; and (2) the individual has committed a gross misdemeanor-level  
40.20 violation of any of the following offenses: sections 256.98 (wrongfully obtaining  
40.21 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,  
40.22 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide  
40.23 and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or  
40.24 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree);  
40.25 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a  
40.26 vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of  
40.27 persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal  
40.28 abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335  
40.29 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a  
40.30 vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision  
40.31 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house);  
40.32 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child);  
40.33 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into  
40.34 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance  
40.35 of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611



41.1 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous  
41.2 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable  
41.3 adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2  
41.4 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction  
41.5 card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene  
41.6 materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful  
41.7 materials; dissemination and display to minors prohibited); or violation of an order for  
41.8 protection under section 518B.01, subdivision 14.

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

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

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

41.21 (e) When a disqualification is based on a judicial determination other than a  
41.22 conviction, the disqualification period begins from the date of the court order. When a  
41.23 disqualification is based on an admission, the disqualification period begins from the  
41.24 date of an admission in court. When a disqualification is based on an Alford Plea, the  
41.25 disqualification period begins from the date the Alford Plea is entered in court. When  
41.26 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
41.27 disqualification date begins from the date of the dismissal, the date of discharge of the  
41.28 sentence imposed for a conviction for a disqualifying crime of similar elements, or the  
41.29 date of the incident, whichever occurs last.

41.30 Sec. 29. Minnesota Statutes 2008, section 245C.15, subdivision 4, is amended to read:

41.31 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under  
41.32 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence  
41.33 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level  
41.34 violation of any of the following offenses: sections 256.98 (wrongfully obtaining  
41.35 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,

42.1 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide  
42.2 and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree);  
42.3 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224  
42.4 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation  
42.5 of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult);  
42.6 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation  
42.7 of an order for protection under 609.3232 (protective order authorized; procedures;  
42.8 penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen  
42.9 goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);  
42.10 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous  
42.11 weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or  
42.12 harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment);  
42.13 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23  
42.14 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination  
42.15 and display to minors prohibited); or violation of an order for protection under section  
42.16 518B.01 (Domestic Abuse Act).

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

42.19 (1) failure to make required reports under section 626.556, subdivision 3, or  
42.20 626.557, subdivision 3, for incidents in which: (i) the final disposition under section  
42.21 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was  
42.22 recurring or serious; or

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

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

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

43.1 (e) When a disqualification is based on a judicial determination other than a  
43.2 conviction, the disqualification period begins from the date of the court order. When a  
43.3 disqualification is based on an admission, the disqualification period begins from the  
43.4 date of an admission in court. When a disqualification is based on an Alford Plea, the  
43.5 disqualification period begins from the date the Alford Plea is entered in court. When  
43.6 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
43.7 disqualification date begins from the date of the dismissal, the date of discharge of the  
43.8 sentence imposed for a conviction for a disqualifying crime of similar elements, or the  
43.9 date of the incident, whichever occurs last.

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

43.12 Sec. 30. Minnesota Statutes 2008, section 245C.22, subdivision 7, is amended to read:

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

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

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

43.20 (b) Notwithstanding section 13.46, upon granting a variance to a license holder  
43.21 under section 245C.30, the identity of the disqualified individual who is the subject of  
43.22 the variance, the individual's disqualifying characteristics under section 245C.15, and the  
43.23 terms of the variance are public data, when the variance:

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

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

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

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

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

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

44.1 (4) the disqualification relates to a license to provide relative child foster care.  
44.2 As used in this clause, "relative" has the meaning given it under section 260C.007,  
44.3 subdivision 27.

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

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

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

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

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

44.13 Sec. 31. Minnesota Statutes 2008, section 245C.24, subdivision 2, is amended to read:

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

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

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

45.1           (d) The commissioner may set aside the disqualification or grant a variance relating  
45.2 to the disqualification of an individual who is disqualified based on the involuntary  
45.3 termination of parental rights under section 260C.301, unless the individual is disqualified  
45.4 in connection with a license to provide family child care or child foster care.

