

1.1 A bill for an act

1.2 relating to state government; making changes to human services licensing  
1.3 provisions; Department of Human Services hearings; modifying background  
1.4 study requirements, disqualifications, and data classifications; allowing  
1.5 the commissioner of administration to transfer real property; requiring the  
1.6 commissioners of human services and commerce to issue reports on consumer  
1.7 satisfaction; amending Minnesota Statutes 2008, sections 144A.071, subdivision  
1.8 4c; 245A.03, by adding a subdivision; 245A.07, subdivision 2a; 245A.30;  
1.9 245A.66; 245B.05, subdivision 7; 245C.02, subdivision 18; 245C.27, subdivision  
1.10 2; 245C.28, subdivision 3; 256B.092, subdivision 4d; 626.556, subdivision  
1.11 10i; 626.557, subdivision 9d; Minnesota Statutes 2009 Supplement, sections  
1.12 245A.03, subdivision 2; 245A.04, subdivisions 5, 7; 245A.07, subdivisions 1, 3;  
1.13 245A.144; 245A.50, subdivision 5; 245C.15, subdivision 2; 245C.20; 245C.22,  
1.14 subdivision 7; 245C.27, subdivision 1; 256.045, subdivision 3; 626.556,  
1.15 subdivisions 2, 10e; repealing Minnesota Statutes 2008, section 256B.0919,  
1.16 subdivision 4; Minnesota Rules, part 2500.5000.

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

1.18 **ARTICLE 1**

1.19 **LICENSING**

1.20 Section 1. Minnesota Statutes 2008, section 144A.071, subdivision 4c, is amended to  
1.21 read:

1.22 Subd. 4c. **Exceptions for replacement beds after June 30, 2003.** (a) The  
1.23 commissioner of health, in coordination with the commissioner of human services, may  
1.24 approve the renovation, replacement, upgrading, or relocation of a nursing home or  
1.25 boarding care home, under the following conditions:

1.26 (1) to license and certify an 80-bed city-owned facility in Nicollet County to be  
1.27 constructed on the site of a new city-owned hospital to replace an existing 85-bed facility  
1.28 attached to a hospital that is also being replaced. The threshold allowed for this project

2.1 under section 144A.073 shall be the maximum amount available to pay the additional  
2.2 medical assistance costs of the new facility;

2.3 (2) to license and certify 29 beds to be added to an existing 69-bed facility in St.  
2.4 Louis County, provided that the 29 beds must be transferred from active or layaway status  
2.5 at an existing facility in St. Louis County that had 235 beds on April 1, 2003.

2.6 The licensed capacity at the 235-bed facility must be reduced to 206 beds, but the payment  
2.7 rate at that facility shall not be adjusted as a result of this transfer. The operating payment  
2.8 rate of the facility adding beds after completion of this project shall be the same as it was  
2.9 on the day prior to the day the beds are licensed and certified. This project shall not  
2.10 proceed unless it is approved and financed under the provisions of section 144A.073;

2.11 (3) to license and certify a new 60-bed facility in Austin, provided that: (i) 45 of  
2.12 the new beds are transferred from a 45-bed facility in Austin under common ownership  
2.13 that is closed and 15 of the new beds are transferred from a 182-bed facility in Albert Lea  
2.14 under common ownership; (ii) the commissioner of human services is authorized by the  
2.15 2004 legislature to negotiate budget-neutral planned nursing facility closures; and (iii)  
2.16 money is available from planned closures of facilities under common ownership to make  
2.17 implementation of this clause budget-neutral to the state. The bed capacity of the Albert  
2.18 Lea facility shall be reduced to 167 beds following the transfer. Of the 60 beds at the  
2.19 new facility, 20 beds shall be used for a special care unit for persons with Alzheimer's  
2.20 disease or related dementias;

2.21 (4) to license and certify up to 80 beds transferred from an existing state-owned  
2.22 nursing facility in Cass County to a new facility located on the grounds of the  
2.23 Ah-Gwah-Ching campus. The operating cost payment rates for the new facility shall be  
2.24 determined based on the interim and settle-up payment provisions of Minnesota Rules,  
2.25 part 9549.0057, and the reimbursement provisions of section 256B.431. The property  
2.26 payment rate for the first three years of operation shall be \$35 per day. For subsequent  
2.27 years, the property payment rate of \$35 per day shall be adjusted for inflation as provided  
2.28 in section 256B.434, subdivision 4, paragraph (c), as long as the facility has a contract  
2.29 under section 256B.434; ~~and~~

2.30 (5) to initiate a pilot program to license and certify up to 80 beds transferred from  
2.31 an existing county-owned nursing facility in Steele County relocated to the site of a new  
2.32 acute care facility as part of the county's Communities for a Lifetime comprehensive plan  
2.33 to create innovative responses to the aging of its population. Upon relocation to the new  
2.34 site, the nursing facility shall delicense 28 beds. The property payment rate for the first  
2.35 three years of operation of the new facility shall be increased by an amount as calculated  
2.36 according to items (i) to (v):

3.1 (i) compute the estimated decrease in medical assistance residents served by the  
3.2 nursing facility by multiplying the decrease in licensed beds by the historical percentage  
3.3 of medical assistance resident days;

3.4 (ii) compute the annual savings to the medical assistance program from the  
3.5 delicensure of 28 beds by multiplying the anticipated decrease in medical assistance  
3.6 residents, determined in item (i), by the existing facility's weighted average payment rate  
3.7 multiplied by 365;

3.8 (iii) compute the anticipated annual costs for community-based services by  
3.9 multiplying the anticipated decrease in medical assistance residents served by the nursing  
3.10 facility, determined in item (i), by the average monthly elderly waiver service costs for  
3.11 individuals in Steele County multiplied by 12;

3.12 (iv) subtract the amount in item (iii) from the amount in item (ii);

3.13 (v) divide the amount in item (iv) by an amount equal to the relocated nursing  
3.14 facility's occupancy factor under section 256B.431, subdivision 3f, paragraph (c),  
3.15 multiplied by the historical percentage of medical assistance resident days.

3.16 For subsequent years, the adjusted property payment rate shall be adjusted for  
3.17 inflation as provided in section 256B.434, subdivision 4, paragraph (c), as long as the  
3.18 facility has a contract under section 256B.434-; and

3.19 (6) to consolidate and relocate nursing facility beds to a new site in Goodhue County  
3.20 and to integrate these services with other community-based programs and services under a  
3.21 communities for a lifetime pilot program and comprehensive plan to create innovative  
3.22 responses to the aging of its population. Eighty beds in the city of Red Wing shall be  
3.23 transferred from the downsizing and relocation of an existing 84-bed, hospital-owned  
3.24 nursing facility and the entire closure or downsizing of beds from a 65-bed nonprofit  
3.25 nursing facility in the community resulting in the delicensure of 69 beds in the two  
3.26 existing facilities. Notwithstanding the carryforward of the approval authority in section  
3.27 144A.073, subdivision 11, the funding approved in April 2009 by the commissioner of  
3.28 health for a project in Goodhue County shall not carry forward. The closure of the 69 beds  
3.29 shall not be eligible for a planned closure rate adjustment under section 256B.437. The  
3.30 construction project permitted in this clause shall not be eligible for a threshold project  
3.31 rate adjustment under section 256B.434, subdivision 4f. The property payment rate for  
3.32 the first three years of operation of the new facility shall be increased by an amount as  
3.33 calculated according to items (i) to (vi):

3.34 (i) compute the estimated decrease in medical assistance residents served by both  
3.35 nursing facilities by multiplying the difference between the occupied beds of the two  
3.36 nursing facilities for the reporting year ending September 30, 2009, and the projected

4.1 occupancy of the facility at 95 percent occupancy by the historical percentage of medical  
4.2 assistance resident days;

4.3 (ii) compute the annual savings to the medical assistance program from the  
4.4 delicensure by multiplying the anticipated decrease in the medical assistance residents,  
4.5 determined in item (i), by the hospital-owned nursing facility weighted average payment  
4.6 rate multiplied by 365;

4.7 (iii) compute the anticipated annual costs for community-based services by  
4.8 multiplying the anticipated decrease in medical assistance residents served by the  
4.9 facilities, determined in item (i), by the average monthly elderly waiver service costs for  
4.10 individuals in Goodhue County multiplied by 12;

4.11 (iv) subtract the amount in item (iii) from the amount in item (ii);

4.12 (v) multiply the amount in item (iv) by 48.5 percent; and

4.13 (vi) divide the difference of the amount in item (iv) and the amount in item (v) by an  
4.14 amount equal to the relocated nursing facility's occupancy factor under section 256B.431,  
4.15 subdivision 3f, paragraph (c), multiplied by the historical percentage of medical assistance  
4.16 resident days.

4.17 For subsequent years, the adjusted property payment rate shall be adjusted for  
4.18 inflation as provided in section 256B.434, subdivision 4, paragraph (c), as long as the  
4.19 facility has a contract under section 256B.434.

