



DHS Reconsideration ATTORNEY HANDBOOK

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Note: This handbook is written as a resource for attorneys. Persons who are not lawyers are advised that this handbook provides information about the law designed to help lawyers provide quality legal services. This book is not the same as legal advice – the application of law to an individual’s circumstances. If you are not an attorney, we recommend you consult a lawyer for professional advice and application of the law to your situation.

September 2007

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SECTION 1: CLE MATERIALS

OVERVIEW OF DHS BACKGROUND STUDIES - DISQUALIFICATION AND RECONSIDERATION

MINNESOTA STATUTES, CHAPTER 245C

Laura Plummer Zrust
Department of Human Services
Licensing Division

2007 Background Studies Legislation

- Laws 2007, Chapter 112 (DHS Licensing bill)
- Laws 2007, Chapter 147, Article 3 (HHS Omnibus bill)

Individuals Required to Have a Background Study

Minnesota Statutes, section 245C.03

- Persons applying for a license
- Individuals 13 and over living in the household
- Current or prospective employees or contractors who will have direct contact
- Volunteers or student volunteers who will have direct contact, unless under continuous, direct supervision
- Managerial officials

And, if Commissioner has reasonable cause:

- Individuals who, without providing direct contact services, may have unsupervised access
- Individuals ages 10-12 living in the household

Information Commissioner Reviews

Minnesota Statutes, section 245C.08

- Information from Minnesota Bureau of Criminal Apprehension (BCA)

- All substantiated reports of maltreatment of minors and vulnerable adults (DHS, MDH, and SSIS)
- Juvenile court records, as applicable
- Also, when reasonable cause, arrest and investigative information from agencies specified under subdivision 3 (e.g. courts, other states, FBI)

Expungements

Minnesota Statutes, sections 245C.08 and 609A.03

Notwithstanding expungement by a court, the Commissioner may consider criminal and juvenile records, unless:

- The Commissioner received notice of the petition for expungement; and
- The court order for expungement is directed specifically to the Commissioner.

DHS Studies

Minnesota Statutes, section 245C.03

- Programs directly-licensed by DHS
- MDH programs
- Supplemental nursing services agencies
- Personnel agencies, educational programs, and professional services agencies
- DOC programs serving children or youth
- PCPOs
- Effective July 1, 2007, child foster care and adoption

County Studies

Minn. Stat. sections 245A.16 and 245C.08, subd. 2

- 245A.16 delegates to counties responsibility to conduct background studies on individuals affiliated with family child care, adult foster care, and adult day services
- Counties and private licensing agencies previously responsible for child foster care studies
- 2007 amendment to 245A.16 transfers the responsibility to conduct background studies for child foster care from county or private agency to DHS (part of Adam Walsh amendments)

Adam Walsh Child Protection and Safety Act of 2006

- Enacted July 27, 2006 (Public Law 109-248)
- Purpose is protection of children from sexual exploitation and violent crime
- Expands national sex offender registry
- Increases background study requirements
- Strengthens federal penalties for crimes against children
- Requires state compliance by July 1, 2007, in order to continue receiving Title IV-E funding

2007 Minnesota Adam Walsh-Related Legislation

- Laws of Minnesota 2007, Chapter 147, Article 3
- Transfers responsibility for child foster care studies from counties and private agencies to DHS
- Effective July 1, 2007, DHS will conduct background studies relating to child foster care and adoption
- New requirements for “Adam Walsh” studies include:
 - ❖ fingerprint-based FBI check on individuals 18 and older
 - ❖ review of substantiated child maltreatment on all individuals in all MN counties (SSIS)
 - ❖ if an individual has resided in another state within past 5 years, review of substantiated child maltreatment findings in other state

Adam Walsh Background Study Required When:

- Individual studied is affiliated with a new application for child foster care
- Individual studied is newly affiliated with a current child foster care license
- Individual studied is affiliated with a prospective adoptive home
- A regular (non-Adam Walsh) study will be conducted by DHS when the study is connected to re-licensing a currently licensed child foster care

Disqualification

Minnesota Statutes, section 245C.14

- Disqualification from direct contact with, or access to, persons receiving services
- General bases for disqualification:
 - ❖ conviction
 - ❖ admission
 - ❖ Alford Plea ('07 amendment)
 - ❖ preponderance of evidence
 - ❖ serious or recurring maltreatment of a minor or vulnerable adult

Minnesota Statutes, section 245C.15

- **Permanent disqualifications** (subd. 1). Individual disqualified regardless of how much time has passed and, unless otherwise specified, regardless of the level of offense. Includes violent offenses, all criminal sexual conduct, and involuntary termination of parental rights.
- **Fifteen-year disqualifications** (subd. 2). Felony level offenses. Individual disqualified 15 years from discharge of sentence imposed.
- **Ten-year disqualifications** (subd. 3). Gross misdemeanor level offenses. Individual disqualified 10 years from discharge of sentence imposed.
- **Seven-year disqualifications** (subd. 4). Misdemeanor level offenses, serious or recurring maltreatment, and administrative disqualification under section 256.98, subd. 8 ('07 amendment). Individual disqualified for 7 years from discharge of sentence imposed or from date of administrative determination.

Assessment of Immediate Risk of Harm

Minnesota Statutes, section 245C.16

- Commissioner reviews information immediately available to make a determination regarding subject's immediate risk of harm to persons receiving services
- Factors considered – subdivision 1, paragraph (b)
- After evaluation, Commissioner determines the individual:

- ❖ Poses an imminent risk of harm and orders immediate removal
- ❖ Poses a risk of harm requiring continuous, direct supervision during the time period the individual may request reconsideration
- ❖ Does not pose an imminent risk of harm or risk of harm requiring supervision

Disqualification Notice - Subject

Minnesota Statutes, section 245C.17

- Information causing disqualification
- Instructions on how to request reconsideration and time frame (request form enclosed)
- An explanation of any restrictions on the Commissioner's discretion to set aside the disqualification under sec. 245C.24 (bars)
- Notice of data that will become public if the individual's disqualification is set aside or a variance is granted relating to the individual's disqualification, if applicable (245C.22, subd. 7)

Commissioner's determination of the individual's immediate risk of harm:

- If imminent risk of harm, explanation of basis of determination
- If determine individual does not pose an imminent risk of harm, conditions under which the program may allow the individual to have direct contact or access to persons receiving services

Disqualification Notice - Program

Minnesota Statutes, section 245C.17

- Notice that the Commissioner has found information that disqualifies the study subject from direct contact with or access to persons receiving services
- The Commissioner's determination of the individual's immediate risk of harm (245C.16)
- Imminent risk of harm - program ordered to immediately remove the disqualified individual

Risk of harm requiring continuous, direct supervision requires program to:

- Immediately remove the individual; or before allowing the individual to provide direct contact:
 - ❖ Obtain a copy of the disqualification notice from the disqualified individual
 - ❖ Ensure the individual is under continuous, direct supervision during the time period in which the individual may request reconsideration
 - ❖ Ensure the individual requests reconsideration within 30 days.

If individual does not pose an imminent risk of harm or risk of harm requiring continuous, direct supervision, program must:

- Immediately remove the individual; or before allowing the individual to provide direct contact or access:
 - ❖ Obtain a copy of the disqualification notice from the individual
 - ❖ Ensure the individual requests reconsideration within 15 days

Information Regarding Individual's Disqualification

The Commissioner shall not notify the program of the information contained in the individual's background study unless:

- The basis for the disqualification is failure to cooperate with the background study
- The basis for the disqualification is serious or recurring maltreatment
- The Data Practices Act provides for the release of the information
- The individual studied authorizes the release of the information

Request for Reconsideration of Disqualification

Minnesota Statutes, section 245C.21

The individual requesting reconsideration must submit information showing that:

- If challenging correctness of the disqualification, that the information relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect
- For maltreatment, the information relied upon in determining that the maltreatment was serious or recurring is incorrect

- The individual does not pose a risk of harm to any person receiving services from the program, addressing risk of harm factors under section 245C.22, subd. 4.

Timelines for Submission of Request for Reconsideration

Minnesota Statutes, section 245C.21, subd. 2

- Thirty days: if immediate removal or continuous, direct supervision ordered under 245C.16 assessment
- Fifteen days: if immediate removal or supervision not ordered under 245C.16 assessment

Commissioner's Review of Request for Reconsideration

Minnesota Statutes, section 245C.22

- **Correctness:** Commissioner determines whether the information relied upon to disqualify the individual was correct.
- **Risk of harm:** Commissioner determines whether the disqualified individual has submitted sufficient information to demonstrate they do not pose a risk of harm to people receiving services.
- Preeminent weight given to safety of persons being served: When reviewing the request, the Commissioner must give preeminent weight to the safety of each person receiving services over the interests of the disqualified individual.
- MDH conducts review of disqualifications issued following DHS background study for individuals affiliated with MDH services.

Commissioner's Review of Correctness

Minnesota Statutes, section 245C.22, subdivision 2

If the Commissioner determines that the information relied upon to disqualify the subject was incorrect, the disqualification is *rescinded*.

Commissioner's Review of Request for Reconsideration for Risk of Harm

Minnesota Statutes, section 245C.22, subd. 4

- The Commissioner may set aside the individual's disqualification if the Commissioner determines the individual has submitted sufficient information to demonstrate they do not pose a risk of harm to any person receiving services.
- Burden of proof is on the disqualified individual to demonstrate that they do not pose a risk of harm.

Risk of Harm Factors

Minnesota Statutes, section 245C.22, subd. 4

In determining whether to set aside the disqualification, the Commissioner must consider:

- The nature, severity, and consequences that lead to the disqualification
- Whether there is more than one disqualifying event
- The age and vulnerability of the victim at the time of the event
- The harm suffered by the victim
- The vulnerability of persons served by the program ('07amendment)
- The similarity between the victim and persons served by the program
- The time elapsed without a repeat of same or similar event
- Documentation of successful completion of pertinent training or rehabilitation
- Other relevant information

Any single factor may be determinative of the Commissioner's decision.