45.5           Sec. 32. Minnesota Statutes 2008, section 245C.24, subdivision 3, is amended to read:

45.6           Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may  
45.7 not set aside the disqualification of an individual in connection with a license to provide  
45.8 family child care for children, foster care for children in the provider's home, or foster  
45.9 care or day care services for adults in the provider's home if: (1) less than ten years  
45.10 has passed since the discharge of the sentence imposed, if any, for the offense; or (2)  
45.11 when disqualified based on a preponderance of evidence determination under section  
45.12 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under section 245C.14,  
45.13 subdivision 1, paragraph (a), clause (1), and less than ten years has passed since the  
45.14 individual committed the act or admitted to committing the act, whichever is later; and  
45.15 (3) the individual has committed a violation of any of the following offenses: sections  
45.16 609.165 (felon ineligible to possess firearm); criminal vehicular homicide or criminal  
45.17 vehicular operation causing death under 609.21 (criminal vehicular homicide and injury);  
45.18 609.215 (aiding suicide or aiding attempted suicide); felony violations under 609.223 or  
45.19 609.2231 (assault in the third or fourth degree); 609.229 (crimes committed for benefit  
45.20 of a gang); 609.713 (terroristic threats); 609.235 (use of drugs to injure or to facilitate  
45.21 crime); 609.24 (simple robbery); 609.255 (false imprisonment); 609.562 (arson in the  
45.22 second degree); 609.71 (riot); 609.498, subdivision 1 or 1b (aggravated first-degree or  
45.23 first-degree tampering with a witness); burglary in the first or second degree under 609.582  
45.24 (burglary); 609.66 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns  
45.25 and short-barreled shotguns); 609.749, subdivision 2 (gross misdemeanor harassment;  
45.26 stalking); 152.021 or 152.022 (controlled substance crime in the first or second degree);  
45.27 152.023, subdivision 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance  
45.28 crime in the third degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled  
45.29 substance crime in the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree  
45.30 assault by a caregiver against a vulnerable adult); 609.23 (mistreatment of persons  
45.31 confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse of a  
45.32 vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial  
45.33 exploitation of a vulnerable adult); 609.234 (failure to report); 609.265 (abduction);  
45.34 609.2664 to 609.2665 (manslaughter of an unborn child in the first or second degree);  
45.35 609.267 to 609.2672 (assault of an unborn child in the first, second, or third degree);

46.1 609.268 (injury or death of an unborn child in the commission of a crime); repeat offenses  
46.2 under 617.23 (indecent exposure); 617.293 (disseminating or displaying harmful material  
46.3 to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor  
46.4 offense under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense  
46.5 under 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under  
46.6 609.377 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct  
46.7 against a vulnerable adult); or 624.713 (certain persons not to possess firearms).

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

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

46.16 Sec. 33. Minnesota Statutes 2008, section 245C.25, is amended to read:

46.17 **245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT**  
46.18 **DETERMINATION AND DISQUALIFICATION.**

46.19 (a) If an individual is disqualified on the basis of a determination of maltreatment  
46.20 under section 626.556 or 626.557, which was serious or recurring, and the individual  
46.21 requests reconsideration of the maltreatment determination under section 626.556,  
46.22 subdivision 10i, or 626.557, subdivision 9d, and also requests reconsideration of  
46.23 the disqualification under section 245C.21, the commissioner shall consolidate the  
46.24 reconsideration of the maltreatment determination and the disqualification into a single  
46.25 reconsideration.

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

46.31 (c) If the county has previously conducted a consolidated reconsideration under  
46.32 paragraph (b) of a maltreatment determination and a disqualification based on serious or  
46.33 recurring maltreatment, and the county subsequently disqualifies the individual based  
46.34 on that determination, the county shall conduct the reconsideration of the subsequent  
46.35 disqualification. The scope of the subsequent disqualification shall be limited to whether

47.1 the individual poses a risk of harm in accordance with section 245C.22, subdivision 4. If  
47.2 the commissioner subsequently disqualifies the individual in connection with a child foster  
47.3 care license based on the county's previous maltreatment determination, the commissioner  
47.4 shall conduct the reconsideration of the subsequent disqualification.