4.20 (b) Projects approved under this subdivision shall be treated in a manner equivalent  
4.21 to projects approved under subdivision 4a.

4.22 Sec. 2. Minnesota Statutes 2009 Supplement, section 245A.03, subdivision 2, is  
4.23 amended to read:

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

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

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

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

4.34 (4) sheltered workshops or work activity programs that are certified by the  
4.35 commissioner of employment and economic development;

- 5.1 (5) programs operated by a public school for children 33 months or older;
- 5.2 (6) nonresidential programs primarily for children that provide care or supervision  
5.3 for periods of less than three hours a day while the child's parent or legal guardian is in  
5.4 the same building as the nonresidential program or present within another building that is  
5.5 directly contiguous to the building in which the nonresidential program is located;
- 5.6 (7) nursing homes or hospitals licensed by the commissioner of health except as  
5.7 specified under section 245A.02;
- 5.8 (8) board and lodge facilities licensed by the commissioner of health that do not  
5.9 ~~provide services for five or more persons whose primary diagnosis is mental illness that do~~  
5.10 ~~not provide intensive residential treatment~~ children's residential services under Minnesota  
5.11 Rules, chapter 2960, mental health or chemical dependency treatment;
- 5.12 (9) homes providing programs for persons placed by a county or a licensed agency  
5.13 for legal adoption, unless the adoption is not completed within two years;
- 5.14 (10) programs licensed by the commissioner of corrections;
- 5.15 (11) recreation programs for children or adults that are operated or approved by a  
5.16 park and recreation board whose primary purpose is to provide social and recreational  
5.17 activities;
- 5.18 (12) programs operated by a school as defined in section 120A.22, subdivision 4;  
5.19 YMCA as defined in section 315.44; YWCA as defined in section 315.44; or JCC as  
5.20 defined in section 315.51, whose primary purpose is to provide child care or services to  
5.21 school-age children;
- 5.22 (13) Head Start nonresidential programs which operate for less than 45 days in  
5.23 each calendar year;
- 5.24 (14) noncertified boarding care homes unless they provide services for five or more  
5.25 persons whose primary diagnosis is mental illness or a developmental disability;
- 5.26 (15) programs for children such as scouting, boys clubs, girls clubs, and sports and  
5.27 art programs, and nonresidential programs for children provided for a cumulative total of  
5.28 less than 30 days in any 12-month period;
- 5.29 (16) residential programs for persons with mental illness, that are located in hospitals;
- 5.30 (17) the religious instruction of school-age children; Sabbath or Sunday schools; or  
5.31 the congregate care of children by a church, congregation, or religious society during the  
5.32 period used by the church, congregation, or religious society for its regular worship;
- 5.33 (18) camps licensed by the commissioner of health under Minnesota Rules, chapter  
5.34 4630;
- 5.35 (19) mental health outpatient services for adults with mental illness or children  
5.36 with emotional disturbance;

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

6.3 (21) unrelated individuals who provide out-of-home respite care services to persons  
6.4 with developmental disabilities from a single related family for no more than 90 days in a  
6.5 12-month period and the respite care services are for the temporary relief of the person's  
6.6 family or legal representative;

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

6.9 (23) community support services programs as defined in section 245.462, subdivision  
6.10 6, and family community support services as defined in section 245.4871, subdivision 17;

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

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

6.15 (26) chemical dependency or substance abuse treatment activities of licensed  
6.16 professionals in private practice as defined in Minnesota Rules, part 9530.6405, subpart  
6.17 15, when the treatment activities are not paid for by the consolidated chemical dependency  
6.18 treatment fund;

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

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

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

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

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

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

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

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

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

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

7.10 Sec. 3. Minnesota Statutes 2008, section 245A.03, is amended by adding a subdivision  
7.11 to read:

7.12 **Subd. 9. Permitted services by an individual who is related.** Notwithstanding  
7.13 subdivision 2, paragraph (a), clause (1), and subdivision 7, an individual who is related to a  
7.14 person receiving supported living services may provide licensed services to that person if:

7.15 (1) the person who receives supported living services received these services in a  
7.16 residential site on July 1, 2005;

7.17 (2) the services under clause (1) were provided in a corporate foster care setting for  
7.18 adults and were funded by the developmental disabilities home and community-based  
7.19 services waiver defined in section 256B.092;

7.20 (3) the individual who is related obtains and maintains both a license under  
7.21 chapter 245B and an adult foster care license under Minnesota Rules, parts 9555.5105  
7.22 to 9555.6265; and

7.23 (4) the individual who is related is not the guardian of the person receiving supported  
7.24 living services.

7.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.26 Sec. 4. Minnesota Statutes 2009 Supplement, section 245A.04, subdivision 5, is  
7.27 amended to read:

7.28 **Subd. 5. Commissioner's right of access.** When the commissioner is exercising  
7.29 the powers conferred by this chapter and sections 245.69, 626.556, and 626.557, the  
7.30 commissioner must be given access to the physical plant and grounds where the program  
7.31 is provided, documents and records, including records maintained in electronic format,  
7.32 persons served by the program, and staff whenever the program is in operation and the  
7.33 information is relevant to inspections or investigations conducted by the commissioner.  
7.34 The commissioner must be given access without prior notice and as often as the

8.1 commissioner considers necessary if the commissioner is ~~conducting an investigation~~  
8.2 ~~of allegations of~~ investigating alleged maltreatment or other, conducting a licensing  
8.3 inspection, or investigating an alleged violation of applicable laws or rules. In conducting  
8.4 inspections, the commissioner may request and shall receive assistance from other state,  
8.5 county, and municipal governmental agencies and departments. The applicant or license  
8.6 holder shall allow the commissioner to photocopy, photograph, and make audio and video  
8.7 tape recordings during the inspection of the program at the commissioner's expense. The  
8.8 commissioner shall obtain a court order or the consent of the subject of the records or the  
8.9 parents or legal guardian of the subject before photocopying hospital medical records.

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

8.14 Sec. 5. Minnesota Statutes 2009 Supplement, section 245A.04, subdivision 7, is  
8.15 amended to read:

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

- 8.19 (1) the name of the license holder;
- 8.20 (2) the address of the program;
- 8.21 (3) the effective date and expiration date of the license;
- 8.22 (4) the type of license;
- 8.23 (5) the maximum number and ages of persons that may receive services from the  
8.24 program; and
- 8.25 (6) any special conditions of licensure.

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

- 8.28 (1) the commissioner is unable to conduct the evaluation or observation required  
8.29 by subdivision 4, paragraph (a), clauses (3) and (4), because the program is not yet  
8.30 operational;
- 8.31 (2) certain records and documents are not available because persons are not yet  
8.32 receiving services from the program; and
- 8.33 (3) the applicant complies with applicable laws and rules in all other respects.

8.34 (c) A decision by the commissioner to issue a license does not guarantee that any  
8.35 person or persons will be placed or cared for in the licensed program. A license shall not

9.1 be transferable to another individual, corporation, partnership, voluntary association, other  
9.2 organization, or controlling individual or to another location.

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

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

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

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

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

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

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

9.18 (f) The commissioner shall not issue or reissue a license if an individual living in  
9.19 the household where the licensed services will be provided as specified under section  
9.20 245C.03, subdivision 1, has been disqualified and the disqualification has not been set  
9.21 aside and no variance has been granted.

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

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

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

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

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

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

10.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.16 Sec. 6. Minnesota Statutes 2009 Supplement, section 245A.07, subdivision 1, is  
10.17 amended to read:

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

10.25 (b) If a license holder appeals the suspension or revocation of a license and the  
10.26 license holder continues to operate the program pending a final order on the appeal, ~~and~~  
10.27 ~~the license expires during this time period,~~ the commissioner shall issue the license holder  
10.28 a temporary provisional license. ~~The temporary provisional license is effective on the date~~  
10.29 ~~issued and expires on the date that a final order is issued.~~ Unless otherwise specified by the  
10.30 commissioner, variances in effect on the date of the license sanction under appeal continue  
10.31 under the temporary provisional license. If a license holder fails to comply with applicable  
10.32 law or rule while operating under a temporary provisional license, the commissioner may  
10.33 impose additional sanctions under this section and section 245A.06, and may terminate  
10.34 any prior variance. ~~If the license holder prevails on the appeal and the effective period~~  
10.35 ~~of the previous license has expired~~ a temporary provisional license is set to expire, a

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11.1 new temporary provisional license shall be issued to the license holder upon payment of  
11.2 any fee required under section 245A.10. ~~The effective date of the new license shall be~~  
11.3 ~~retroactive to the date the license would have shown had no sanction been initiated. The~~  
11.4 ~~expiration date shall be the expiration date of that license had no license sanction been~~  
11.5 ~~initiated.~~ The temporary provisional license shall expire on the date the final order is  
11.6 issued. If the license holder prevails on the appeal, a new nonprovisional license shall  
11.7 be issued for the remainder of the current license period.