Reconsideration Decisions

- **Rescission:** Commissioner determines the disqualifying information is incorrect.
- **Set aside:** Commissioner determines individual submitted sufficient information to demonstrate they do not pose a risk of harm
- **Not set aside:** Commissioner determines the individual failed to demonstrate that they do not pose a risk of harm
- **Variance:** Commissioner has not set aside the disqualification, but has determined there are conditions under which the disqualified individual may provide direct contact or have access to persons receiving services, that minimize the risk of harm (245C.30)

Set Aside

- Commissioner determined that the individual has submitted sufficient information to demonstrate they do not pose a risk of harm
- Individual remains disqualified, but can continue to be in a position having direct contact with, or access to, persons receiving services.
- Set aside is limited solely to the program specified in the set aside notice
- Program is notified of reason for disqualification
- Bar disqualifications cannot be set aside (245C.24)

Public Data Regarding Set Aside

Minnesota Statutes, section 245C.22, subdivision 7

The identity of the disqualified individual who received the set aside and the individual's disqualifying characteristics are public data if the set aside was for:

- Any disqualification, if the set aside relates to a child care center or family child care program; or
- A disqualification under section 245C.15, subd. 2 (felonies) relating to any program.

Not Set Aside

- Commissioner determined the individual failed to demonstrate that they do not pose a risk of harm
- Commissioner notifies subject and program of not set aside decision
- Identity of disqualified individual and reason for disqualification remain private data

Program ordered to immediately remove disqualified individual if:

- Individual did not timely request reconsideration
- Not set aside is final agency decision (no hearing right)
- Individual had a hearing right but did not timely request a hearing
- Individual had a hearing and Commissioner's final order under 245A.08 or 256.045 affirmed the not set aside.

Variance

Minnesota Statutes, section 245C.30

- Commissioner has not set aside the disqualification, but has determined there are conditions under which the disqualified individual may provide direct contact services or have access that minimize the risk of harm to people receiving services.
- Variance is time-limited and specifies the reason for the disqualification and the conditions with which the individual and program must comply.
- Program notified of reason for disqualification.
- Except for family child care, and foster care for children or adults or adult day services provided in the provider's own home, a variance must be requested by the program.

Public Data Regarding Variances

Minnesota Statutes, section 245C.22, subd. 7

The identity of the disqualified individual who is the subject of the variance, the individual's disqualifying characteristics, and the terms of the variance are public data when the variance:

- Was issued to a child care center or family child care program; or
- Relates to an individual with a disqualification under section 245C.15, subd. 2 (felonies) relating to any program.

When Disqualification Information Remains Private Data

Minnesota Statutes, section 245C.22, subdivision 7

The identity of a disqualified individual and the reason for the disqualification remain private data when:

- A disqualification is not set aside and no variance is granted
- The set aside or variance does not relate to child care and is not a disqualification under 245C.15, subd. 2 (felonies)
- The disqualification is rescinded

- The disqualification relates to a license to provide relative child foster care
- The disqualified individual is a family child care household member under the age of 18 and the set aside or variance relates to a misdemeanor-level theft under 609.62

Bars to Set Aside of Disqualification

Minnesota Statutes, section 245C.24

- Commissioner is prohibited from setting aside disqualifications specified under 245C.24
- Permanent bars (subd. 2): Commissioner is prohibited from setting aside or granting a variance regardless of how much times has passed for offenses specified under 245C.15, subd. 1. Applies to all service settings.

Apply only to family child care, and child and adult foster care and adult day services in provider's own home:

- Ten-year bars (subd. 3): Commissioner is prohibited from setting aside a disqualification for ten years. Variance may be granted.
- Seven-year bars (subd. 4): Maltreatment resulting in substantial bodily, mental, or emotional harm. Prohibits set aside for 7 years. Variance may be granted.

Consolidated Reconsideration of Maltreatment Determination and Disqualification

Minn. Stat. sections 245C.25; 626.556, subd. 10i, and 626.557, subd. 9d

- If an individual is found responsible for maltreatment and is disqualified for serious or recurring maltreatment, the individual has a right to request reconsideration regarding both determinations.
- If the individual requests reconsideration of both the maltreatment determination and disqualification, both determinations are reviewed in single reconsideration.
- For county maltreatment determinations and disqualifications based on serious or recurring maltreatment, county conducts the consolidated reconsideration.

Disqualification Hearing Rights

- Fair hearings: Minnesota Statutes, section 245C.27. Hearings conducted pursuant to section 256.045
- Contested case hearings: Minnesota Statutes, section 245C.28. Hearings conducted under Chapter 14.
- Hearing right arises from the not set aside of the disqualification. Subject has no hearing right if disqualification is set aside. If variance is granted, subject has hearing right on the not set aside.

Fair Hearings

Minnesota Statutes, sections 245C.27 and 256.045

Disqualified individual whose disqualification was not set aside has right to a fair hearing under 256.045, when disqualification is based on:

- Preponderance of evidence
- Serious or recurring maltreatment
- Failure to report maltreatment, which was substantiated

No hearing right if disqualification is:

- Based on a conviction or admission
- Administrative disqualification under 256.98, subd. 8 ('07)
- Conclusive
- A final agency decision

Scope of Disqualification Hearing

- Scope of review includes correctness of the disqualification and a determination whether the disqualification should be set aside, unless the scope of review is otherwise limited based on conclusiveness under section 245C.29 or the disqualification is a bar under section 245C.24.
- If the individual was disqualified on multiple bases, including a conviction or admission (not otherwise subject to a hearing) as well as other disqualifications which are subject to

a hearing right (e.g. preponderance of evidence), in determining whether to set aside the disqualification, the judge shall consider all of the disqualifying characteristics, including those that are otherwise not subject to review.

Scope of Hearings for Bar Disqualifications

Minnesota Statutes, section 245C.24

- No discretion to set aside a bar disqualification
- If a bar disqualification was affirmed upon reconsideration based on correctness and the individual otherwise has a hearing right, the scope of the hearing is limited solely to the issue of correctness.
- If correctness of the bar disqualification is conclusive, the reconsideration decision to affirm the disqualification is the final agency decision.

Consolidated Fair Hearing For Maltreatment and Disqualification Not Set Aside

Minnesota Statutes, section 245C.27, subdivision 2

The scope of the fair hearing shall include both the maltreatment determination and the disqualification which was not set aside if an individual who was disqualified for serious or recurring maltreatment:

- Requests a fair hearing on the maltreatment under section 626.556, subdivision 10i, or section 626.557, subd. 9d; and
- Requests a fair hearing on the disqualification based on serious or recurring maltreatment that is not set aside.

Conclusive Disqualifications

Minnesota Statutes, section 245C.29

A disqualification under Chapter 245C is conclusive if the:

- Disqualified individual did not request reconsideration;
- Disqualified individual did not request a hearing on the disqualification; or

- Commissioner has issued a final order in an appeal of the disqualification under section 245A.08, subd. 5, or 256.045, or a court has issued final decision.

Effect of Conclusive Disqualifications

- If a disqualification is conclusive, the individual does not have a hearing right.
- If individual is subsequently disqualified, the individual has a right to again request reconsideration on risk of harm, but subsequent determinations regarding risk of harm are not subject to another hearing.

Disqualifications Based on Conclusive Maltreatment Determinations

Minnesota Statutes, section 245C.29

A maltreatment determination is conclusive if the:

- Individual did not request reconsideration of the maltreatment determination;
- Individual did not request a fair hearing regarding the reconsideration decision; or
- Commissioner has issued a final order in an appeal of that determination under section 245A.08, subd. 5, or 256.045.

Limitations:

- When the individual is subsequently disqualified based on a determination that the maltreatment was serious or recurring, the individual has a right to request reconsideration of the disqualification only.
- If individual requests reconsideration and the disqualification is affirmed and not set aside, the individual has a fair hearing right on the disqualification only.
- In such cases, scope of the hearing does not include the conclusive underlying maltreatment.
- Laws 2007, Ch. 147, Art. 1, sec. 31, requires county's notice of determination of maltreatment to include a statement that the maltreatment finding may result in denial of a license or disqualification under Ch. 245C.

Contested Case Hearings

Minnesota Statutes, chapter 14 and section 245C.28

A disqualified individual whose disqualification was not set aside may have a right to a contested case hearing when:

- Commissioner denies a license or issues a licensing sanction, based on the not set aside of the individual's disqualification (see also 245A.08).
- Under section 245C.28, subd. 3, all individuals who are employees of a public employer, as defined under section 179A.03, subd. 15, have a right to a contested case hearing.

Consolidated Contested Case Hearings – Licensing Sanctions Based on Disqualification Not Set Aside

Minnesota Statutes, sections 245A.08 and 245C.28

- When a license denial or a licensing sanction is based on a maltreatment determination and/or a disqualification that was not set aside, the scope of the contested case hearing generally includes the maltreatment and/or disqualification, unless the determinations are conclusive, the disqualification is a bar or as otherwise provided under Chapters 245A or 245C.
- When the license denial or sanction is based on the disqualification not set aside of an individual other than the applicant or license holder and the disqualified individual otherwise has a hearing right, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the ALJ.
- If the matters are consolidated into a contested case hearing, a separate fair hearing is not conducted regarding the maltreatment and/or disqualification.

DHS Licensing Website

www.dhs.state.mn.us

AG: #1845175-v1

**SAMPLE DISQUALIFICATION LETTER #1
for serious maltx based on county investigation
Subject letter**

Re:
Facility ID No.:
Background Study No.:

Dear Mr. :

A background study on you has been initiated by the above named program as required by Minnesota Statutes, chapter 245C, and Minnesota Statutes, section 144.057, and section 241.021. As part of this study, the Division of Licensing reviewed results of past investigations that substantiated maltreatment of vulnerable adults and of minors.

Our records from County show that you were notified in a letter dated , that County Child Protection determined that you were responsible for substantiated maltreatment. The investigation found that . If you did not receive a letter from County notifying you of this determination and your appeal rights, or to obtain more information about this investigation, contact County directly.