47.5 Sec. 34. Minnesota Statutes 2008, section 245C.27, subdivision 1, is amended to read:

47.6 Subdivision 1. **Fair hearing when disqualification is not set aside.** (a) If the  
47.7 commissioner does not set aside a disqualification of an individual under section  
47.8 245C.22 who is disqualified on the basis of a preponderance of evidence that the  
47.9 individual committed an act or acts that meet the definition of any of the crimes listed in  
47.10 section 245C.15; for a determination under section 626.556 or 626.557 of substantiated  
47.11 maltreatment that was serious or recurring under section 245C.15; or for failure to make  
47.12 required reports under section 626.556, subdivision 3; or 626.557, subdivision 3, pursuant  
47.13 to section 245C.15, subdivision 4, paragraph (b), clause (1), the individual may request  
47.14 a fair hearing under section 256.045, unless the disqualification is deemed conclusive  
47.15 under section 245C.29.

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

47.20 (c) Except as provided under paragraph (e), if the individual was disqualified  
47.21 based on a conviction ~~or of~~, admission to, or Alford Plea to any crimes listed in section  
47.22 245C.15, subdivisions 1 to 4, or for a disqualification under section 256.98, subdivision  
47.23 8, the reconsideration decision under section 245C.22 is the final agency determination  
47.24 for purposes of appeal by the disqualified individual and is not subject to a hearing under  
47.25 section 256.045. If the individual was disqualified based on a judicial determination, that  
47.26 determination is treated the same as a conviction for purposes of appeal.

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

47.29 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a  
47.30 disqualification of an individual who was disqualified based on both a preponderance  
47.31 of evidence and a conviction or admission, the individual may request a fair hearing  
47.32 under section 256.045, unless the disqualifications are deemed conclusive under section  
47.33 245C.29. The scope of the hearing conducted under section 256.045 with regard to the  
47.34 disqualification based on a conviction or admission shall be limited solely to whether the  
47.35 individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case,

48.1 the reconsideration decision under section 245C.22 is not the final agency decision for  
48.2 purposes of appeal by the disqualified individual.

48.3 Sec. 35. Minnesota Statutes 2008, section 245C.301, is amended to read:

48.4 **245C.301 NOTIFICATION OF SET-ASIDE OR VARIANCE.**

48.5 (a) Except as provided under paragraphs (b) and (c), ~~if required by the commissioner,~~  
48.6 family child care providers ~~and child care centers~~ must provide a written notification to  
48.7 parents considering enrollment of a child or parents of a child attending the family child  
48.8 care ~~or child care center~~ if the program employs or has living in the home any individual  
48.9 who is the subject of either a set-aside or variance.

48.10 (b) Notwithstanding paragraph (a), family child care license holders are not required  
48.11 to disclose that the program has an individual living in the home who is the subject of a  
48.12 set-aside or variance if:

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

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

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

48.18 (c) The notice specified in paragraph (a) is not required when the period of  
48.19 disqualification in section 245C.15, subdivisions 2 to 4, has been exceeded.

48.20 (d) Upon receipt of a notice from the commissioner that a disqualification has been  
48.21 set aside or a variance has been granted related to a current employee, child care centers  
48.22 must provide a written notification to parents of children attending the child care center  
48.23 with whom that employee may have contact. An investigation memorandum posted  
48.24 under section 245A.06, subdivision 8, or section 245A.07, subdivision 5, that reports the  
48.25 disqualification of the individual who is the subject of the notice under this paragraph is  
48.26 no longer required to be posted after the license holder provides the notice required under  
48.27 this paragraph.

48.28 Sec. 36. Minnesota Statutes 2008, section 256.045, subdivision 3, is amended to read:

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

48.31 (1) any person applying for, receiving or having received public assistance, medical  
48.32 care, or a program of social services granted by the state agency or a county agency or  
48.33 the federal Food Stamp Act whose application for assistance is denied, not acted upon



49.1 with reasonable promptness, or whose assistance is suspended, reduced, terminated, or  
49.2 claimed to have been incorrectly paid;

49.3 (2) any patient or relative aggrieved by an order of the commissioner under section  
49.4 252.27;

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

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

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

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

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

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

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

49.21 (10) except as provided under chapter 245C, an individual disqualified under  
49.22 sections 245C.14 and 245C.15, which has not been set aside under sections 245C.22  
49.23 and 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the  
49.24 evidence that the individual has committed an act or acts that meet the definition of any of  
49.25 the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports  
49.26 required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings  
49.27 regarding a maltreatment determination under clause (4) or (9) and a disqualification under  
49.28 this clause in which the basis for a disqualification is serious or recurring maltreatment,  
49.29 which has not been set aside under sections 245C.22 and 245C.23, shall be consolidated  
49.30 into a single fair hearing. In such cases, the scope of review by the human services referee  
49.31 shall include both the maltreatment determination and the disqualification. The failure to  
49.32 exercise the right to an administrative reconsideration shall not be a bar to a hearing under  
49.33 this section if federal law provides an individual the right to a hearing to dispute a finding  
49.34 of maltreatment. Individuals and organizations specified in this section may contest the  
49.35 specified action, decision, or final disposition before the state agency by submitting a  
49.36 written request for a hearing to the state agency within 30 days after receiving written