11.8 (c) If a license holder is under investigation and the license is due to expire  
11.9 before completion of the investigation, the program shall be issued a new license upon  
11.10 completion of the reapplication requirements and payment of any applicable license fee.  
11.11 Upon completion of the investigation, a licensing sanction may be imposed against the  
11.12 new license under this section, section 245A.06, or 245A.08.

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

11.17 Sec. 7. Minnesota Statutes 2008, section 245A.07, subdivision 2a, is amended to read:

11.18 Subd. 2a. **Immediate suspension expedited hearing.** (a) Within five working days  
11.19 of receipt of the license holder's timely appeal, the commissioner shall request assignment  
11.20 of an administrative law judge. The request must include a proposed date, time, and place  
11.21 of a hearing. A hearing must be conducted by an administrative law judge within 30  
11.22 calendar days of the request for assignment, unless an extension is requested by either  
11.23 party and granted by the administrative law judge for good cause. The commissioner shall  
11.24 issue a notice of hearing by certified mail or personal service at least ten working days  
11.25 before the hearing. The scope of the hearing shall be limited solely to the issue of whether  
11.26 the temporary immediate suspension should remain in effect pending the commissioner's  
11.27 final order under section 245A.08, regarding a licensing sanction issued under subdivision  
11.28 3 following the immediate suspension. The burden of proof in expedited hearings under  
11.29 this subdivision shall be limited to the commissioner's demonstration that reasonable  
11.30 cause exists to believe that the license holder's actions or failure to comply with applicable  
11.31 law or rule poses, or if the actions of other individuals or conditions in the program poses  
11.32 an imminent risk of harm to the health, safety, or rights of persons served by the program.  
11.33 "Reasonable cause" means there exist specific articulable facts or circumstances which  
11.34 provide the commissioner with a reasonable suspicion that there is an imminent risk of  
11.35 harm to the health, safety, or rights of persons served by the program.

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

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

12.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

12.16 Sec. 8. Minnesota Statutes 2009 Supplement, section 245A.07, subdivision 3, is  
12.17 amended to read:

12.18 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may  
12.19 suspend or revoke a license, or impose a fine if a license holder fails to comply fully with  
12.20 applicable laws or rules, if a license holder, a controlling individual, or an individual  
12.21 living in the household where the licensed services are provided or is otherwise subject  
12.22 to a background study has a disqualification which has not been set aside under section  
12.23 245C.22, or if a license holder knowingly withholds relevant information from or gives  
12.24 false or misleading information to the commissioner in connection with an application  
12.25 for a license, in connection with the background study status of an individual, during an  
12.26 investigation, or regarding compliance with applicable laws or rules. A license holder  
12.27 who has had a license suspended, revoked, or has been ordered to pay a fine must be  
12.28 given notice of the action by certified mail or personal service. If mailed, the notice  
12.29 must be mailed to the address shown on the application or the last known address of the  
12.30 license holder. The notice must state the reasons the license was suspended, revoked, or  
12.31 a fine was ordered.

12.32 (b) If the license was suspended or revoked, the notice must inform the license  
12.33 holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts  
12.34 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking  
12.35 a license. The appeal of an order suspending or revoking a license must be made in writing

13.1 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to  
13.2 the commissioner within ten calendar days after the license holder receives notice that the  
13.3 license has been suspended or revoked. If a request is made by personal service, it must be  
13.4 received by the commissioner within ten calendar days after the license holder received  
13.5 the order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits  
13.6 a timely appeal of an order suspending or revoking a license, the license holder may  
13.7 continue to operate the program as provided in section 245A.04, subdivision 7, paragraphs  
13.8 (g) and (h), until the commissioner issues a final order on the suspension or revocation.

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

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

13.24 (3) A license holder shall promptly notify the commissioner of human services,  
13.25 in writing, when a violation specified in the order to forfeit a fine is corrected. If upon  
13.26 reinspection the commissioner determines that a violation has not been corrected as  
13.27 indicated by the order to forfeit a fine, the commissioner may issue a second fine. The  
13.28 commissioner shall notify the license holder by certified mail or personal service that a  
13.29 second fine has been assessed. The license holder may appeal the second fine as provided  
13.30 under this subdivision.

13.31 (4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for  
13.32 each determination of maltreatment of a child under section 626.556 or the maltreatment  
13.33 of a vulnerable adult under section 626.557 for which the license holder is determined  
13.34 responsible for the maltreatment under section 626.556, subdivision 10e, paragraph (i),  
13.35 or 626.557, subdivision 9c, paragraph (c); the license holder shall forfeit \$200 for each  
13.36 occurrence of a violation of law or rule governing matters of health, safety, or supervision,

14.1 including but not limited to the provision of adequate staff-to-child or adult ratios, and  
14.2 failure to comply with background study requirements under chapter 245C; and the license  
14.3 holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those  
14.4 subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means  
14.5 each violation identified in the commissioner's fine order. Fines assessed against a license  
14.6 holder that holds a license to provide the residential-based habilitation services, as defined  
14.7 under section 245B.02, subdivision 20, and a license to provide foster care, may be  
14.8 assessed against both licenses for the same occurrence, but the combined amount of the  
14.9 fines shall not exceed the amount specified in this clause for that occurrence.

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

14.14 Sec. 9. Minnesota Statutes 2009 Supplement, section 245A.144, is amended to read:

14.15 **245A.144 SUDDEN INFANT DEATH AND SHAKEN BABY SYNDROME**  
14.16 **FOR CHILD FOSTER CARE PROVIDERS.**

14.17 (a) Licensed child foster care providers that care for infants or children through five  
14.18 years of age must document that before staff persons and caregivers assist in the care of  
14.19 infants or children through five years of age, they are instructed on the standards in section  
14.20 245A.1435 and receive training on reducing the risk of sudden infant death syndrome  
14.21 and shaken baby syndrome for infants and young children. This section does not apply  
14.22 to emergency relative ~~foster care~~ placement under section 245A.035. The training on  
14.23 reducing the risk of sudden infant death syndrome and shaken baby syndrome may be  
14.24 provided as:

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

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

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

15.1 (c) Training for child foster care providers must be approved by the county or private  
15.2 licensing agency ~~and~~ that is responsible for monitoring the child foster care provider  
15.3 under section 245A.16. The approved training fulfills, in part, training required under  
15.4 Minnesota Rules, part 2960.3070.

15.5 Sec. 10. Minnesota Statutes 2008, section 245A.30, is amended to read:

15.6 **245A.30 LICENSING PROHIBITION FOR CERTAIN JUVENILE**  
15.7 **FACILITIES SERVING CHILDREN.**

15.8 The commissioner may not:

15.9 (1) issue any license under Minnesota Rules, parts ~~9545.0905 to 9545.1125,~~  
15.10 2960.0010 to 2960.0710, for the residential placement of juveniles children at a facility  
15.11 if the facility accepts juveniles children who reside outside of Minnesota without an  
15.12 agreement with the entity placing the juvenile child at the facility that obligates the entity  
15.13 to pay the educational and medical expenses of the juvenile child; or

15.14 (2) renew a license under Minnesota Rules, parts ~~9545.0905 to 9545.1125,~~  
15.15 2960.0010 to 2960.0710, for the residential placement of juveniles children if the facility  
15.16 accepts juveniles children who reside outside of Minnesota without an agreement with  
15.17 the entity placing the juvenile child at the facility that obligates the entity to pay the  
15.18 educational and medical expenses of the juvenile child.

15.19 Sec. 11. Minnesota Statutes 2009 Supplement, section 245A.50, subdivision 5, is  
15.20 amended to read:

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

15.22 (a) License holders must document that before staff persons, caregivers, and helpers  
15.23 assist in the care of infants, they are instructed on the standards in section 245A.1435 and  
15.24 receive training on reducing the risk of sudden infant death syndrome. In addition, license  
15.25 holders must document that before staff persons, caregivers, and helpers assist in the care  
15.26 of infants and children under school age, they receive training on reducing the risk of  
15.27 shaken baby syndrome. The training in this subdivision may be provided as initial training  
15.28 under subdivision 1 or ongoing annual training under subdivision 7.

15.29 (b) Sudden infant death syndrome reduction training required under this subdivision  
15.30 must be at least one-half hour in length and must be completed at least once every five  
15.31 years. At a minimum, the training must address the risk factors related to sudden infant  
15.32 death syndrome, means of reducing the risk of sudden infant death syndrome in child  
15.33 care, and license holder communication with parents regarding reducing the risk of  
15.34 sudden infant death syndrome.

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

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

16.8 (e) The commissioner shall make available for viewing by all licensed child care  
16.9 providers a video presentation on the dangers associated with shaking infants and young  
16.10 children. The video presentation shall be part of the initial and ongoing annual training of  
16.11 licensed child care providers, caregivers, and helpers caring for children under school age.  
16.12 The commissioner shall provide to child care providers and interested individuals, at cost,  
16.13 copies of a video approved by the commissioner of health under section 144.574 on the  
16.14 dangers associated with shaking infants and young children.