The incident of substantiated maltreatment for which you were found to be responsible meets the criteria to be determined as serious, and causes you to be disqualified from any position allowing direct contact with, or access to, persons receiving services from programs licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations.

WHAT WAS TOLD ABOUT YOUR DISQUALIFICATION:

Your employer was told that you are disqualified because you are responsible for serious maltreatment.

WHAT YOU CAN DO ABOUT YOUR DISQUALIFICATION (How to request reconsideration):

1. You may ask for a reconsideration of your disqualification. You may request reconsideration on two grounds:
 - a. if you believe that the information that was used to disqualify you is incorrect, you may send a letter that identifies what information was wrong, explain why the information was wrong, and send in the correct information; and/or,
 - b. you can explain why, in spite of your disqualification, you would not harm the people who are receiving services where you work. You can use the enclosed form for this request for reconsideration of your disqualification. You can also send any other information such as work evaluations, recommendations, etc.
2. You have 30 days after receiving this letter to send the information to [Department of Human Services or Department of Health].

WHAT COULD DO ABOUT YOUR JOB:

They may or may not choose to let you work. If chooses to let you work:

1. You must provide them a copy of this letter.
2. You must tell them that you are requesting reconsideration of your disqualification; and
3. They must make sure that you are always within sight or hearing of a supervising person when providing direct contact services.

WHAT WILL HAPPEN:

1. If you do not send the information (your request for reconsideration) within 30 days, will have to immediately remove you from any position allowing direct contact with, or access to, persons receiving services. This will affect your job in other facilities too.
2. If you do request reconsideration of your disqualification, the information you provide will be reviewed. You will get a letter after the Department has received all relevant information, telling you what the decision is.
3. Pursuant to Minnesota Statutes, section 245C.23, subd. 1, (a), if you request reconsideration and your disqualification is set aside, the program will be told why you were disqualified. In addition, the program will also be informed that upon request, and without your consent, information about the factors that were the basis for the decision to set aside your disqualification are available to them.

Even if you are no longer working at , you may still request reconsideration of your disqualification.

If there are any future disqualifying criminal convictions, they will be reported to the Department of Human Services by the corrections system.

Please see the enclosed sheet for further background study information. If you have any questions, you may contact the Call Center at (651) 296-3802.

Sincerely,

Kristin Johnson, Supervisor
Division of Licensing

SAMPLE DISQUALIFICATION LETTER # 2
(serious maltreatment based on county investigation, Facility Letter)

Re:
Background Study No.:

Facility ID No.:

Dear Mr. :

The Division of Licensing has received information regarding the above named individual that causes this person to be disqualified from any position allowing direct contact with, or access to, persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations. The individual is disqualified because s/he is responsible for serious maltreatment. This action is taken pursuant to Minnesota Statutes, chapter 245C (Department of Human Services Background Studies Act), Minnesota Statutes, section 144.057, and Minnesota Statutes, section 241.021.

Your program may choose whether or not to allow the person to provide direct contact services pending a possible reconsideration decision by the Commissioner. If the program chooses to allow the individual to provide direct contact services, the program must first do the following:

- obtain from the individual a copy of his/her notice of disqualification, which explains the reason for disqualification;
- ensure that the individual requests reconsideration within 30 days of receiving his/her notice of disqualification (mailed the same date as this letter) and;
- ensure that the individual is under continuous, direct supervision when providing direct contact services with persons receiving services from your program pending reconsideration of the disqualification.

If your program chooses not to allow the person to provide direct contact services, the individual must be immediately removed from any position allowing direct contact with, or access to, persons receiving services from your program.

The individual's notice of disqualification included a form which may be used for requesting reconsideration. If the individual chooses not to request reconsideration within 30 days, or if the individual requests reconsideration and the disqualification is not set aside, you will be notified that his/her immediate removal from any position allowing direct contact with, or access to, persons receiving services from your program is required. A decision regarding a request for reconsideration will be issued after receipt of a complete request.

Sincerely,
Kristin Johnson, Supervisor Division of Licensing

SAMPLE REQUEST FOR RECONSIDERATION

Suggested Form for Request for Reconsideration of Disqualification
Due to a Criminal Offense

You may use this form to request reconsideration of your disqualification. Send the following information, with any additional attachments, to

MN Department of Human Services
Division of Licensing
444 LaFayette Rd N
St. Paul, MN 55155-3842

Name: _____ Date: May 14, 2007
Address: _____ Phone: _____
City: _____ State/Zip: _____

Check one:

_____ I want you to review the Reconsideration Request which I previously submitted and I do not wish to add any additional information.

_____ I am again submitting my Request for Reconsideration of my disqualification by completing this entire form.

Check one:

_____ The information about my disqualification is correct and I am requesting reconsideration of my disqualification because I don't pose any risk of harm to the people receiving services (answer Question B, below).

_____ The information about my disqualification is **not** correct (answer Question A, below).

A. If the information is not correct, please explain what was wrong, explain why it was wrong, and include correct information with written proof from the court:

B. I am requesting reconsideration of my disqualification because I don't pose any risk of harm to the people receiving services (Please respond to questions 1 – 9, below).

1. Explain the details of the crime you committed. What did you do?

2. Please answer all questions that apply to you.

A. Who were the victim(s) of the crime(s) you committed?

B. How did you harm your victim(s)?

C. If your crime(s) were against a business or government agency, how did you harm the business or government agency?

D. How much time has gone by since you committed the crime?

3. Describe the patients or clients you work with and tell what services are provided to them. What are their needs. What do you do for them?

4. Explain how the patients or clients are kept safe so they don't become victims of crimes such as the one(s) you committed.

5. Are the patients or clients you work with the same or different from the victim(s) of your crime. How are they the same? How are they different?

6. How could your type of crime be committed against the people for whom you provide care? How could your type of crime affect those people?

7. Please list the jobs you have had in health or human services before and after your disqualifying crime. List dates of employment with a brief description of your duties

8. Describe any rehabilitation or training that you have received since the disqualifying crime

and include copies of any certificate that you have received from that training. How has that training helped you understand why you committed the crime? How do you think that training will keep you from committing other crimes?

9. Explain why you believe that you would not pose a risk of harm to the patients or clients where you work.

Additional Comments

Notes:

1. **If so indicated on page 4**, you must include a police report of the crime(s) you committed that explains what happened during the arrears. You can get the report at the police department where you were arrested. The report may be obtained through the arresting police department. In addition, you may choose to include court documents. Do not send back the BAC record which was sent to you.
2. **If so indicated on page 4**, you must contact your probation officer and have him/her submit a written report to the address on the front page of this form describing how you have progressed during probation and any other information about your conviction(s).
3. **If you have undergone treatment for chemical use problems**, submit a discharge summary.
4. **If you do not submit all the required information**, the Department of Human Services may be unable to make an accurate assessment of your request for reconsideration.

List of Attachments (delete those that do not apply)

1. Police Report
2. Letter of support from Rehabilitation Counselor
3. Letter of support from AA Sponsor
4. Letter of support from employer
5. Letter of support from
6. Job performance evaluations
- 7.

CHALLENGING DHS DISQUALIFICATIONS

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Why should we care?

Initial Client Considerations

- Deadlines and Timing

Must respond to maltreatment determinations within 15 days. §626.556, subd. 10(i); disqualification notices within 30 days. §245C.21, subd. 2; request an administrative hearing within 30 days after reconsideration decision. §256.045, subd. 3(a); request judicial review in district court within 30 days. §256.045, subd 7; file with court of appeals within 60 days. Minn. R. Civ. App. Pro. 104.01, subd. 1.

- Multiple Notices

It is possible to get disqualification notices from several different agencies, including the county that investigated the maltreatment, the Department of Human Services, and the Department of Health. You must respond to each notice individually, or you risk one agency making a conclusive determination that will affect other agencies.

- Find the Appropriate Remedy for Your Client

Become very familiar with your client's work history and goals to make sure that you work towards a solution that is appropriate for your client.

- Try to Settle

What Are Your Client's Options?

Within DHS/MDH

1. Rescind the disqualification

- Complete freedom to work in direct care position. Can transfer jobs freely.
- Does not apply to accurate convictions.

2. Set-aside

- Only available if the disqualifier is not a bar.
- Free to work at the job(s) for which a background study was conducted.
- Must undergo a new background study for a new or different job.
- No remedy if DHS grants a set-aside but employer refuses to rehire.

3. Variance

- Only available if the disqualifier is not a bar.
- Only available if the employer requests it.
- Can work at the job(s) for which background study was conducted, but in a supervised capacity.
- Must undergo a new background study for a new or different job.
- No remedy if DHS grants a variance but employer refuses to rehire.

Outside of DHS/MDH

1. Expungement

- Sealing Arrest Records §299C.11 (seals BCA & FBI records)
- Statutory Expungement §609A.02 (seals judicial and executive records [DHS & MDH] if notified and contained in the order)
- Inherent Authority Expungement (*State v. Schultz*: seals only judicial records unless abuse of discretion or constitutional violation)
- Juvenile Delinquency Expungements §260B.198, subd. 6. (only applies if delinquency was adjudicated; probably seals judicial and executive records)

2. Pardon

- DHS honors pardons.
- Mandatory minimum waiting periods of 5-10 years after discharge.
- Can take over a year to obtain.
- State only grants 10-15 per year.

3. Wait out the disqualification period

4. Change Careers

5. Move to another state

How Can You Help Your Client Achieve Their Goals?