50.1 notice of the action, decision, or final disposition, or within 90 days of such written notice  
50.2 if the applicant, recipient, patient, or relative shows good cause why the request was  
50.3 not submitted within the 30-day time limit.

50.4 (b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or  
50.5 (10), is the only administrative appeal to the final agency determination specifically,  
50.6 including a challenge to the accuracy and completeness of data under section 13.04.  
50.7 Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment  
50.8 that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing  
50.9 homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a  
50.10 contested case proceeding under the provisions of chapter 14. Hearings requested under  
50.11 paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after  
50.12 July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is  
50.13 only available when there is no juvenile court or adult criminal action pending. If such  
50.14 action is filed in either court while an administrative review is pending, the administrative  
50.15 review must be suspended until the judicial actions are completed. If the juvenile court  
50.16 action or criminal charge is dismissed or the criminal action overturned, the matter may be  
50.17 considered in an administrative hearing.

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

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

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

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

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

51.1 Sec. 37. Minnesota Statutes 2008, section 256.045, subdivision 3b, is amended to read:

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

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

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

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

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

51.15 (b) If the disqualification is affirmed, the state human services referee shall  
51.16 determine whether the individual poses a risk of harm in accordance with the requirements  
51.17 of section ~~245C.16~~ 245C.22, and whether the disqualification should be set aside or not set  
51.18 aside. In determining whether the disqualification should be set aside, the human services  
51.19 referee shall consider all of the characteristics that cause the individual to be disqualified,  
51.20 including those characteristics that were not subject to review under paragraph (a), in  
51.21 order to determine whether the individual poses a risk of harm. A decision to set aside  
51.22 a disqualification that is the subject of the hearing constitutes a determination that the  
51.23 individual does not pose a risk of harm and that the individual may provide direct contact  
51.24 services in the individual program specified in the set aside. If a determination that the  
51.25 information relied upon to disqualify an individual was correct and is conclusive under  
51.26 section 245C.29, and the individual is subsequently disqualified under section 245C.14,  
51.27 the individual has a right to again request reconsideration on the risk of harm under section  
51.28 245C.21. Subsequent determinations regarding risk of harm are not subject to another  
51.29 hearing under this section.

51.30 (c) The state human services referee shall recommend an order to the commissioner  
51.31 of health, education, or human services, as applicable, who shall issue a final order. The  
51.32 commissioner shall affirm, reverse, or modify the final disposition. Any order of the  
51.33 commissioner issued in accordance with this subdivision is conclusive upon the parties  
51.34 unless appeal is taken in the manner provided in subdivision 7. In any licensing appeal  
51.35 under chapters 245A and 245C and sections 144.50 to 144.58 and 144A.02 to 144A.46,

52.1 the commissioner's determination as to maltreatment is conclusive, as provided under  
52.2 section 245C.29.

52.3 Sec. 38. Minnesota Statutes 2008, section 626.556, subdivision 2, is amended to read:

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

52.6 (a) "Family assessment" means a comprehensive assessment of child safety, risk  
52.7 of subsequent child maltreatment, and family strengths and needs that is applied to a  
52.8 child maltreatment report that does not allege substantial child endangerment. Family  
52.9 assessment does not include a determination as to whether child maltreatment occurred  
52.10 but does determine the need for services to address the safety of family members and the  
52.11 risk of subsequent maltreatment.