16.15 Sec. 12. Minnesota Statutes 2008, section 245A.66, is amended to read:

16.16 **245A.66 REQUIREMENTS; MALTREATMENT OF MINORS.**

16.17 Subdivision 1. Internal review. Except for family child care settings and foster care  
16.18 for children in the license holder's residence, license holders serving children shall:

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

16.24 (i) related policies and procedures were followed;

16.25 (ii) the policies and procedures were adequate;

16.26 (iii) there is a need for additional staff training;

16.27 (iv) the reported event is similar to past events with the children or the services  
16.28 involved; and

16.29 (v) there is a need for corrective action by the license holder to protect the health and  
16.30 safety of children in care.

16.31 Based on the results of this review, the license holder must develop, document, and  
16.32 implement a corrective action plan designed to correct current lapses and prevent future  
16.33 lapses in performance by individuals or the license holder, if any;

16.34 (2) identify the primary and secondary person or position who will ensure that, when  
16.35 required, internal reviews are completed. The secondary person shall be involved when

17.1 there is reason to believe that the primary person was involved in the alleged or suspected  
17.2 maltreatment; and

17.3 (3) document that the internal review has been completed and provide documentation  
17.4 showing the review was completed to the commissioner upon the commissioner's request.  
17.5 The documentation provided to the commissioner by the license holder may consist of a  
17.6 completed checklist that verifies completion of each of the requirements of the review.

17.7 Subd. 2. Child care centers; risk reduction plan. (a) Child care centers licensed  
17.8 under this chapter and Minnesota Rules, chapter 9503, must develop a risk reduction plan  
17.9 that assesses the general risks to children served by the child care center. The license  
17.10 holder must establish procedures to minimize identified risks, train staff on the procedures,  
17.11 and annually review the procedures.

17.12 (b) The risk reduction plan must include an assessment of risk to children the center  
17.13 serves or intends to serve based on the following:

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

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

17.23 (3) an assessment of the risks presented by the environment for each facility and  
17.24 for each site, including an evaluation of the following factors: the type of grounds and  
17.25 terrain surrounding the building and the proximity to hazards, busy roads, and publicly  
17.26 accessed businesses.

17.27 (c) The risk reduction plan must include a statement of measures that will be taken  
17.28 to minimize the risk of harm presented to children. At a minimum, the risk reduction  
17.29 plan must address the following:

17.30 (1) a general description of supervision, programming, and reference to the  
17.31 policies and procedures developed and implemented to address the risks identified in the  
17.32 assessment required under paragraph (b) related to the general population served, the  
17.33 physical plant, and environment;

17.34 (2) in addition to any program-specific risks identified in paragraph (b), the plan  
17.35 must include or refer to policies and procedures developed and implemented to minimize  
17.36 the risk of harm or injury to children, including:

- 18.1 (i) closing children's fingers in doors, including cabinet doors;  
18.2 (ii) leaving children in the community without supervision;  
18.3 (iii) children leaving the facility without supervision;  
18.4 (iv) caregiver dislocation of children's elbows;  
18.5 (v) burns from hot food or beverages, whether served to children or being consumed  
18.6 by caregivers, and the devices used to warm food and beverages;  
18.7 (vi) injuries from equipment, such as scissors and glue guns;  
18.8 (vii) sunburn;  
18.9 (viii) feeding children foods to which they are allergic;  
18.10 (ix) children falling from changing tables; and  
18.11 (x) children accessing dangerous items or chemicals or coming into contact with  
18.12 residue from harmful cleaning products; and  
18.13 (3) the plan shall prohibit the accessibility of hazardous items to children.

18.14 **Subd. 3. Orientation to risk reduction plan and annual review of plan.** (a) The  
18.15 license holder shall ensure that all mandated reporters, as defined in section 626.556,  
18.16 subdivision 3, who are under the control of the license holder, receive an orientation to  
18.17 the risk reduction plan prior to first providing unsupervised direct contact services, as  
18.18 defined in section 245C.02, subdivision 11, to children, not to exceed 14 days from the  
18.19 first supervised direct contact, and annually thereafter.

18.20 (b) The license holder must review the risk reduction plan annually. When  
18.21 conducting the review, the license holder must consider incidents that have occurred in  
18.22 the center since the last review, including:

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

18.28 Following any change to the risk reduction plan, the license holder must inform mandated  
18.29 reporters, under the control of the license holder, of the changes in the risk reduction plan.

18.30 **EFFECTIVE DATE.** This section is effective January 1, 2011.

18.31 Sec. 13. Minnesota Statutes 2008, section 245B.05, subdivision 7, is amended to read:

18.32 Subd. 7. **Reporting incidents.** (a) The license holder must maintain information  
18.33 about and report incidents under section 245B.02, subdivision 10, clauses (1) to (7), to the  
18.34 consumer's legal representative, other licensed caregiver, if any, and case manager within

19.1 24 hours of the occurrence, or within 24 hours of receipt of the information unless the  
19.2 incident has been reported by another license holder. An incident under section 245B.02,  
19.3 subdivision 10, clause (8), must be reported as required under paragraph (c) unless the  
19.4 incident has been reported by another license holder.

19.5 (b) When the incident involves more than one consumer, the license holder must  
19.6 not disclose personally identifiable information about any other consumer when making  
19.7 the report to each consumer's legal representative, other licensed caregiver, if any, and  
19.8 case manager unless the license holder has the consent of a consumer or a consumer's  
19.9 legal representative.

19.10 (c) Within 24 hours of reporting maltreatment as required under section 626.556  
19.11 or 626.557, the license holder must inform the consumer's legal representative and case  
19.12 manager of the report unless there is reason to believe that the legal representative or case  
19.13 manager is involved in the suspected maltreatment. The information the license holder  
19.14 must disclose is the nature of the activity or occurrence reported, the agency that receives  
19.15 the report, and the telephone number of the Department of Human Services Licensing  
19.16 Division.

19.17 (d) Except as provided in paragraph (e), death or serious injury of the consumer  
19.18 must also be reported to the Department of Human Services Licensing Division and the  
19.19 ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

19.20 (e) When a death or serious injury occurs in a facility certified as an intermediate  
19.21 care facility for persons with developmental disabilities, the death or serious injury must  
19.22 be reported to the Department of Health, Office of Health Facility Complaints, and the  
19.23 ombudsman, as required under sections 245.91 and 245.94, subdivision 2a.

19.24 Sec. 14. Minnesota Statutes 2008, section 245C.02, subdivision 18, is amended to read:

19.25 Subd. 18. **Serious maltreatment.** (a) "Serious maltreatment" means sexual abuse,  
19.26 maltreatment resulting in death, ~~maltreatment~~ neglect resulting in serious injury which  
19.27 reasonably requires the care of a physician whether or not the care of a physician was  
19.28 sought, or abuse resulting in serious injury.

19.29 (b) For purposes of this definition, "care of a physician" is treatment received or  
19.30 ordered by a physician, physician assistant, or nurse practitioner, but does not include:

19.31 (1) diagnostic testing, assessment, or observation;

19.32 (2) the application of, recommendation to use, or prescription solely for a remedy  
19.33 that is available over the counter without a prescription; or

19.34 (3) a prescription solely for a topical antibiotic to treat burns when there is no  
19.35 follow-up appointment.

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20.1 (c) For purposes of this definition, "abuse resulting in serious injury" means: bruises,  
20.2 bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal  
20.3 injuries; head injuries with loss of consciousness; extensive second-degree or third-degree  
20.4 burns and other burns for which complications are present; extensive second-degree or  
20.5 third-degree frostbite and other frostbite for which complications are present; irreversible  
20.6 mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and  
20.7 objects that are harmful; near drowning; and heat exhaustion or sunstroke.

20.8 (d) Serious maltreatment includes neglect when it results in criminal sexual conduct  
20.9 against a child or vulnerable adult.

20.10 Sec. 15. Minnesota Statutes 2009 Supplement, section 245C.15, subdivision 2, is  
20.11 amended to read:

20.12 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section  
20.13 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,  
20.14 if any, for the offense; and (2) the individual has committed a felony-level violation  
20.15 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);  
20.16 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph  
20.17 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);  
20.18 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231  
20.19 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth  
20.20 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a  
20.21 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of  
20.22 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);  
20.23 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter  
20.24 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first  
20.25 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury  
20.26 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275  
20.27 (attempt to coerce); 609.466 (medical assistance fraud); 609.495 (aiding an offender);  
20.28 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a  
20.29 witness); 609.52 (theft); 609.521 (possession of shoplifting gear); 609.525 (bringing  
20.30 stolen goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);  
20.31 609.535 (issuance of dishonored checks); 609.562 (arson in the second degree);  
20.32 609.563 (arson in the third degree); 609.582 (burglary); 609.59 (possession of burglary  
20.33 tools); 609.611 (insurance fraud); 609.625 (aggravated forgery); 609.63 (forgery);  
20.34 609.631 (check forgery; offering a forged check); 609.635 (obtaining signature by  
20.35 false pretense); 609.66 (dangerous weapons); 609.67 (machine guns and short-barreled

21.1 shotguns); 609.687 (adulteration); 609.71 (riot); 609.713 (terroristic threats); 609.82  
21.2 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23 (indecent  
21.3 exposure), not involving a minor; repeat offenses under 617.241 (obscene materials and  
21.4 performances; distribution and exhibition prohibited; penalty); 624.713 (certain persons  
21.5 not to possess firearms); chapter 152 (drugs; controlled substance); or a felony-level  
21.6 conviction involving alcohol or drug use.