Challenging Maltreatment Determinations

- Seven-year disqualifications for failure to make certain required reports of maltreatment or serious or recurring maltreatment of a minor or vulnerable adults §245C.15, subd. 4.
- Possible Options: Rescission (if client has preserved appeal rights); set-aside or variance (if not a bar), wait out the disqualification period, change careers, or move to another state. Rule out expungements and pardons because these are non-criminal.
- If your client is within the appeal period for the determination, you can challenge the merits of the determination in writing, and again at a fair hearing if you lose their written challenge.
- Find the definition of the disqualifying act and try to prove that their conduct did not match that definition. *In re Staley*, 730 N.W.2d 289, 297-299 (Minn.App. 2007). See also *In re Kleven*. See by analogy *In re S.F.*
- If your client is outside of the appeal period, you should always try to reopen the determination informally by simply asking the investigating agency to reopen the case, or by ordering the investigation file to find proof of insufficient notice or egregious investigation flaws.
- If your client is past the appeal period and the determination is conclusive, then you should request a set aside in writing and again at a fair hearing if necessary. The risk of harm factors are listed in §245C.22. You should provide as much information as possible for the Commissioner to weigh. For a successful case example, see *State v. Awes*, 2005 WL 3111848 (Minn.App.).
- Challenging every disqualification is important because it preserves appeal rights and affects future set-asides, even if the subject doesn't get their job back.
- Fair hearings are available if your client has preserved their appeal rights. The scope of the hearing will include the correctness of the underlying disqualification, as well as a risk of harm analysis. If your client has lost their right to challenge the underlying disqualification, they can still request a hearing to address the eight risk of harm factors.
- Case examples

Challenging a Preponderance of the Evidence Determination that a Disqualifying Crime Occurred

- The state can disqualify individuals based on a preponderance of evidence that a disqualifying crime occurred. §245C.14. This is usually based on unprosecuted police reports or dismissed charges.

- Possible Options: Disproving the preponderance determination (if client has preserved appeal rights); set-aside, variance, or wait out the disqualification period (if disqualification is not a permanent bar); possibly a statutory expungement with an order directed at DHS & MDH; or change careers or move to another state.
- The determination is conclusive if your client ignored a previous disqualification based on the same incident, or if they lost a prior hearing on the matter §245C.29, subd. 2.
- If the determination is not conclusive, you should timely challenge the determination and request a set aside in writing. Supplement with proof of your client's innocence and proof of rehabilitation.
- If the written request for reconsideration is denied, you should request a fair hearing to challenge the determination and show that they do not pose a risk of harm §245C.27, subd. 1.
- Fair hearings are very difficult because the state only has to prove that the crime occurred by a preponderance of the evidence. However, you can call witnesses and raise any criminal defense at the fair hearing, such as mistaken identity, self-defense, battered women's syndrome, etc.
- Case examples

Challenging Criminal Conviction Disqualifiers: Limited Remedies

- Not all crimes disqualify the subject. Disqualifying crimes and their corresponding disqualification periods are listed in §245C.15.
- Possible Options: Set-aside, variance, or wait out the disqualification period (if disqualification is not a permanent bar); possibly a statutory expungement with an order directed at DHS & MDH; inherent authority expungement if case involved constitutional violations or an abuse of discretion; pardon; or change careers or move to another state.
- If the conviction information is not correct, you should challenge it in writing and provide proof of the incorrect information. *Moore v. Comm'r of Human Svcs.* 2006 WL 771869 (Minn.App.).
- If the conviction is correct, then no fair hearing is available because your client was afforded the "full panoply" of due process rights during the criminal proceedings. §245C.27, subd. 1(c); *Sweet v. Comm'r of Human Svcs.*, 702 N.W.2d 314, 321 (2005).
- Expungements: DHS & MDH will honor a criminal expungement if they received notice and the order directs DHS to seal its record of the offense. §245C.08; §609A.03, subd. 7(a)(3). Note: Expungements that seal only judicial records (inherent authority) or BCA arrest records (§299c.11) do not have an effect on DHS/MDH records. A successful expungement can take between six and nine months to complete.
- Case examples

Rights/Burdens Upon Reconsideration

- Commissioner gives preeminent weight to the safety of the individuals to be served. Any single factor may be determinative. §245C.22, subd. 3.
- Subject has the burden of proving that they do not pose a risk of harm. §245C.22, subd. 4(b).
- Any one factor can disqualify an individual §245C.
- Commissioner must consider all eight risk of harm factors for each applicant. §245C.22, subd. 4.
- Subject has a property right in employment, especially if it is licensed employment.
Fosselman v. Comm'r of Human Svcs., 612 N.W.2d 456 (Minn. App. 2000)

TRUE FALSE EXERCISE

1. If a disqualification is rescinded, it will not come up in future job applications. _____
2. If a disqualification is set aside, it will not come up in future job applications. _____
3. If the individual misses the 30-day deadline for filing his/her written request for reconsideration, the disqualification will apply to all future job applications in the same field. _____
4. If an individual files a written request for reconsideration and the disqualification is set aside, the individual may appeal that determination to try to get the reconsideration rescinded. _____
5. If an individual files a written request for reconsideration and the disqualification is not set aside, the individual may ask for a variance at the fair hearing level. _____
6. If an individual gets disqualification notices from several different agencies (e.g., the county, the Department of Human Services, and the Department of Health), one agency may make a conclusive determination that will affect the other agencies' decisions _____
7. If a conviction is correct, the individual was afforded the full panoply of due process rights during the criminal proceeding and any appeal from a written request for reconsideration goes directly to the Minnesota Court of Appeals. _____
8. If an individual ignores a disqualification based on an administrative determination that a disqualifying crime occurred, the administrative determination that a disqualifying crime occurred is conclusive and applies to all future disqualifications based on the same incident. _____
9. If an individual ignores a disqualification based on preponderance of the evidence, the administrative determination of preponderance of evidence is conclusive and applies to all future disqualifications based on the same incident. _____
10. If a disqualification is based on a maltreatment finding made by default (the individual did not show up at the hearing to contest the maltreatment charge), the individual may contest the underlying maltreatment determination as part of the DHS reconsideration process. _____

CASE STUDIES

Client has been working as a Certified Nursing Assistant in a nursing home since 1998. She received a disqualification (DQ) notice from the Department of Human Services (DHS). She was disqualified because of a 1997 felony theft of public assistance conviction. She got an expungement in 2005 and she does not know why this keeps showing up. She has no prior or subsequent criminal offenses. She received the letter two days ago. What do you do?

Client has been working as a Personal Care Attendant for her mother since 2006. she received a letter from DHS in April stating that she could no longer work as a PCA because of a “preponderance of the evidence” that she engaged in a third degree drug incident in 2005. She explains that she was never charged and it was her boyfriend who was selling drugs from her apartment, not her. What do you do?

Client has been working as a teacher in a daycare facility since 2004. He received a notice from DHS yesterday stating that he was disqualified from working at the facility because of a determination that he committed maltreatment against his daughter. He claims that his seven-year old daughter told the school nurse that he hit her with a belt, and some marks were showing up. He claims that spanking with a belt is normal discipline in his family. What do you do?

SECTION 2: SUPPLEMENT TO CLE MATERIALS

DHS RECONSIDERATION CASES CHECKLISTS

Overview

- **Application:** Client has applied for a job at a Department of Human Services (DHS) or Department of Health (MDH) -licensed facility working with a vulnerable population (e.g., elderly, disabled, children).¹
- **Background Study:** The DHS-licensed facility (facility) sends the client's name to DHS² or the county³ to conduct a background check⁴ for criminal convictions, admissions, Alford Pleas, unprosecuted arrests, administrative disqualifications ('07 amendment), or serious or recurring maltreatment of a minor or vulnerable adult.⁵ If check comes back positive, client is sent a notice that he/she is "disqualified" from this position because he or she poses a "risk of harm" to the vulnerable people served.
- **Disqualification:** There are different types of disqualifications, depending on the disqualifying act (Minn. Stat § 245C.15)
 - Permanent (§ 245C.15, subd. 1): Individual disqualified regardless of how much time has passed and, unless otherwise specified, regardless of the level of offense, without exception. Includes violent offenses, all criminal sexual conduct, and involuntary termination of parental rights.

¹ Individuals required to have a background study (Minn. Stat. § 245C.03): persons applying for a license; individuals 13 and over living in the household; current or prospective employees or contractors who will have direct contact; volunteers or student volunteers who will have direct contact, unless under continuous, direct supervision; managing officials. And, if Commissioner has reasonable cause: individuals who, without providing direct contact services, may have unsupervised access; and individuals ages 10-12 living in the household.

² DHS Studies include (Minn Stat § 245C.03): programs directly licensed by DHS; MDH programs; supplemental nursing services agencies; personnel agencies, educational programs, and professional services agencies; DOC programs serving children or youth; personal care provider organizations; and (effective 7/1/07) child foster care and adoption.

³ County studies include (Minn Stat. §§ 245A.16 and 245C.08 Subd.2): individuals affiliated with family child care, adult foster care, and adult day services.

⁴ Information Commissioner reviews (Minn Stat. § 245C.08): Information from the MN Bureau of Criminal Apprehension (BCA); All substantiated reports of maltreatment of minors and vulnerable adults (Department of Human Services, Minnesota Department of Health, and SSIS (?)); juvenile court records, as applicable; also, when reasonable cause, arrest, and investigative information from agencies specified under subdivision 3 (e.g., courts, other states. FBI).

⁵ Minn Stat. § 245C.14

- 15-year (§ 245C.15, subd. 2): Felony level offenses (15 years starts from discharge of sentence imposed)
- 10-year (§ 245C.15, subd. 3): Gross misdemeanor level offenses (10 years starts from discharge of sentence imposed).
- 7-year (§ 245C.15, subd. 4): Misdemeanor level offenses, serious or recurring maltreatment and administrative disqualification under § 256.98, subd. 8 ('07 amendment). (7 years starts from discharge of sentence imposed).
- **Immediate Risk of Harm Assessment:** Commissioner reviews information immediately available to make a determination regarding client's immediate risk of harm to persons receiving services at the facility. The results determine whether and under what conditions the individual may continue to work pending the outcome of their reconsideration request.
 - Based on factors considered listed in §245C.16, subd 1, paragraph (b), Commissioner determines that the individual either:
 - Poses an immediate risk of harm and orders immediate removal (from facility);
 - Poses a risk of harm requiring continuous, direct supervision during the time period the client may request consideration; or
 - Does not pose an imminent risk of harm or risk of harm requiring supervision.
- **Initial Disqualification Notice:** The client receives notice of the Commissioner's determination of disqualification (DQ). The notice includes:
 - Information causing the DQ and results of immediate risk of harm assessment;
 - Instructions on how to request reconsideration and the time frame; and
 - An explanation of any restrictions on the Commissioner's discretion to set aside the DQ under Sec. 245C.24 (bars⁶)
- **Options and Remedies:** Remedies for disqualified individuals are limited – need to discuss with client what his/her goals are. Remedies are based on the individual timely requesting reconsideration of the disqualification after they receive notice.
 - Best remedy is to **rescind** the underlying DQ. This means that the Commissioner will remove the disqualifying act from the individual's background study and the person will have no limitations on getting work with vulnerable people based on that particular disqualifying act.