52.12 (b) "Investigation" means fact gathering related to the current safety of a child  
52.13 and the risk of subsequent maltreatment that determines whether child maltreatment  
52.14 occurred and whether child protective services are needed. An investigation must be used  
52.15 when reports involve substantial child endangerment, and for reports of maltreatment in  
52.16 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to  
52.17 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and  
52.18 13, and 124D.10; or in a nonlicensed personal care provider association as defined in  
52.19 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

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

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

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

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

52.31 (5) murder in the first, second, or third degree under section 609.185, 609.19, or  
52.32 609.195;

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

52.34 (7) assault in the first, second, or third degree under section 609.221, 609.222, or  
52.35 609.223;

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

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

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

53.4 (11) malicious punishment or neglect or endangerment of a child under section  
53.5 609.377 or 609.378;

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

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

53.10 (d) "Sexual abuse" means the subjection of a child by a person responsible for the  
53.11 child's care, by a person who has a significant relationship to the child, as defined in  
53.12 section 609.341, or by a person in a position of authority, as defined in section 609.341,  
53.13 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual  
53.14 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),  
53.15 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct  
53.16 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual  
53.17 abuse also includes any act which involves a minor which constitutes a violation of  
53.18 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes  
53.19 threatened sexual abuse.

53.20 (e) "Person responsible for the child's care" means (1) an individual functioning  
53.21 within the family unit and having responsibilities for the care of the child such as a  
53.22 parent, guardian, or other person having similar care responsibilities, or (2) an individual  
53.23 functioning outside the family unit and having responsibilities for the care of the child  
53.24 such as a teacher, school administrator, other school employees or agents, or other lawful  
53.25 custodian of a child having either full-time or short-term care responsibilities including,  
53.26 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,  
53.27 and coaching.

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

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

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

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

54.5 (4) failure to ensure that the child is educated as defined in sections 120A.22 and  
54.6 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's  
54.7 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

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

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

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

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

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

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

54.35 Abuse does not include reasonable and moderate physical discipline of a child  
54.36 administered by a parent or legal guardian which does not result in an injury. Abuse does

55.1 not include the use of reasonable force by a teacher, principal, or school employee as  
55.2 allowed by section 121A.582. Actions which are not reasonable and moderate include,  
55.3 but are not limited to, any of the following that are done in anger or without regard to the  
55.4 safety of the child:

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

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

55.7 (3) shaking a child under age three;

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

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

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

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

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

55.19 (9) unreasonable physical confinement or restraint not permitted under section  
55.20 609.379, including but not limited to tying, caging, or chaining; or

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

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

55.26 (i) "Facility" means:

55.27 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,  
55.28 sanitarium, or other facility or institution required to be licensed under sections 144.50 to  
55.29 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

55.30 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and  
55.31 124D.10; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56.33 Sec. 39. Minnesota Statutes 2008, section 626.556, subdivision 10e, is amended to  
56.34 read:



57.1 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family  
57.2 assessment or the investigation within 45 days of the receipt of a report. The conclusion of  
57.3 the assessment or investigation may be extended to permit the completion of a criminal  
57.4 investigation or the receipt of expert information requested within 45 days of the receipt  
57.5 of the report.

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

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

57.12 (d) If the commissioner of education conducts an assessment or investigation,  
57.13 the commissioner shall determine whether maltreatment occurred and what corrective  
57.14 or protective action was taken by the school facility. If a determination is made that  
57.15 maltreatment has occurred, the commissioner shall report to the employer, the school  
57.16 board, and any appropriate licensing entity the determination that maltreatment occurred  
57.17 and what corrective or protective action was taken by the school facility. In all other cases,  
57.18 the commissioner shall inform the school board or employer that a report was received,  
57.19 the subject of the report, the date of the initial report, the category of maltreatment alleged  
57.20 as defined in paragraph (f), the fact that maltreatment was not determined, and a summary  
57.21 of the specific reasons for the determination.

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

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

- 57.30 (1) physical abuse as defined in subdivision 2, paragraph (g);  
57.31 (2) neglect as defined in subdivision 2, paragraph (f);  
57.32 (3) sexual abuse as defined in subdivision 2, paragraph (d);  
57.33 (4) mental injury as defined in subdivision 2, paragraph (m); or  
57.34 (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

57.35 (g) For the purposes of this subdivision, a determination that child protective  
57.36 services are needed means that the local welfare agency has documented conditions

58.1 during the assessment or investigation sufficient to cause a child protection worker, as  
58.2 defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of  
58.3 maltreatment if protective intervention is not provided and that the individuals responsible  
58.4 for the child's care have not taken or are not likely to take actions to protect the child  
58.5 from maltreatment or risk of maltreatment.

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

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

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

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

58.26 (3) whether the facility or individual followed professional standards in exercising  
58.27 professional judgment.