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

21.11 (c) An individual is disqualified under section 245C.14 if less than 15 years has  
21.12 passed since the ~~individual's~~ termination of the individual's parental rights under section  
21.13 260C.301, subdivision 1, paragraph (b), or subdivision 3.

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

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

21.22 (f) When a disqualification is based on a judicial determination other than a  
21.23 conviction, the disqualification period begins from the date of the court order. When a  
21.24 disqualification is based on an admission, the disqualification period begins from the  
21.25 date of an admission in court. When a disqualification is based on an Alford Plea, the  
21.26 disqualification period begins from the date the Alford Plea is entered in court. When  
21.27 a disqualification is based on a preponderance of evidence of a disqualifying act, the  
21.28 disqualification date begins from the date of the dismissal, the date of discharge of the  
21.29 sentence imposed for a conviction for a disqualifying crime of similar elements, or the  
21.30 date of the incident, whichever occurs last.

21.31 **EFFECTIVE DATE.** This section is effective retroactively from May 22, 2009.

21.32 Sec. 16. Minnesota Statutes 2009 Supplement, section 245C.20, is amended to read:

21.33 **245C.20 LICENSE HOLDER RECORD KEEPING.**

22.1            Subdivision 1. **Background studies initiated by program.** A licensed program  
22.2 shall document the date the program initiates a background study under this chapter in the  
22.3 program's personnel files. When a background study is completed under this chapter, a  
22.4 licensed program shall maintain a notice that the study was undertaken and completed  
22.5 in the program's personnel files. Except when background studies are initiated through  
22.6 the commissioner's online system, if a licensed program has not received a response from  
22.7 the commissioner under section 245C.17 within 45 days of initiation of the background  
22.8 study request, the licensed program must contact the human services licensing division  
22.9 to inquire about the status of the study. If a license holder initiates a background study  
22.10 under the commissioner's online system, but the background study subject's name does  
22.11 not appear in the list of active or recent studies initiated by that license holder, the  
22.12 license holder must either contact the human services licensing division or resubmit the  
22.13 background study information online for that individual.

22.14            Subd. 2. **Background studies initiated by others.** When a license holder relies on  
22.15 a background study initiated by a personnel pool agency, a temporary personnel agency,  
22.16 an educational program, or a professional services agency for a person required to have a  
22.17 background study completed under section 245C.03, the license holder must maintain a  
22.18 copy of the background study results in the license holder's files.

22.19            Sec. 17. Minnesota Statutes 2009 Supplement, section 245C.22, subdivision 7, is  
22.20 amended to read:

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

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

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

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

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

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

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

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

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

23.6 (3) the disqualification is rescinded because the information relied upon to disqualify  
23.7 the individual is incorrect; ~~or~~

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

23.9 As used in this clause, "relative" has the meaning given it under section 260C.007,  
23.10 subdivision 27; or

23.11 (5) the disqualified individual is a household member of a licensed foster care  
23.12 provider and:

23.13 (i) the disqualified individual previously received foster care services from this  
23.14 licensed foster care provider;

23.15 (ii) the disqualified individual was subsequently adopted by this licensed foster  
23.16 care provider; and

23.17 (iii) the disqualifying act occurred before the adoption.

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

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

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

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

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

23.27 Sec. 18. Minnesota Statutes 2008, section 256B.092, subdivision 4d, is amended to  
23.28 read:

23.29 Subd. 4d. **Medicaid reimbursement; licensed provider; related individuals.** ~~The~~  
23.30 ~~commissioner shall seek a federal amendment to the home and community-based services~~  
23.31 ~~waiver for individuals with developmental disabilities, to allow Medicaid reimbursement~~  
23.32 ~~for the provision of supported living services to a related individual is allowed~~ when the  
23.33 ~~following conditions have been met:~~ specified in section 245A.03, subdivision 9, are met.

23.34 ~~(1) the individual is 18 years of age or older;~~

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24.1 ~~(2) the provider is certified initially and annually thereafter, by the county, as~~  
24.2 ~~meeting the provider standards established in chapter 245B and the federal waiver plan;~~  
24.3 ~~(3) the provider has been certified by the county as meeting the adult foster care~~  
24.4 ~~provider standards established in Minnesota Rules, parts 9555.5105 to 9555.6265;~~  
24.5 ~~(4) the provider is not the legal guardian or conservator of the related individual; and~~  
24.6 ~~(5) the individual's service plan meets the standards of this section and specifies any~~  
24.7 ~~special conditions necessary to prevent a conflict of interest for the provider.~~

24.8 Sec. 19. Minnesota Statutes 2009 Supplement, section 626.556, subdivision 2, is  
24.9 amended to read:

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

24.12 (a) "Family assessment" means a comprehensive assessment of child safety, risk  
24.13 of subsequent child maltreatment, and family strengths and needs that is applied to a  
24.14 child maltreatment report that does not allege substantial child endangerment. Family  
24.15 assessment does not include a determination as to whether child maltreatment occurred  
24.16 but does determine the need for services to address the safety of family members and the  
24.17 risk of subsequent maltreatment.

24.18 (b) "Investigation" means fact gathering related to the current safety of a child  
24.19 and the risk of subsequent maltreatment that determines whether child maltreatment  
24.20 occurred and whether child protective services are needed. An investigation must be used  
24.21 when reports involve substantial child endangerment, and for reports of maltreatment in  
24.22 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to  
24.23 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and  
24.24 13, and 124D.10; or in a nonlicensed personal care provider association as defined in  
24.25 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

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

- 24.31 (1) egregious harm as defined in section 260C.007, subdivision 14;  
24.32 (2) sexual abuse as defined in paragraph (d);  
24.33 (3) abandonment under section 260C.301, subdivision 2;

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

25.4 (5) murder in the first, second, or third degree under section 609.185, 609.19, or  
25.5 609.195;

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

25.7 (7) assault in the first, second, or third degree under section 609.221, 609.222, or  
25.8 609.223;

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

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

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

25.12 (11) malicious punishment or neglect or endangerment of a child under section  
25.13 609.377 or 609.378;

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

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

25.18 (d) "Sexual abuse" means the subjection of a child by a person responsible for the  
25.19 child's care, by a person who has a significant relationship to the child, as defined in  
25.20 section 609.341, or by a person in a position of authority, as defined in section 609.341,  
25.21 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual  
25.22 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),  
25.23 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct  
25.24 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual  
25.25 abuse also includes any act which involves a minor which constitutes a violation of  
25.26 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes  
25.27 threatened sexual abuse.

25.28 (e) "Person responsible for the child's care" means (1) an individual functioning  
25.29 within the family unit and having responsibilities for the care of the child such as a  
25.30 parent, guardian, or other person having similar care responsibilities, or (2) an individual  
25.31 functioning outside the family unit and having responsibilities for the care of the child  
25.32 such as a teacher, school administrator, other school employees or agents, or other lawful  
25.33 custodian of a child having either full-time or short-term care responsibilities including,  
25.34 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,  
25.35 and coaching.

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

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

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

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

26.14 (4) failure to ensure that the child is educated as defined in sections 120A.22 and  
26.15 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's  
26.16 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

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

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

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

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

26.34 (9) emotional harm from a pattern of behavior which contributes to impaired  
26.35 emotional functioning of the child which may be demonstrated by a substantial and  
26.36 observable effect in the child's behavior, emotional response, or cognition that is not

27.1 within the normal range for the child's age and stage of development, with due regard to  
27.2 the child's culture.

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

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

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

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

27.16 (3) shaking a child under age three;

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

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

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

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

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

27.28 (9) unreasonable physical confinement or restraint not permitted under section  
27.29 609.379, including but not limited to tying, caging, or chaining; or

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

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

27.35 (i) "Facility" means:

28.1 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,  
28.2 sanitarium, or other facility or institution required to be licensed under sections 144.50 to  
28.3 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;

28.4 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and  
28.5 124D.10; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29.6 (q) "Nonmaltreatment mistake" means:

29.7 (1) at the time of the incident, the individual was performing duties identified in the  
29.8 center's child care program plan required under Minnesota Rules, part 9503.0045;

29.9 (2) the individual has not been determined responsible for a similar incident that  
29.10 resulted in a finding of maltreatment for at least seven years;

29.11 (3) the individual has not been determined to have committed a similar  
29.12 nonmaltreatment mistake under this paragraph for at least four years;

29.13 (4) any injury to a child resulting from the incident, if treated, is treated only with  
29.14 remedies that are available over the counter, whether ordered by a medical professional or  
29.15 not; and

29.16 (5) except for the period when the incident occurred, the facility and the individual  
29.17 providing services were both in compliance with all licensing requirements relevant to the  
29.18 incident.