⁶ Permanent bars (bars) to set aside DQs for all positions apply to certain criminal convictions and involuntary termination of parental rights (§245C.15, subd. 1). There are also 10-year bars (subd. 3) (variance may be granted) and 7-year bars (subd. 4) notably maltreatment resulting in substantial bodily, mental, or emotional harm) to provide family child care, child and adult foster care, and adult day services in a provider's own home.

- This involves successfully challenging correctness of the DQ, proving that the information relied upon in determining the underlying conduct that gave rise to the DQ is incorrect, or for maltreatment, the information relied upon in determining that the maltreatment was serious or recurring is incorrect.
- Next best – to have the DQ **set aside**. This means that the individual remains disqualified, but can continue to be in a position having direct contact with, or access to, persons receiving services without supervision. However, the set aside applies only to the facility specified in the set aside notice. If the client applies for future jobs in this field, client will go through the DQ process from scratch. This presents problems for individuals who are seeking employment, but it seems to work well for individuals who have an established job.
 - Individual must prove to the Commissioner that he or she does not pose a risk of harm to any person receiving services from the facility, addressing the risk of harm factors under §245.22, subd. 4. Burden of proof is on the individual to demonstrate that they do not pose a risk of harm.
 - Program is notified of reason for DQ
 - Bar DQs cannot be set aside (§245C.24).
- Next best – obtain a **variance**. The Commissioner does not rescind or set aside the DQ, but has determined there are conditions under which the disqualified individual may provide direct contact services or have access that minimize the risk of harm to people receiving services. This usually means that the client works under some sort of supervision.
 - Variance is time-limited and specifies the reason for the DQ and the conditions with which the individual and facility must comply.
 - Facility is notified of reason for DQ.
 - A client may not request a variance – the facility (employer) must request this (except for family child care and foster care for children or adults or adult day services provided in the provider’s own home, where the variance may be requested by the individual).
 - Bar DQs cannot result in a variance. §245C.30, subd. 1.
- Worst-Case Scenario—the DQ is **not set aside**.
 - The Commissioner determined that the client failed to demonstrate that he or she does not pose a risk of harm after the individual has requested reconsideration or has let their reconsideration period elapse.
 - Commissioner notifies client and facility of not set aside decision.
 - Identity of disqualified individual and reason for DQ remains private data.
 - Facility is ordered to immediately remove the disqualified client if:

- Client did not timely request reconsideration or a hearing to which they were entitled;
 - “Not set aside” is the final agency decision after reconsideration if the individual was not entitled to a hearing (disqualifications based on convictions);
 - The individual had a hearing and the Commissioner’s final order under §245A.08 or §256.045 affirmed the decision not to set aside the disqualification.
- **Timing** is very important. Many clients miss important appeal deadlines.
 - Must respond to initial maltreatment determinations within 15 days (§626.556 subd.10(i)).
 - Must respond to initial DQ notices within 30 days (§ 245C.21, subd.2.).
 - Must request an administrative hearing within 30 days after reconsideration decision (§256.045, subd 3 (a)).
 - Must request judicial review in district court within 30 days (§256.045, subd 7.)
 - Must file with court of appeals within 60 days (Minn. R. Civ. App. Pro. 104.01, subd. 1)
- **Clients:**
 - Clients are often in a crisis situation. VLN cases usually involve low paying jobs such as child care or health care (e.g., certified nursing assistant (C.N.A.)). Clients don’t have much, if any, financial cushion.
 - Even worse, some clients used to be on welfare and were assessed by Workforce Development to be able to work in this area, so then underwent training. Now applied for a job and were disqualified. (It may be their first clue that they may not be able to get a job in the field for which they trained.)

Preliminary Review

It is important to ask the client several preliminary questions before advising them. The following are helpful questions to determine what options exist for the client.

1. What kind of work is it? (CNA? Nursing? Daycare? Etc) What type of people are they serving ((Seniors? Children? Daycare? Mentally or physically handicapped?))
2. How long has the client been doing this type of work? What kind of training, background, and qualifications does the client have?
3. Does the client have a license for the type of work he/she does?
4. Is the notice that they received their first such notice, or has the client received a letter in the past? If so, have they responded to it? (If client responded to a prior letter, was the DQ set aside or did the client get a variance? Was it from child protection? Note: get documents from prior proceeding, including maltreatment determination or DQ letter.)
5. Review the DQ Notice:
 - a. What is the date of the letter? What is the deadline for submitting written request for reconsideration?
 - i. If the deadline passed a short time ago, see if client has the envelope the DQ came in. If the postmark is significantly later than the date of the letter, ask for deadline to be extended accordingly. If the appeal period has elapsed, call DHS to see if client could get an extension based on some extenuating circumstance (client moved, client was homeless, client does not speak English well, etc.)
 - ii. If the time period for requesting reconsideration has expired and the client is not entitled to an extension, the client can start the disqualification/reconsideration process over again. Assuming the disqualification is not a bar, advise them to apply for another job and be disqualified, so that they can timely request reconsideration for that job. Disqualifications are facility-specific and do not carry over to new jobs.
 - b. Who is the notice from (MN Dept of Health or Dept of Human Services or which county)?⁷
 - c. What is the basis for the DQ? Where did the disqualifying offense occur? Has the individual taken any steps to eliminate the disqualifying offense (expungement, sealing arrest records, etc.)
 - d. Did the notice include instructions on how to request reconsiderations and time frame?

⁷ Important to note because it is likely that you will have to contact the reviewing agency for the case file or other agencies within the county (child protection, guardian ad litem, social workers, etc...) to get information regarding your client.

- e. Does the notice include an explanation of any restrictions on the Commissioner's discretion to set aside the DQ under §245C.24 (bars)?
- f. Check for notice that the data will become public if the individual's DQ is set aside or a variance is granted relating to the individual's DQ, if applicable (§245C.22, subd.7)
- g. Review the Commissioner's determination of an immediate risk of harm and any information about whether the client can continue to work pending the outcome of the reconsideration request and if so, under what type of restriction.
- h. Note: the facility also receives a notice that the individual has been disqualified under of §245C.17 and information about whether the individual poses and immediate risk of harm.
- i. The Commissioner cannot initially disclose to the facility the actual basis for the disqualification unless the basis for the DQ is failure to cooperate with the background study; the basis for the DQ is serious or recurring maltreatment; The Data Practices Act provides for the release of the information or the client authorizes the release of the information

Maltreatment Cases Checklist

Maltreatment cases involve non-criminal allegations of abuse or neglect against a child or vulnerable adult. These incidents could have happened several years ago, or they could be very recent. Most clients who have been disqualified on the basis of an incident of maltreatment were not aware that the offense would affect their future employment, and they usually did not timely challenge the maltreatment determination when it occurred. The goal is to remove the underlying maltreatment determination or in the alternative, prove that despite the maltreatment determination, the client does not pose a risk of harm to persons served. Unless the client has a licensed facility, maltreatment determinations are not bars.

I. **WRITTEN REQUEST FOR RECONSIDERATION.**⁸ Once the individual receives their initial disqualification notice, they should request reconsideration in writing to both the agency that made the maltreatment determination and the agency that sent the disqualification notice. Most individuals have only 15 days from the date of the letter to challenge the underlying maltreatment determination and 30 days to challenge the subsequent DQ.

A. **The appeal period for the underlying maltreatment period has elapsed.** Can you somehow reopen the client's underlying maltreatment finding?

1. Was the client disqualified in the past for maltreatment (same incident) and did not respond to the initial maltreatment determination? If yes, they technically have no right to appeal the old determination, but you should try to reopen the case.
 - a. Order the investigation file and look for proof of insufficient notice or egregious investigation flaws. (You will need to make a Data Practices request to get the file.) If so, notify DHS or MDH and make every effort to challenge the issue of the underlying maltreatment determination under part B.
 - b. Try simply asking the investigating agency to reopen the case (informally). If successful, see part B.
 - c. If there is no way to reopen the maltreatment determination, the client must either wait out the 7-year disqualification period or

⁸ Must provide the following information, in accordance with Minn. Stat. 245C.21(3) when applying for reconsideration: (a) The information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect; (b) For maltreatment, the information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect; or (c) The subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter, by addressing the information required under section 245C.22(4).

prove that despite the maltreatment determination, they do not pose a risk of harm to persons served. Go to part C.

B. The maltreatment determination is recent and you can timely challenge it.

1. The goal is to prove that the act did not constitute serious or recurring maltreatment. Order the entire contents of the maltreatment investigation and record. Then, review the grounds for finding maltreatment and analyze whether the facts can support a different conclusion other than maltreatment. To do so, find the definition/elements of the disqualifying act and try to prove that the client's conduct did not match that definition. *See In re Staley*, 730 N.W.2d 289 (Minn. App. 2007). Look at the *Vulnerable Adults Act* and the *Maltreatment of Minors Act* for elements and definitions.⁹
2. Supplement your analysis with any evidence about what actually happened. Consider contacting a medical expert to evaluate the evidence, gather witnesses who may have observed what happened, and probe into the alleged victim's history of abuse, illness, injury, and truthfulness.
3. Submit your written argument and evidence to the agency that made the maltreatment determination within 15 days. Send a copy to the disqualifying agency, as well, if they are separate.