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

58.33 (k) Individual counties may implement more detailed definitions or criteria that  
58.34 indicate which allegations to investigate, as long as a county's policies are consistent  
58.35 with the definitions in the statutes and rules and are approved by the county board. Each  
58.36 local welfare agency shall periodically inform mandated reporters under subdivision 3

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59.1 who work in the county of the definitions of maltreatment in the statutes and rules and any  
59.2 additional definitions or criteria that have been approved by the county board.

59.3 Sec. 40. Minnesota Statutes 2008, section 626.556, subdivision 10f, is amended to read:

59.4 Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion  
59.5 of a family assessment, the local welfare agency shall notify the parent or guardian  
59.6 of the child of the need for services to address child safety concerns or significant risk  
59.7 of subsequent child maltreatment. The local welfare agency and the family may also  
59.8 jointly agree that family support and family preservation services are needed. Within ten  
59.9 working days of the conclusion of an investigation, the local welfare agency or agency  
59.10 responsible for assessing or investigating the report shall notify the parent or guardian  
59.11 of the child, the person determined to be maltreating the child, and if applicable, the  
59.12 director of the facility, of the determination and a summary of the specific reasons for  
59.13 the determination. When the investigation involves a child foster care setting that is  
59.14 monitored by a private licensing agency under section 245A.16, the local welfare agency  
59.15 responsible for assessing or investigating the report shall notify the private licensing  
59.16 agency of the determination and shall provide a summary of the specific reasons for  
59.17 the determination. The notice to the private licensing agency must include identifying  
59.18 private data, but not the identity of the reporter of maltreatment. The notice must also  
59.19 include a certification that the information collection procedures under subdivision 10,  
59.20 paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to  
59.21 obtain access to other private data on the subject collected, created, or maintained under  
59.22 this section. In addition, the notice shall include the length of time that the records will be  
59.23 kept under subdivision 11c. The investigating agency shall notify the parent or guardian  
59.24 of the child who is the subject of the report, and any person or facility determined to  
59.25 have maltreated a child, of their appeal or review rights under this section or section  
59.26 256.022. The notice must also state that a finding of maltreatment may result in denial of a  
59.27 license application or background study disqualification under chapter 245C related to  
59.28 employment or services that are licensed by the Department of Human Services under  
59.29 chapter 245A, the Department of Health under chapter 144 or 144A, the Department of  
59.30 Corrections under section 241.021, and from providing services related to an unlicensed  
59.31 personal care provider organization under chapter 256B.

59.32 Sec. 41. Minnesota Statutes 2008, section 626.557, subdivision 9c, is amended to read:

59.33 Subd. 9c. **Lead agency; notifications, dispositions, determinations.** (a) Upon  
59.34 request of the reporter, the lead agency shall notify the reporter that it has received the

60.1 report, and provide information on the initial disposition of the report within five business  
60.2 days of receipt of the report, provided that the notification will not endanger the vulnerable  
60.3 adult or hamper the investigation.

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

60.6 (c) When determining whether the facility or individual is the responsible party for  
60.7 substantiated maltreatment or whether both the facility and the individual are responsible  
60.8 for substantiated maltreatment, the lead agency shall consider at least the following  
60.9 mitigating factors:

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

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

60.22 (3) whether the facility or individual followed professional standards in exercising  
60.23 professional judgment.

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

60.29 (e) The lead agency shall complete its final disposition within 60 calendar days. If  
60.30 the lead agency is unable to complete its final disposition within 60 calendar days, the lead  
60.31 agency shall notify the following persons provided that the notification will not endanger  
60.32 the vulnerable adult or hamper the investigation: (1) the vulnerable adult or the vulnerable  
60.33 adult's legal guardian, when known, if the lead agency knows them to be aware of the  
60.34 investigation; and (2) the facility, where applicable. The notice shall contain the reason for  
60.35 the delay and the projected completion date. If the lead agency is unable to complete its  
60.36 final disposition by a subsequent projected completion date, the lead agency shall again

61.1 notify the vulnerable adult or the vulnerable adult's legal guardian, when known if the lead  
61.2 agency knows them to be aware of the investigation, and the facility, where applicable,  
61.3 of the reason for the delay and the revised projected completion date provided that the  
61.4 notification will not endanger the vulnerable adult or hamper the investigation. A lead  
61.5 agency's inability to complete the final disposition within 60 calendar days or by any  
61.6 projected completion date does not invalidate the final disposition.