29.19 This definition only applies to child care centers licensed under Minnesota Rules,  
29.20 chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantial  
29.21 maltreatment by the individual, the commissioner of human services shall determine that  
29.22 a nonmaltreatment mistake was made by the individual.

29.23 Sec. 20. Minnesota Statutes 2009 Supplement, section 626.556, subdivision 10e,  
29.24 is amended to read:

29.25 Subd. 10e. **Determinations.** (a) The local welfare agency shall conclude the family  
29.26 assessment or the investigation within 45 days of the receipt of a report. The conclusion of  
29.27 the assessment or investigation may be extended to permit the completion of a criminal  
29.28 investigation or the receipt of expert information requested within 45 days of the receipt  
29.29 of the report.

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

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

30.1 (d) If the commissioner of education conducts an assessment or investigation,  
30.2 the commissioner shall determine whether maltreatment occurred and what corrective  
30.3 or protective action was taken by the school facility. If a determination is made that  
30.4 maltreatment has occurred, the commissioner shall report to the employer, the school  
30.5 board, and any appropriate licensing entity the determination that maltreatment occurred  
30.6 and what corrective or protective action was taken by the school facility. In all other cases,  
30.7 the commissioner shall inform the school board or employer that a report was received,  
30.8 the subject of the report, the date of the initial report, the category of maltreatment alleged  
30.9 as defined in paragraph (f), the fact that maltreatment was not determined, and a summary  
30.10 of the specific reasons for the determination.

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

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

- 30.19 (1) physical abuse as defined in subdivision 2, paragraph (g);
- 30.20 (2) neglect as defined in subdivision 2, paragraph (f);
- 30.21 (3) sexual abuse as defined in subdivision 2, paragraph (d);
- 30.22 (4) mental injury as defined in subdivision 2, paragraph (m); or
- 30.23 (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

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

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

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

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

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

31.15 (3) whether the facility or individual followed professional standards in exercising  
31.16 professional judgment.

31.17 The evaluation of the facility's responsibility under clause (2) must not be based on the  
31.18 completeness of the risk assessment or risk reduction plan required under section 245A.66,  
31.19 but must be based on the facility's compliance with the regulatory standards for policies  
31.20 and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota  
31.21 Rules.

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

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

31.33 **Sec. 21. CONSUMER SATISFACTION; HUMAN SERVICES.**

32.1           (a) The commissioner of human services shall submit a memorandum each year to  
32.2 the governor and the chairs of the house of representatives and senate standing committees  
32.3 with jurisdiction over the department's programs that provides the following information:

32.4           (1) the number of calls made to each of the department's help lines by consumers  
32.5 and citizens regarding the services provided by the department;

32.6           (2) the program area related to the call;

32.7           (3) the number of calls resolved at the department;

32.8           (4) the number of calls that were referred to a county agency for resolution;

32.9           (5) the number of calls that were referred elsewhere for resolution;

32.10          (6) the number of calls that remain open; and

32.11          (7) the number of calls that were without merit.

32.12          (b) The initial memorandum shall be submitted no later than February 15, 2012, with  
32.13 subsequent memoranda submitted no later than February 15 each following year.

32.14          (c) The commissioner shall publish the annual memorandum on the department's  
32.15 Web site each year no later than March 1.

32.16          **EFFECTIVE DATE.** This section is effective January 1, 2011.

32.17          Sec. 22. **CONSUMER SATISFACTION; COMMERCE.**

32.18          (a) The commissioner of commerce shall submit a memorandum each year to the  
32.19 governor and the chairs of the house of representatives and senate standing committees  
32.20 with jurisdiction over the department's programs that provides the following information:

32.21          (1) the number of calls made to each of the department's help lines by consumers  
32.22 and citizens regarding the services provided by the department;

32.23          (2) the program area related to the call;

32.24          (3) the number of calls resolved at the department;

32.25          (4) the number of calls that were referred to a county agency for resolution;

32.26          (5) the number of calls that were referred elsewhere for resolution;

32.27          (6) the number of calls that remain open; and

32.28          (7) the number of calls that were without merit.

32.29          (b) The initial memorandum shall be submitted no later than February 15, 2012, with  
32.30 subsequent memoranda submitted no later than February 15 each following year.

32.31          (c) The commissioner shall publish the annual memorandum on the department's  
32.32 Web site each year no later than March 1.

32.33          **EFFECTIVE DATE.** This section is effective January 1, 2011.

33.1 Sec. 23. TRANSFER OF REAL PROPERTY.

33.2 (a) Notwithstanding Minnesota Statutes, sections 16B.281 to 16B.287, or other  
33.3 law, administrative rule, or commissioner's order to the contrary, the commissioner  
33.4 of administration may, in one or more transactions, sell by private sale to a federally  
33.5 recognized Indian tribe located in the state of Minnesota for fair market value all or part of  
33.6 the real property at the Brainerd Regional Human Services Center for public purposes.  
33.7 The conveyance shall be in a form approved by the attorney general and subject to  
33.8 Minnesota Statutes, section 16A.695. This paragraph expires May 15, 2015.

33.9 (b) As part of a sale transaction, the commissioner of human services may enter into  
33.10 a shared services agreement to provide or obtain utilities services on the campus.

33.11 (c) The commissioner of administration may, upon request of the commissioner of  
33.12 human services, acquire by gift or purchase, easements to provide road access and utilities  
33.13 to facilitate multiparty ownership of lands and buildings on the Brainerd campus. The  
33.14 authority to acquire easements under this paragraph expires May 15, 2015.

33.15 Sec. 24. REPEALER.

33.16 (a) Minnesota Rules, part 2500.5000, is repealed.

33.17 (b) Minnesota Statutes 2008, section 256B.0919, subdivision 4, is repealed.

33.18 **ARTICLE 2**

33.19 **DHS HEARINGS**

33.20 Section 1. Minnesota Statutes 2009 Supplement, section 245C.27, subdivision 1, is  
33.21 amended to read:

33.22 Subdivision 1. **Fair hearing ~~when disqualification is not set aside~~ following a**  
33.23 **reconsideration decision.** (a) ~~If the commissioner does not set aside a disqualification~~  
33.24 ~~of an individual under section 245C.22~~ An individual who is disqualified on the basis of  
33.25 a preponderance of evidence that the individual committed an act or acts that meet the  
33.26 definition of any of the crimes listed in section 245C.15; for a determination under section  
33.27 626.556 or 626.557 of substantiated maltreatment that was serious or recurring under  
33.28 section 245C.15; or for failure to make required reports under section 626.556, subdivision  
33.29 3; or 626.557, subdivision 3, pursuant to section 245C.15, subdivision 4, paragraph (b),  
33.30 clause (1), ~~the individual~~ may request a fair hearing under section 256.045, following  
33.31 a reconsideration decision issued under section 245C.23, unless the disqualification is  
33.32 deemed conclusive under section 245C.29.

33.33 (b) The fair hearing is the only administrative appeal of the final agency  
33.34 determination for purposes of appeal by the disqualified individual. The disqualified

34.1 individual does not have the right to challenge the accuracy and completeness of data  
34.2 under section 13.04.

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

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

34.12 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a  
34.13 disqualification of an individual who was disqualified based on both a preponderance  
34.14 of evidence and a conviction or admission, the individual may request a fair hearing  
34.15 under section 256.045, unless the disqualifications are deemed conclusive under section  
34.16 245C.29. The scope of the hearing conducted under section 256.045 with regard to the  
34.17 disqualification based on a conviction or admission shall be limited solely to whether the  
34.18 individual poses a risk of harm, according to section 256.045, subdivision 3b. In this case,  
34.19 the reconsideration decision under section 245C.22 is not the final agency decision for  
34.20 purposes of appeal by the disqualified individual.

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

34.22 Subd. 2. **Consolidated fair hearing following a reconsideration decision.** (a) If an  
34.23 individual who is disqualified on the bases of serious or recurring maltreatment requests  
34.24 a fair hearing on the maltreatment determination under section 626.556, subdivision  
34.25 10i, or 626.557, subdivision 9d, and requests a fair hearing under this section on the  
34.26 disqualification, ~~which has not been set aside,~~ following a reconsideration decision under  
34.27 section 245C.23, the scope of the fair hearing under section 256.045 shall include the  
34.28 maltreatment determination and the disqualification.

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

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

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

35.1 Subd. 3. **Employees of public employer.** (a) ~~If the commissioner does not set aside~~  
35.2 ~~the disqualification of an~~ A disqualified individual who is an employee of an employer, as  
35.3 defined in section 179A.03, subdivision 15, ~~the individual~~ may request a contested case  
35.4 hearing under chapter 14 following a reconsideration decision under section 245C.23,  
35.5 unless the disqualification is deemed conclusive under section 245C.29. The request  
35.6 for a contested case hearing must be made in writing and must be postmarked and sent  
35.7 within 30 calendar days after the employee receives notice ~~that the disqualification has not~~  
35.8 ~~been set aside~~ of the reconsideration decision. If the individual was disqualified based  
35.9 on a conviction or admission to any crimes listed in section 245C.15, the scope of the  
35.10 contested case hearing shall be limited solely to whether the individual poses a risk of  
35.11 harm pursuant to section 245C.22.