C. **Risk of Harm Analysis.** Regardless of whether you can challenge the underlying maltreatment finding, you should also submit written information to the disqualifying agency to prove that the individual does not pose a risk of harm to patients. The secondary goal, after rescinding the underlying maltreatment determination, is to obtain a **set aside**, so that the individual can continue to work at the facility despite their disqualifying offense. §2456C.22.

In evaluating your request for a set-aside, the Commissioner weighs the following factors under §245C.22, subd. 4:

- i. The nature, severity, and consequences of the event or events that led to the DQ;
- ii. Whether there is more than one disqualifying event;
- iii. The age and vulnerability of the victim at the time of the event;
- iv. The vulnerability of the persons served (2007 amendment)

⁹ If the DQ was based on a failure to report the maltreatment of a child the commissioner's determination must be based on the ALL of the following: a) The individual was a mandated reporter under [Minn. Stat. § 626.556, subd. 3](#) (Supp. 1999); b) The individual knew or had reason to know that a child was maltreated; c) The maltreatment was substantiated; d) The maltreatment was recurring or serious; and e) The individual failed to make the required report. NOTE: See section (e)(a)(iii) for additional information on conclusiveness.

- v. The harm suffered by the victim;
- vi. The similarity between the victim and persons served by the program;
- vii. The time elapsed without a repeat of the same or similar event;
- viii. Documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- ix. Any other information relevant to reconsideration.

You should provide written responses to these questions and supplement the record with as much information as possible to prove that the individual is trustworthy. Try to obtain probation reports, treatment and aftercare records, school records, formal letters of support from non-relatives, successful program completion (the closer the relation to maltreatment the better), certificates from a program for anger management, and information about any other life-changing experiences or schooling. (For a successful case example, see *State v. Awes*, 2005 WL 3111848 (Minn. App)). The burden of proof is on the individual to prove that they do not pose a risk of harm. Any single factor can be determinative. Preeminent weight is given to the safety of persons served.

- D. The third option is to pursue a **variance**. Only the employer (or license holder) can request a variance, but you can contact the employer to ask that they request it. This involves the employer assuring the disqualifying agency that the individual would work in a supervised capacity, while maintaining their disqualifying characteristic. Variances can be time-limited and rescinded at any time for cause. §245C.30. You cannot appeal the Commissioner's decision to not grant a variance.

If the Commissioner rescinds the disqualification or grants a set-aside or a variance, your client will be able to continue working, assuming that the facility has decided to retain them pending resolution of their reconsideration request.

II. FAIR HEARING. If the Commissioner denies your written request to rescind the maltreatment determination or to grant a set-aside, you can request an administrative hearing to contest the decision.

- A. **Procedural Information.** Request a fair hearing by sending DHS Appeals division a statement that you would like a fair hearing. The deadline is 30 days from receipt of notice. Detailed instructions are provided on the notices.
- B. Fair hearings take place with a DHS judge and an Assistant Attorney General and/or an Assistant County Attorney representing the state.
- C. After you request a fair hearing, DHS will assign a judge, who will set a pre-hearing conference, at which you and the AAG or ACA will set the time and date of the hearing and set the scope of the hearing.
- D. The scope of the maltreatment hearing will include an evaluation of the Commissioner's decision that the individual poses a risk of harm, assuming it is the first time the individual has had a fair hearing based on the disqualification.

Ideally, it will also include the underlying maltreatment determination (consolidated hearing) if the individual has preserved their appeal rights to contest the maltreatment determination, or if you have convinced DHS or the judge to include the maltreatment determination in the scope of the hearing. The second disqualification notice will include information about the proposed scope of the hearing. Detailed information about the possible scope of the hearing is also contained in §§245C.27-29.

- E. **Preparing for the Hearing.** You should have gathered all investigation data about the underlying disqualification, as well as any additional evidence or witnesses, in order to submit an accurate written appeal. If you did not have a chance to do so, gather this information in preparation for the fair hearing and send it to the AAG or ACA as soon as possible to facilitate a settlement. See IB.
 - F. Try to submit a thorough memo for the judge (copy AG and/or ACA) with your theory of the case and any defenses prior to the hearing. Include affidavits from any witnesses identified from the file and any witnesses identified by the client. This may also facilitate settlement.
 - G. Contact the AG and/or ACA regarding potentially settling the case. A settlement usually involves a set aside or a variance while maintaining the underlying maltreatment disqualification. For many clients, this is the easiest and fastest way to resolve their crisis and get them back to work.
 - H. If you cannot settle, know that the rules of evidence are relaxed in the hearing. However, you should submit your exhibits and witnesses several days before the hearing and lay foundation for your exhibits. You should also prepare direct exam for your witnesses and cross exam for the state's witnesses, who are usually the maltreatment investigator and a state representative who made the decision not to set aside the disqualification.
 - I. DHS judges cannot decide constitutional issues or other equitable concerns in the hearing, but you should still make those arguments in order to preserve them for appeal.
- II. If you lose your fair hearing, you can ask the DHS judge to reconsider the decision within 30 days. You do not have to request reconsideration before appealing the decision to district court.
- III. You can request **JUDICIAL REVIEW** of the DHS judge's decision under §256.045, subd. 7. You cannot introduce new evidence at the review hearing, but the judge will be able to decide constitutional and equitable issues that the DHS judge could not.
- IV. If you lose at the district court level, you may request **APPELLATE REVIEW** as a civil matter.

Conviction Cases Checklist

Individuals can be disqualified based on a variety of crimes against persons and property crimes. §245C.15. If the disqualification is based on a criminal conviction, know that your client's remedies are limited. Unlike maltreatment cases, you cannot simply challenge the existence of a criminal conviction. You should be familiar with the different limited remedies and find out which remedy is best for your client.

I. WRITTEN REQUEST FOR RECONSIDERATION.

- A. Once the Commissioner sends the initial disqualification notice, the individual has 30 days to challenge the disqualification on paper.
- B. If the conviction information is somehow inaccurate (e.g., identity theft, incorrect background study information, etc), the individual should ask the Commissioner to **rescind** the conviction. If the conviction information is incorrect, provide proof of the incorrect information to DHS in your written request for reconsideration (i.e., fingerprints of client vs. fingerprints on file from the offender) *Moore v. Comm'r of Human Svcs.* 2006 WL 771869 (Minn. App.)
- C. Most of the time, however, the conviction information is correct. In this case, you can attempt to remove the conviction through a **criminal expungement**. §609A. A criminal expungement is a separate proceeding from the disqualification. Criminal expungements take six or more months, and there is no guarantee that your client will win. An expungement is only valid if the individual notified MDH and DHS and the expungement order directs those agencies to seal their records. If the conviction was a first-time drug possession offense or the client was a juvenile who was certified adult, they may be able to seal their DHS or MDH records through an expungement, as long as they serve the Commissioner of Health and the Commissioner of Human Services. For all other convictions, appellate case law states that a district court judge cannot seal executive branch records because of the separation of powers doctrine. See *State v. Schultz*, 676 N.W.2d 337, 343-44 (Minn. App. 2004). DHS and MDH are part of the executive branch, therefore, you will most likely not be able to convince a judge to do so.
- D. DHS honors **pardons**, but they take a very long time and involve mandatory minimum waiting periods.
- E. Realistically, if the conviction data is accurate, the best remedy for the client will be a **set-aside** or a **variance**. The time period, factors, and burdens are identical to the maltreatment reconsideration process. See Maltreatment section above, at I C & D. Note: unlike maltreatment disqualifications, certain severe criminal convictions carry permanent bars, which means that the individual cannot obtain a set aside or a variance if they have a permanent bar conviction on their record. See §245C.15, subs. 1; §245C. 24; §245C.30.
- F. Disqualifications based on criminal convictions do not carry any sort of **fair hearing** or **district court** review rights. The idea is that the individual had their day in court

during the criminal proceedings for the underlying disqualification. §245C.27, subd. 1(c); *See Sweet v. Comm'r of Human Services*, 702 N.W.2d 314, 321 (Minn.App.2005).

- G. If the Commissioner does not grant a set-aside or a variance and the conviction is not a permanent bar, the individual can also **wait out the disqualification period** (7-15 years from discharge of sentence).

II. For any conviction disqualification, the next step after the Commissioner's decision about reconsideration is the **COURT OF APPEALS**.

PREPONDERANCE OF THE EVIDENCE CHECKLIST

The Commissioner can disqualify an individual even if he or she was not convicted or adjudicated of a disqualifying act, as long as the Commissioner finds that a disqualifying act occurred by a preponderance of the evidence. §245C.14. The evidentiary basis is usually a police report or dismissed charges that were pled to lesser offenses.

- I. If the determination is not conclusive,¹⁰ file the written **REQUEST FOR RECONSIDERATION** within 30 days of receiving the initial disqualification notice.
 - A. The best remedy in this situation is to challenge the underlying determination and convince the Commissioner to **rescind** the disqualification. To do so, you must prove that there is no a preponderance of the evidence that the disqualifying act occurred.
 - B. First, **gather the evidence** used to determine the preponderance determination. Call DHS and request the evidence used to disqualify the individual. Also collect relevant police and sheriff's reports, court papers, plea agreements, and investigation data. Look for information about dismissing the case because of insufficient evidence or the existence of a defense. Also try to track down witnesses and get their statements.
 - C. Next, submit a **written response** proving that the disqualifying act did not occur, or in the alternative, show that an affirmative defense existed (e.g., self-defense). Submit witness statements and any evidence that you have found.
 - D. In addition to challenging the preponderance determination, or even if you cannot do so, ask that the DQ be **set aside** for this job and argue that the client does not pose a risk of harm to persons served. The risk of harm factors and standards are the same as listed in the maltreatment section. See Maltreatment section, I C. Note: an individual cannot request a set-aside or a variance if the preponderance of the evidence shows a permanent bar. §245C.15 & 24.
- II. The appeal path for preponderance cases is nearly identical to maltreatment cases. If the Commissioner denies the written request for reconsideration, they should request **A FAIR HEARING** under §256.045, subd. 7, to challenge the determination and/or the set aside denial. After the fair hearing, they can request **JUDICIAL REVIEW** in the county where the offense allegedly occurred, then **APPELLATE REVIEW**.