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

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

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

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

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

62.1 Sec. 42. Minnesota Statutes 2008, section 626.557, subdivision 12b, is amended to  
62.2 read:

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

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

62.13 (b) The commissioners of health and human services shall prepare an investigation  
62.14 memorandum for each report alleging maltreatment investigated under this section.  
62.15 County social service agencies must maintain private data on individuals but are not  
62.16 required to prepare an investigation memorandum. During an investigation by the  
62.17 commissioner of health or the commissioner of human services, data collected under this  
62.18 section are confidential data on individuals or protected nonpublic data as defined in  
62.19 section 13.02. Upon completion of the investigation, the data are classified as provided in  
62.20 clauses (1) to (3) and paragraph (c).

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

- 62.23 (i) the name of the facility investigated;
- 62.24 (ii) a statement of the nature of the alleged maltreatment;
- 62.25 (iii) pertinent information obtained from medical or other records reviewed;
- 62.26 (iv) the identity of the investigator;
- 62.27 (v) a summary of the investigation's findings;
- 62.28 (vi) statement of whether the report was found to be substantiated, inconclusive,  
62.29 false, or that no determination will be made;
- 62.30 (vii) a statement of any action taken by the facility;
- 62.31 (viii) a statement of any action taken by the lead agency; and
- 62.32 (ix) when a lead agency's determination has substantiated maltreatment, a statement  
62.33 of whether an individual, individuals, or a facility were responsible for the substantiated  
62.34 maltreatment, if known.

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

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

63.6 (i) the name of the vulnerable adult;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64.4 (g) Lead agencies, prosecuting authorities, and law enforcement agencies may  
64.5 exchange not public data, as defined in section 13.02, if the agency or authority requesting  
64.6 the data determines that the data are pertinent and necessary to the requesting agency in  
64.7 initiating, furthering, or completing an investigation under this section. Data collected  
64.8 under this section must be made available to prosecuting authorities and law enforcement  
64.9 officials, local county agencies, and licensing agencies investigating the alleged  
64.10 maltreatment under this section. The lead agency shall exchange not public data with the  
64.11 vulnerable adult maltreatment review panel established in section 256.021 if the data are  
64.12 pertinent and necessary for a review requested under that section. Upon completion of the  
64.13 review, not public data received by the review panel must be returned to the lead agency.

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

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

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

64.24 Sec. 43. Minnesota Statutes 2008, section 626.5572, subdivision 13, is amended to  
64.25 read:

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

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

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



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

65.3 Sec. 44. **REPEALER.**

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

65.5 **ARTICLE 3**

65.6 **DEPARTMENT OF HUMAN SERVICES LICENSING TECHNICAL**

65.7 Section 1. Minnesota Statutes 2008, section 245C.03, subdivision 4, is amended to read:

65.8 Subd. 4. **Personnel agencies; educational programs; professional services**  
65.9 **agencies.** The commissioner also may conduct studies on individuals specified in  
65.10 subdivision 1, paragraph (a), clauses (3) and (4), when the studies are initiated by:

65.11 (1) personnel pool agencies;

65.12 (2) temporary personnel agencies;

65.13 (3) educational programs that train individuals by providing direct contact services  
65.14 in licensed programs; and

65.15 (4) professional services agencies that are not licensed and which contract with  
65.16 licensed programs to provide direct contact services or individuals who provide direct  
65.17 contact services.

65.18 Sec. 2. Minnesota Statutes 2008, section 245C.08, subdivision 1, is amended to read:

65.19 Subdivision 1. **Background studies conducted by commissioner of human**  
65.20 **services.** (a) For a background study conducted by the commissioner, the commissioner  
65.21 shall review:

65.22 (1) information related to names of substantiated perpetrators of maltreatment of  
65.23 vulnerable adults that has been received by the commissioner as required under section  
65.24 626.557, subdivision 9c, paragraph (i);

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

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

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

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

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

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

66.5 (ii) information from national crime information databases, when the background  
66.6 study object is 18 years of age or older.