35.12 (b) ~~If the commissioner does not set aside a disqualification that is~~ When an  
35.13 individual is disqualified based on a maltreatment determination, the scope of the contested  
35.14 case hearing under paragraph (a), must include the maltreatment determination and the  
35.15 disqualification. In such cases, a fair hearing must not be conducted under section 256.045.

35.16 (c) Rules adopted under this chapter may not preclude an employee in a contested  
35.17 case hearing for a disqualification from submitting evidence concerning information  
35.18 gathered under this chapter.

35.19 (d) When an individual has been disqualified from multiple licensed programs ~~and~~  
35.20 ~~the disqualifications have not been set aside under section 245C.22,~~ if at least one of the  
35.21 disqualifications entitles the person to a contested case hearing under this subdivision,  
35.22 the scope of the contested case hearing shall include all disqualifications from licensed  
35.23 programs ~~which were not set aside.~~

35.24 (e) In determining whether the disqualification should be set aside, the administrative  
35.25 law judge shall consider all of the characteristics that cause the individual to be disqualified  
35.26 in order to determine whether the individual poses a risk of harm. The administrative law  
35.27 judge's recommendation and the commissioner's order to set aside a disqualification that is  
35.28 the subject of the hearing constitutes a determination that the individual does not pose a  
35.29 risk of harm and that the individual may provide direct contact services in the individual  
35.30 program specified in the set aside.

35.31 Sec. 4. Minnesota Statutes 2009 Supplement, section 256.045, subdivision 3, is  
35.32 amended to read:

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

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

36.6 (2) any patient or relative aggrieved by an order of the commissioner under section  
36.7 252.27;

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

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

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

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

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

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

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

36.24 (10) except as provided under chapter 245C, an individual disqualified under  
36.25 sections 245C.14 and 245C.15, ~~which has not been set aside under sections 245C.22~~  
36.26 ~~and following a reconsideration decision issued under section 245C.23~~, on the basis of  
36.27 serious or recurring maltreatment; a preponderance of the evidence that the individual  
36.28 has committed an act or acts that meet the definition of any of the crimes listed in section  
36.29 245C.15, subdivisions 1 to 4; or for failing to make reports required under section  
36.30 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment  
36.31 determination under clause (4) or (9) and a disqualification under this clause in which the  
36.32 basis for a disqualification is serious or recurring maltreatment, ~~which has not been set~~  
36.33 ~~aside under sections 245C.22 and 245C.23~~, shall be consolidated into a single fair hearing.  
36.34 In such cases, the scope of review by the human services referee shall include both the  
36.35 maltreatment determination and the disqualification. The failure to exercise the right to an  
36.36 administrative reconsideration shall not be a bar to a hearing under this section if federal

37.1 law provides an individual the right to a hearing to dispute a finding of maltreatment.  
37.2 Individuals and organizations specified in this section may contest the specified action,  
37.3 decision, or final disposition before the state agency by submitting a written request for  
37.4 a hearing to the state agency within 30 days after receiving written notice of the action,  
37.5 decision, or final disposition, or within 90 days of such written notice if the applicant,  
37.6 recipient, patient, or relative shows good cause why the request was not submitted within  
37.7 the 30-day time limit; or

37.8 (11) any person with an outstanding debt resulting from receipt of public assistance,  
37.9 medical care, or the federal Food Stamp Act who is contesting a setoff claim by the  
37.10 Department of Human Services or a county agency. The scope of the appeal is the validity  
37.11 of the claimant agency's intention to request a setoff of a refund under chapter 270A  
37.12 against the debt.

37.13 (b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or  
37.14 (10), is the only administrative appeal to the final agency determination specifically,  
37.15 including a challenge to the accuracy and completeness of data under section 13.04.  
37.16 Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment  
37.17 that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing  
37.18 homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a  
37.19 contested case proceeding under the provisions of chapter 14. Hearings requested under  
37.20 paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after  
37.21 July 1, 1997. A hearing for an individual or facility under paragraph (a), clause (9), is  
37.22 only available when there is no juvenile court or adult criminal action pending. If such  
37.23 action is filed in either court while an administrative review is pending, the administrative  
37.24 review must be suspended until the judicial actions are completed. If the juvenile court  
37.25 action or criminal charge is dismissed or the criminal action overturned, the matter may be  
37.26 considered in an administrative hearing.

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

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

37.35 (e) A vendor of medical care as defined in section 256B.02, subdivision 7, or a  
37.36 vendor under contract with a county agency to provide social services is not a party and

38.1 may not request a hearing under this section, except if assisting a recipient as provided in  
38.2 subdivision 4.

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

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

38.9 Sec. 5. Minnesota Statutes 2008, section 626.556, subdivision 10i, is amended to read:

38.10 Subd. 10i. **Administrative reconsideration; review panel.** (a) Administrative  
38.11 reconsideration is not applicable in family assessments since no determination concerning  
38.12 maltreatment is made. For investigations, except as provided under paragraph (e), an  
38.13 individual or facility that the commissioner of human services, a local social service  
38.14 agency, or the commissioner of education determines has maltreated a child, an interested  
38.15 person acting on behalf of the child, regardless of the determination, who contests  
38.16 the investigating agency's final determination regarding maltreatment, may request the  
38.17 investigating agency to reconsider its final determination regarding maltreatment. The  
38.18 request for reconsideration must be submitted in writing to the investigating agency within  
38.19 15 calendar days after receipt of notice of the final determination regarding maltreatment  
38.20 or, if the request is made by an interested person who is not entitled to notice, within  
38.21 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the  
38.22 request for reconsideration must be postmarked and sent to the investigating agency  
38.23 within 15 calendar days of the individual's or facility's receipt of the final determination. If  
38.24 the request for reconsideration is made by personal service, it must be received by the  
38.25 investigating agency within 15 calendar days after the individual's or facility's receipt of the  
38.26 final determination. Effective January 1, 2002, an individual who was determined to have  
38.27 maltreated a child under this section and who was disqualified on the basis of serious or  
38.28 recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration  
38.29 of the maltreatment determination and the disqualification. The request for reconsideration  
38.30 of the maltreatment determination and the disqualification must be submitted within 30  
38.31 calendar days of the individual's receipt of the notice of disqualification under sections  
38.32 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment  
38.33 determination and the disqualification must be postmarked and sent to the investigating  
38.34 agency within 30 calendar days of the individual's receipt of the maltreatment  
38.35 determination and notice of disqualification. If the request for reconsideration is made by

39.1 personal service, it must be received by the investigating agency within 30 calendar days  
39.2 after the individual's receipt of the notice of disqualification.

39.3 (b) Except as provided under paragraphs (e) and (f), if the investigating agency  
39.4 denies the request or fails to act upon the request within 15 working days after receiving  
39.5 the request for reconsideration, the person or facility entitled to a fair hearing under section  
39.6 256.045 may submit to the commissioner of human services or the commissioner of  
39.7 education a written request for a hearing under that section. Section 256.045 also governs  
39.8 hearings requested to contest a final determination of the commissioner of education. For  
39.9 reports involving maltreatment of a child in a facility, an interested person acting on behalf  
39.10 of the child may request a review by the Child Maltreatment Review Panel under section  
39.11 256.022 if the investigating agency denies the request or fails to act upon the request or  
39.12 if the interested person contests a reconsidered determination. The investigating agency  
39.13 shall notify persons who request reconsideration of their rights under this paragraph.  
39.14 The request must be submitted in writing to the review panel and a copy sent to the  
39.15 investigating agency within 30 calendar days of receipt of notice of a denial of a request  
39.16 for reconsideration or of a reconsidered determination. The request must specifically  
39.17 identify the aspects of the agency determination with which the person is dissatisfied.

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

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

39.27 (e) ~~Effective January 1, 2002,~~ If an individual was disqualified under sections  
39.28 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was  
39.29 serious or recurring, and the individual has requested reconsideration of the maltreatment  
39.30 determination under paragraph (a) and requested reconsideration of the disqualification  
39.31 under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and  
39.32 reconsideration of the disqualification shall be consolidated into a single reconsideration.  
39.33 If reconsideration of the maltreatment determination is denied ~~or the disqualification is~~  
39.34 ~~not set aside under sections 245C.21 to 245C.27~~ and the individual remains disqualified  
39.35 following a reconsideration decision, the individual may request a fair hearing under  
39.36 section 256.045. If an individual requests a fair hearing on the maltreatment determination

40.1 and the disqualification, the scope of the fair hearing shall include both the maltreatment  
40.2 determination and the disqualification.