¹⁰ Similar to maltreatment disqualifications, a preponderance of the evidence DQ is conclusive if the client ignored a previous DQ based on the same incident, or if they lost a prior hearing on the matter. §245C.29, subd.2.

SUMMARY OF DISQUALIFICATION CASES

Most of the appellate case law regarding disqualifications is unfavorable because individuals tend to represent themselves *pro se* and they do not make any compelling legal arguments. The following are cases offer explanations to certain statutory provisions and/or are exceptions to the rule and can be used as favorable precedent for future disqualification cases.

In re S.F., 735 N.W.2d (Minn. Ct. App. 2007).

- This case does not specifically address the Maltreatment of Minors Act, but it establishes by analogy that physical abuse is not the equivalent of bodily harm. It requires unreasonable force or cruel discipline that is excessive under the circumstances.
- The court reversed a CHIPS adjudication for parents who spanked their 195-pound, 13-year old son with a wooden paddle 36 times because he wielded a knife against his father, threatened suicide, threw a temper tantrum, and left the house without permission.

In re Kleven, 736 N.W.2d 707 (Minn. App. 2007).

- § Caretaker relator trained vulnerable adults with the intellectual capacity of infants to say “f—k you” and “a—hole.” The Court of Appeals upheld her disqualification. Relator argued that the Vulnerable Adults Act has a subjective standard regarding caregiver’s conduct that “produces or could reasonably be expected to produce physical pain or injury or emotional distress.” Minn. Stat. §§626.557, subd. 1, 626.5572, subd. 2(b)(2) (2004). She argued that the agency could not prove maltreatment because the alleged victims could not understand the statements. DHS argued that the statute has an implicit objective reasonable person standard.
- § The Court of Appeals conceded that the portion of the statute under scrutiny was ambiguous about whether it had a reasonable person standard. Ultimately, the Court reasoned that when a statute is ambiguous, legislative intent should control interpretation. Because the intent of the Vulnerable Adults Act is to protect Minnesota’s vulnerable population, the Court concluded that an objective reasonable person standard should apply to the Vulnerable Adults Act.

Johnson v. Smith 374 nw2d 317 (Minn. Ct. App. 1985).

- This is not a licensing case, however, it is useful to contrast with facts involving child maltreatment. Dicta states that it is parental discipline, not physical abuse, to: hit a child once in the arm with a broomstick, hit them once on the back with a fist, slap them once or twice, hit them on the buttocks with a wooden spoon, and occasionally swear at them.

In re Welfare of Minor Children of J.B.B., 2001 WL 243221 (Minn. Ct. App. 2001).

- This is also not a licensing case, but it contains facts that can be contrasted with maltreatment cases. The Court reversed a physical abuse allegation against a father who spanked his children with a wooden lath. The father spanked his children for proper disciplinary reasons.

- Absent evidence of excessive force or physical injury, a conclusion that children are in need of protective services is not supported based on claims of the parents using corporal punishment for disciplinary reasons.
- This case does not specifically address the Maltreatment of Minors Act, but it reaffirms the point that reasonable parental discipline is not *per se* physical abuse.

Rodne v. Comm’r of Human Servs., 547 N.W.2d 440 (Minn. Ct. App. 1996).

- Use this case to establish that the Commissioner must consider all evidence submitted by the individual. When an individual requests reconsideration under Minn. Stat. § 245A.04, subd. 3b, the Commissioner may not simply disregard information submitted with the request. The Commissioner must consider the information submitted with the request for reconsideration and determine whether the information relied upon to disqualify an individual is incorrect.
- This case is often cited in appellate disqualification cases for the standard of review because disqualifications are quasi-judicial agency decisions not subject to the Administrative Procedures Act. *See* pp. 444-445.

Fosslemen v. Comm'r, 612 N.W.2d 456 (Minn. Ct. App. 2000).

- This case is most commonly used to establish that an individual has a property right in their employment, especially if it involves a license, which means that due process rights attach to disqualification proceedings. *See* pp. 461-465.
- This case involves a maltreatment determination with an interesting question about causation. The disqualifications were based on relators' failure to report the maltreatment allegedly occurring at an intermediate-care facility where relators were employed. The commissioner erred on two points in this case: (1) by failing to grant a hearing he violated the due process rights of relator; (2) he found a failure to report maltreatment but did not link that failure to the harm caused by the patient.

Lundy v. Commissioner of Human Servs., 2001 WL 710452 (Minn. Ct. App. 2001).

- Use this case to contrast with any minor allegations of maltreatment. In this case, the relator actually dislocated a 4-year old child's elbow. The Court affirmed her disqualification.

Awes v. Minnesota Dept. of Health, 2005 WL 3111848 (Minn. Ct. App. 2005).

- This case is one of the rare instances in which the Court of Appeals reversed the Commissioner's decision to disqualify an individual because of a criminal conviction. Relator had been convicted of 5th degree sexual assault as juvenile, but he provided sufficient information to show that he did not pose a risk of harm to persons served. The case offers good ideas about how to present information proving that an individual does not pose a risk of harm

Sweet v. Comm'r of Human Servs., 702 N.W.2d 314 (Minn. Ct. App. 2005).

- This case offers reinforcement for, and more importantly, an explanation about why individuals who are disqualified because of convictions are not entitled to evidentiary hearings. This is because they were afforded the "full panoply" of procedural due process rights during the underlying criminal proceedings.

Dozier v. Comm'r of Human Servs., 547 N.W.2d 393, 395 (Minn. Ct. App. 1996).

- This case simply reinforces the fact that an individual should not even try to obtain a set-aside if they are still on probation. There is almost no chance that they will be able to prove that they have rehabilitated themselves.

Moore v. Comm'r of Human Servs, 2006 WL 771869 (Minn. Ct. App. 2006).

- This case affirms the idea that individuals should always check the accuracy of the Commissioner's disqualifying information. Mistakes can happen, and individuals can obtain favorable results if they provide correct information.
- In this case, the Commissioner had relied on incorrect information in the BCA report that showed that the relator had been convicted of an aggravated felony, when in fact the relator had been convicted a simple felony. This, combined with the fact the individual had been successfully working extensively with vulnerable individuals, did not give the commissioner a reasonable basis for disqualifying the individual. Accordingly, the court set aside the disqualification.

In re Appeal of Staley, 730 N.W.2d 289 (Minn. Ct. App. 2007).

- This case offers a very thorough analysis of several issues that can be raised on appeal, including substantial evidence and arbitrary and capricious arguments. The court declined to accept any of these theories except that the Commissioner's decision was affected by an error of law because he construed the definition of maltreatment too broadly. The individual allegedly yelled profanities at an elderly nursing home resident.

Malloy v. Comm'r of Human Serv's, 657 N.W.2d 894 (Minn. Ct. App. 2003).

- The Court of Appeals reversed the Commissioner's disqualification because he exceeded his statutory authority. The Commissioner cannot disqualify an individual based on a disqualifying offense that was previously set aside, absent any new disqualifying information. The individual had an old theft conviction that was previously set aside. He was accused of maltreatment, but it was not serious or recurring. The Commissioner could not subsequently disqualify the individual based solely on his old theft conviction.

**EXCERPT FROM MINN. STAT. CHAPTER 245A
245A.16 STANDARDS FOR COUNTY AGENCIES AND PRIVATE AGENCIES.**

Subdivision 1. Delegation of authority to agencies. (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04 and chapter 245C, to recommend denial of applicants under section 245A.05, to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06, or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

- (1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;
- (2) adult foster care maximum capacity;
- (3) adult foster care minimum age requirement;
- (4) child foster care maximum age requirement;
- (5) variances regarding disqualified individuals except that county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25 and 245C.27, subdivision 2 , clauses (a) and (b), of a county maltreatment determination and a DQ based on serious or recurring maltreatment; and
- (6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours.

(b) County agencies must report:

- (1) information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2 , clauses (a) and (b), and variances granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner; and
- (2) for relative child foster care applicants and license holders, the number of relatives, as defined in section 260C.007, subdivision 27, and household members of relatives who are disqualified under section 245C.14; the disqualifying characteristics under section 245C.15; the number of these individuals who requested reconsideration under section 245C.21; the number of set-asides under section 245C.22; and variances under section 245C.30 issued. This information shall be reported to the commissioner annually by January 15 of each year in a format prescribed by the commissioner.

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

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

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

Subd. 2. Investigations. (a) The county or private agency shall conduct timely investigations of allegations of maltreatment of children or adults in programs for which the county or private agency is the commissioner's designated representative and record a disposition of each complaint

in accordance with applicable law or rule. The county or private agency shall conduct similar investigations of allegations of violations of rules governing licensure of the program.

(b) If an investigation conducted under clause (a) results in evidence that the commissioner should deny an application or suspend, revoke, or make conditional a license, the county or private agency shall make that recommendation to the commissioner within ten working days.

Subd. 3. Recommendations to the commissioner. The county or private agency shall not make recommendations to the commissioner regarding licensure without first conducting an inspection, study of the applicant, and evaluation pursuant to chapter 245C. The county or private

agency must forward its recommendation to the commissioner regarding the appropriate licensing

action within 20 working days of receipt of a completed application.

Subd. 4. Enforcement of commissioner's orders. The county or private agency shall enforce the commissioner's orders under sections 245A.07, 245A.08, subdivision 5, and chapter 245C, according to the instructions of the commissioner. The county attorney shall assist the county agency in the enforcement and defense of the commissioner's orders under sections 245A.07, 245A.08, and chapter 245C, according to the instructions of the commissioner, unless a conflict of interest exists between the county attorney and the commissioner. For purposes of this section, a conflict of interest means that the county attorney has a direct or shared financial interest with the license holder or has a personal relationship or family relationship with a party in

the licensing action.