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

66.11 Sec. 3. Minnesota Statutes 2008, section 245C.08, subdivision 2, is amended to read:

66.12 Subd. 2. **Background studies conducted by a county agency.** (a) For a background  
66.13 study conducted by a county agency for adult foster care, family adult day services, and  
66.14 family child care services, the commissioner shall review:

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

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

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

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

66.23 (c) Notwithstanding expungement by a court, the county agency may consider  
66.24 information obtained under paragraph (a), clause (3), unless the commissioner received  
66.25 notice of the petition for expungement and the court order for expungement is directed  
66.26 specifically to the commissioner.

66.27 Sec. 4. Minnesota Statutes 2008, section 245C.08, subdivision 4, is amended to read:

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

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

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

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

67.8 (e) Juvenile courts shall provide orders of involuntary and voluntary termination of  
67.9 parental rights under section 260C.301 to the commissioner upon request for purposes of  
67.10 conducting a background study under this chapter.

67.11 Sec. 5. Minnesota Statutes 2008, section 245C.14, subdivision 2, is amended to read:

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

67.16 (b) No individual who is disqualified following a background study under section  
67.17 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), or as provided elsewhere  
67.18 in statute who is disqualified as a result of this section, may be allowed access to persons  
67.19 served by the program unless the commissioner has provided written notice under section  
67.20 245C.17 stating that:

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

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

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

67.28 Sec. 6. Minnesota Statutes 2008, section 299C.61, subdivision 6, is amended to read:

67.29 Subd. 6. **Children's service worker.** "Children's service worker" means a person  
67.30 who has, may have, or seeks to have access to a child to whom the children's service  
67.31 provider provides children's services, and who:

67.32 (1) is employed by, volunteers with, or seeks to be employed by or volunteer with  
67.33 a children's service provider; ~~or~~

68.1 (2) is an independent contractor who provides children's services to a children's  
68.2 service provider; or  
68.3 (3) owns, operates, or seeks to own or operate a children's service provider.

68.4 Sec. 7. Minnesota Statutes 2008, section 299C.62, subdivision 3, is amended to read:

68.5 Subd. 3. **Children's service worker rights.** (a) The children's service provider  
68.6 shall notify the children's service worker of the children's service worker's rights under  
68.7 paragraph (b).

68.8 (b) A children's service worker who is the subject of a background check request  
68.9 has the following rights:

68.10 (1) the right to be informed that a children's service provider will request a  
68.11 background check on the children's service worker:

68.12 (i) for purposes of the children's service worker's application to be employed by,  
68.13 volunteer with, be an independent contractor for, or be an owner of a children's service  
68.14 provider or for purposes of continuing as an employee, volunteer, independent contractor,  
68.15 or owner; and

68.16 (ii) to determine whether the children's service worker has been convicted of any  
68.17 crime specified in section 299C.61, subdivision 2 or 4;

68.18 (2) the right to be informed by the children's service provider of the superintendent's  
68.19 response to the background check and to obtain from the children's service provider a copy  
68.20 of the background check report;

68.21 (3) the right to obtain from the superintendent any record that forms the basis for  
68.22 the report;

68.23 (4) the right to challenge the accuracy and completeness of any information  
68.24 contained in the report or record pursuant to section 13.04, subdivision 4;

68.25 (5) the right to be informed by the children's service provider if the children's  
68.26 service worker's application to be employed with, volunteer with, be an independent  
68.27 contractor for, or be an owner of a children's service provider, or to continue as an  
68.28 employee, volunteer, independent contractor, or owner, has been denied because of the  
68.29 superintendent's response; and

68.30 (6) the right not to be required directly or indirectly to pay the cost of the background  
68.31 check.

68.32 Sec. 8. Minnesota Statutes 2008, section 299C.62, subdivision 4, is amended to read:

68.33 Subd. 4. **Response of bureau.** The superintendent shall respond to a background  
68.34 check request within a reasonable time after receiving the signed, written document

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69.1 described in subdivision 2. The superintendent shall provide the children's service  
69.2 provider with a copy of the applicant's criminal record or a statement that the applicant is  
69.3 not the subject of a criminal history record at the bureau. It is the responsibility of the  
69.4 service provider to determine if the applicant qualifies as an employee ~~or~~ volunteer, or  
69.5 independent contractor under this section.

APPENDIX  
Article locations in s1447-3

ARTICLE 1	DATA PRACTICES .....	Page.Ln 1.17
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APPENDIX  
Repealed Minnesota Statutes: s1447-3

**245C.10 BACKGROUND STUDY; FEES.**

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