40.3 (f) ~~Effective January 1, 2002,~~ If a maltreatment determination or a disqualification  
40.4 based on serious or recurring maltreatment is the basis for a denial of a license under  
40.5 section 245A.05 or a licensing sanction under section 245A.07, the license holder has the  
40.6 right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505  
40.7 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the  
40.8 contested case hearing shall include the maltreatment determination, disqualification,  
40.9 and licensing sanction or denial of a license. In such cases, a fair hearing regarding  
40.10 the maltreatment determination and disqualification shall not be conducted under  
40.11 section 256.045. Except for family child care and child foster care, reconsideration of a  
40.12 maltreatment determination as provided under this subdivision, and reconsideration of a  
40.13 disqualification as provided under section 245C.22, shall also not be conducted when:

40.14 (1) a denial of a license under section 245A.05 or a licensing sanction under section  
40.15 245A.07, is based on a determination that the license holder is responsible for maltreatment  
40.16 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

40.21 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
40.22 determination or disqualification, but does not appeal the denial of a license or a licensing  
40.23 sanction, reconsideration of the maltreatment determination shall be conducted under  
40.24 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the  
40.25 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing  
40.26 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
40.27 626.557, subdivision 9d.

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

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

41.1 Sec. 6. Minnesota Statutes 2008, section 626.557, subdivision 9d, is amended to read:

41.2 Subd. 9d. **Administrative reconsideration; review panel.** (a) Except as provided  
41.3 under paragraph (e), any individual or facility which a lead agency determines has  
41.4 maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on  
41.5 behalf of the vulnerable adult, regardless of the lead agency's determination, who contests  
41.6 the lead agency's final disposition of an allegation of maltreatment, may request the  
41.7 lead agency to reconsider its final disposition. The request for reconsideration must be  
41.8 submitted in writing to the lead agency within 15 calendar days after receipt of notice of  
41.9 final disposition or, if the request is made by an interested person who is not entitled to  
41.10 notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable  
41.11 adult's legal guardian. If mailed, the request for reconsideration must be postmarked and  
41.12 sent to the lead agency within 15 calendar days of the individual's or facility's receipt of  
41.13 the final disposition. If the request for reconsideration is made by personal service, it must  
41.14 be received by the lead agency within 15 calendar days of the individual's or facility's  
41.15 receipt of the final disposition. An individual who was determined to have maltreated a  
41.16 vulnerable adult under this section and who was disqualified on the basis of serious or  
41.17 recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration  
41.18 of the maltreatment determination and the disqualification. The request for reconsideration  
41.19 of the maltreatment determination and the disqualification must be submitted in writing  
41.20 within 30 calendar days of the individual's receipt of the notice of disqualification  
41.21 under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of  
41.22 the maltreatment determination and the disqualification must be postmarked and sent  
41.23 to the lead agency within 30 calendar days of the individual's receipt of the notice of  
41.24 disqualification. If the request for reconsideration is made by personal service, it must be  
41.25 received by the lead agency within 30 calendar days after the individual's receipt of the  
41.26 notice of disqualification.

41.27 (b) Except as provided under paragraphs (e) and (f), if the lead agency denies the  
41.28 request or fails to act upon the request within 15 working days after receiving the request  
41.29 for reconsideration, the person or facility entitled to a fair hearing under section 256.045,  
41.30 may submit to the commissioner of human services a written request for a hearing  
41.31 under that statute. The vulnerable adult, or an interested person acting on behalf of the  
41.32 vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review  
41.33 Panel under section 256.021 if the lead agency denies the request or fails to act upon the  
41.34 request, or if the vulnerable adult or interested person contests a reconsidered disposition.  
41.35 The lead agency shall notify persons who request reconsideration of their rights under this  
41.36 paragraph. The request must be submitted in writing to the review panel and a copy sent

42.1 to the lead agency within 30 calendar days of receipt of notice of a denial of a request for  
42.2 reconsideration or of a reconsidered disposition. The request must specifically identify the  
42.3 aspects of the agency determination with which the person is dissatisfied.

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

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

42.12 (e) If an individual was disqualified under sections 245C.14 and 245C.15, on the  
42.13 basis of a determination of maltreatment, which was serious or recurring, and the individual  
42.14 has requested reconsideration of the maltreatment determination under paragraph (a) and  
42.15 reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration  
42.16 of the maltreatment determination and requested reconsideration of the disqualification  
42.17 shall be consolidated into a single reconsideration. If reconsideration of the maltreatment  
42.18 determination is denied ~~or if the disqualification is not set aside under sections 245C.21 to~~  
42.19 ~~245C.27~~ and the individual remains disqualified following a reconsideration decision, the  
42.20 individual may request a fair hearing under section 256.045. If an individual requests a  
42.21 fair hearing on the maltreatment determination and the disqualification, the scope of the  
42.22 fair hearing shall include both the maltreatment determination and the disqualification.

42.23 (f) If a maltreatment determination or a disqualification based on serious or recurring  
42.24 maltreatment is the basis for a denial of a license under section 245A.05 or a licensing  
42.25 sanction under section 245A.07, the license holder has the right to a contested case hearing  
42.26 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided  
42.27 for under section 245A.08, the scope of the contested case hearing must include the  
42.28 maltreatment determination, disqualification, and licensing sanction or denial of a license.  
42.29 In such cases, a fair hearing must not be conducted under section 256.045. Except for  
42.30 family child care and child foster care, reconsideration of a maltreatment determination  
42.31 under this subdivision, and reconsideration of a disqualification under section 245C.22,  
42.32 must not be conducted when:

42.33 (1) a denial of a license under section 245A.05, or a licensing sanction under section  
42.34 245A.07, is based on a determination that the license holder is responsible for maltreatment  
42.35 or the disqualification of a license holder based on serious or recurring maltreatment;

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

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

43.5 Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment  
43.6 determination or disqualification, but does not appeal the denial of a license or a licensing  
43.7 sanction, reconsideration of the maltreatment determination shall be conducted under  
43.8 sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the  
43.9 disqualification shall be conducted under section 245C.22. In such cases, a fair hearing  
43.10 shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and  
43.11 626.557, subdivision 9d.

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

43.16 (g) Until August 1, 2002, an individual or facility that was determined by the  
43.17 commissioner of human services or the commissioner of health to be responsible for  
43.18 neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August  
43.19 1, 2001, that believes that the finding of neglect does not meet an amended definition of  
43.20 neglect may request a reconsideration of the determination of neglect. The commissioner  
43.21 of human services or the commissioner of health shall mail a notice to the last known  
43.22 address of individuals who are eligible to seek this reconsideration. The request for  
43.23 reconsideration must state how the established findings no longer meet the elements of  
43.24 the definition of neglect. The commissioner shall review the request for reconsideration  
43.25 and make a determination within 15 calendar days. The commissioner's decision on this  
43.26 reconsideration is the final agency action.

43.27 (1) For purposes of compliance with the data destruction schedule under subdivision  
43.28 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as  
43.29 a result of a reconsideration under this paragraph, the date of the original finding of a  
43.30 substantiated maltreatment must be used to calculate the destruction date.

43.31 (2) For purposes of any background studies under chapter 245C, when a  
43.32 determination of substantiated maltreatment has been changed as a result of a  
43.33 reconsideration under this paragraph, any prior disqualification of the individual under  
43.34 chapter 245C that was based on this determination of maltreatment shall be rescinded,  
43.35 and for future background studies under chapter 245C the commissioner must not use the  
43.36 previous determination of substantiated maltreatment as a basis for disqualification or as a

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44.1 basis for referring the individual's maltreatment history to a health-related licensing board  
44.2 under section 245C.31.

44.3 Sec. 7. **EFFECTIVE DATE.**

44.4 Sections 1 to 6 are effective the day following final enactment.

APPENDIX  
Article locations in s2935-2

ARTICLE 1 LICENSING ..... Page.Ln 1.18  
ARTICLE 2 DHS HEARINGS ..... Page.Ln 33.18

**256B.0919 ADULT FOSTER CARE AND FAMILY ADULT DAY CARE.**

Subd. 4. **County certification; licensed providers; related individual; developmentally disabled.** (a) Notwithstanding any provision to the contrary, a county may certify an adult foster care license holder to provide foster care services to an individual with a developmental disability, who is related to the provider, if the following conditions are met:

- (1) the individual is 18 years of age or older;
- (2) the individual's service plan meets the standards of section 256B.092 and specifies any special conditions necessary to prevent a conflict of interest for the provider;
- (3) the provider is not the legal guardian or conservator of the related individual;
- (4) the provider maintains a license under Minnesota Rules, parts 9555.5105 to 9555.6265, to serve unrelated foster care recipients;
- (5) the provider maintains a license under chapter 245B; and
- (6) the county certifies the provider meets the adult foster care provider standards established in Minnesota Rules, parts 9555.5105 to 9555.6265, for services provided to the related individual.

(b) The county shall complete an annual certification review to ensure compliance with paragraph (a), clauses (1) to (6).

(c) Notwithstanding section 256I.04, subdivision 2a, clause (2), the adult foster care provider certified by the county under this subdivision may be reimbursed for room and board costs through the group residential housing program.