Subd. 5. Instruction and technical assistance. The commissioner shall provide instruction and technical assistance to county and private agencies that are subject to this section. County and private agencies shall cooperate with the commissioner in carrying out this section by ensuring that affected employees participate in instruction and technical assistance provided by the commissioner.

Subd. 6. Certification by commissioner. The commissioner shall ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with this section and other applicable laws and rules at least every four years. County agencies that comply with this section shall be certified by the commissioner. If a county agency fails to be certified by the commissioner, the commissioner shall certify a reduction of state administrative aids in an amount up to 20 percent of the county's state portion of Children and Community Services Act funding.

History: 1987 c 333 s 17; 1989 c 282 art 2 s 86; 1990 c 568 art 2 s 52,53; 1991 c 142 s 3; 1992 c 513 art 9 s 16; 1993 c 338 s 9; 1997 c 248 s 32; 1Sp2001 c 9 art 14 s 24; 2002 c 375 art 1 s 18; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33; 2004 c 288 art 1 s 28,29; 2005 c 98 art 3 s 14; 1Sp2005 c 4 art 1 s 20,21

EXCERPTS FROM MINN. STAT, CHAPTER 245C

245C.02 DEFINITIONS.

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

Subd. 2. **Access to persons served by a program.** "Access to persons served by a program" means physical access to persons receiving services or the persons' personal property without continuous, direct supervision, as defined in subdivision 8.

Subd. 3. **Annual or annually.** "Annual" or "annually" has the meaning given in section [245A.02, subdivision 2b](#).

Subd. 4. **Applicant.** "Applicant" has the meaning given in section [245A.02, subdivision 3](#).

Subd. 5. **Background study.** "Background study" means the review of records conducted by the commissioner to determine whether a subject is disqualified from direct contact with persons served by a program and, where specifically provided in statutes, whether a subject is disqualified

from having access to persons served by a program.

Subd. 6. **Child.** "Child" has the meaning given in section [245A.02, subdivision 4](#).

Subd. 7. **Commissioner.** "Commissioner" has the meaning given in section 245A.02, subdivision 5 .

Subd. 8. **Continuous, direct supervision.** "Continuous, direct supervision" means an individual is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program.

Subd. 9. **Contractor.** "Contractor" means any individual, regardless of employer, who is providing program services for hire under the control of the provider.

Subd. 10. **County agency.** "County agency" has the meaning given in section 245A.02, subdivision 6 .

Subd. 11. **Direct contact.** "Direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program.

Subd. 12. **License.** "License" has the meaning given in section [245A.02, subdivision 8](#).

Subd. 13. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9 .

Subd. 14. **Person.** "Person" means a child as defined in subdivision 6 or an adult as defined in section [245A.02, subdivision 2](#).

Subd. 15. **Reasonable cause.** "Reasonable cause" means information or circumstances exist which provide the commissioner with articulable suspicion that further pertinent information may exist concerning a subject. The commissioner has reasonable cause when, but not limited to, the commissioner has received a report from the subject, the license holder, or a third party indicating that the subject has a history that would disqualify the individual or that may pose a risk to the health or safety of persons receiving services.

Subd. 16. **Recurring maltreatment.** "Recurring maltreatment" means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment.

Subd. 17. [Repealed, 2004 c 288 art 1 s 83]

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

(b) For purposes of this definition, "care of a physician" is treatment received or ordered by a physician but does not include diagnostic testing, assessment, or observation.

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

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

Subd. 19. **Subject of a background study.** "Subject of a background study" means an individual on whom a background study is required or completed.

History: 2003 c 15 art 1 s 2; 2004 c 288 art 1 s 38

245C.03 BACKGROUND STUDY: INDIVIDUALS TO BE STUDIED.

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

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

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

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

(4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision

by an individual listed in clause (1) or (3);

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

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

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

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

Subd. 2. **Personal care provider organizations.** The commissioner shall conduct background studies on any individual required under sections [256B.0651](#) and [256B.0653](#) to [256B.0656](#) to have a background study completed under this chapter.

Subd. 3. **Supplemental nursing services agencies.** The commissioner shall conduct all

background studies required under this chapter and initiated by supplemental nursing services agencies registered under section [144A.71, subdivision 1](#).

Subd. 4. Personnel agencies; educational programs; professional services agencies.

The commissioner also may conduct studies on individuals specified in subdivision 1, clauses (3) and (4), when the studies are initiated by:

- (1) personnel pool agencies;
- (2) temporary personnel agencies;
- (3) educational programs that train individuals by providing direct contact services in licensed programs; and
- (4) professional services agencies that are not licensed and which contract with licensed programs to provide direct contact services or individuals who provide direct contact services.

Subd. 5. Other state agencies. The commissioner shall conduct background studies on applicants and license holders under the jurisdiction of other state agencies who are required in other statutory sections to initiate background studies under this chapter, including the applicant's or license holder's employees, contractors, and volunteers when required under other statutory sections.

History: 2003 c 15 art 1 s 3; 2004 c 288 art 1 s 39,40; 1Sp2005 c 4 art 1 s 26

245C.08 BACKGROUND STUDY: INFORMATION COMMISSIONER REVIEWS.

Subdivision 1. Background studies conducted by commissioner of human services. (a)

For a background study conducted by the commissioner, the commissioner shall review:

- (1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c , paragraph (i);
- (2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from county agency findings of maltreatment of minors as indicated through the social service information system;
- (3) information from juvenile courts as required in subdivision 4 for individuals listed in section [245C.03, subdivision 1](#), clauses (2), (5), and (6); and
- (4) information from the Bureau of Criminal Apprehension.

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

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

- (1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;
- (2) information from juvenile courts as required in subdivision 4 for individuals listed in section [245C.03, subdivision 1](#), clauses (2), (5), and (6);
- (3) information from the Bureau of Criminal Apprehension; and
- (4) arrest and investigative records maintained by the Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, the National Criminal Records Repository, and criminal records from other states.

(b) If the individual has resided in the county for less than five years, the study shall include

the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county or private agency may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

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

- (1) the Bureau of Criminal Apprehension;
- (2) the commissioner of health;
- (3) a county attorney;
- (4) a county sheriff;
- (5) a county agency;
- (6) a local chief of police;
- (7) other states;
- (8) the courts; or
- (9) the Federal Bureau of Investigation.

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

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

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

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

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

(e) The commissioner shall destroy juvenile court records obtained under this subdivision when the subject of the records reaches age 23.

History: 2003 c 15 art 1 s 8; 1Sp2003 c 14 art 6 s 5; 2004 c 288 art 1 s 45-47; 1Sp2005 c 4 art 1 s 28,29

245C.14 DISQUALIFICATION.

Subdivision 1. Disqualification from direct contact. (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact

with persons receiving services from the license holder or entity identified in section [245C.03](#), upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

- (1) a conviction of or admission to one or more crimes listed in section [245C.15](#), regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;
- (2) a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in section [245C.15](#), regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level crime; or
- (3) an investigation results in an administrative determination listed under section [245C.15](#), subdivision 4 , paragraph (b).

(b) No individual who is disqualified following a background study under section [245C.03](#), subdivisions 1 and 2 , may be retained in a position involving direct contact with persons served by a program or entity identified in section [245C.03](#), unless the commissioner has provided written notice under section [245C.17](#) stating that:

- (1) the individual may remain in direct contact during the period in which the individual may request reconsideration as provided in section [245C.21, subdivision 2](#);
- (2) the commissioner has set aside the individual's disqualification for that program or entity identified in section [245C.03](#), as provided in section [245C.22, subdivision 4](#); or
- (3) the license holder has been granted a variance for the disqualified individual under section [245C.30](#).

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

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

- (1) the individual may remain in direct contact during the period in which the individual may request reconsideration as provided in section [245C.21, subdivision 2](#);
- (2) the commissioner has set aside the individual's disqualification for that licensed program or entity identified in section [245C.03](#) as provided in section [245C.22, subdivision 4](#); or
- (3) the license holder has been granted a variance for the disqualified individual under section [245C.30](#).

History: *2003 c 15 art 1 s 14; 2004 c 288 art 1 s 50*

245C.15 DISQUALIFYING CRIMES OR CONDUCT.

Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under section [245C.14](#) if: (1) regardless of how much time has passed since the discharge of the sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of the level of the offense, the individual has committed any of the following offenses: sections [609.185](#) (murder in the first degree); [609.19](#) (murder in the second degree); [609.195](#) (murder in the third degree); [609.20](#) (manslaughter in the first degree); [609.205](#) (manslaughter in the second degree); [609.221](#) or [609.222](#) (assault in the first or second degree); a felony offense under sections [609.2242](#)

and [609.2243](#) (domestic assault), spousal abuse, child abuse or neglect, or a crime against children; [609.228](#) (great bodily harm caused by distribution of drugs); [609.245](#) (aggravated robbery); [609.25](#) (kidnapping); [609.2661](#) (murder of an unborn child in the first degree); [609.2662](#) (murder of an unborn child in the second degree); [609.2663](#) (murder of an unborn child in the third degree); [609.322](#) (solicitation, inducement, and promotion of prostitution); a felony offense under [609.324, subdivision 1](#) (other prohibited acts); [609.342](#) (criminal sexual conduct in the first degree); [609.343](#) (criminal sexual conduct in the second degree); [609.344](#) (criminal sexual conduct in the third degree); [609.345](#) (criminal sexual conduct in the fourth degree); [609.3451](#) (criminal sexual conduct in the fifth degree); [609.3453](#) (criminal sexual predatory conduct); [609.352](#) (solicitation of children to engage in sexual conduct); [609.365](#) (incest); a felony offense under [609.377](#) (malicious punishment of a child); a felony offense under [609.378](#) (neglect or endangerment of a child); [609.561](#) (arson in the first degree); [609.66, subdivision 1e](#) (drive-by shooting); [609.749, subdivision 3, 4, or 5](#) (felony-level harassment; stalking); [609.855, subdivision 5](#) (shooting at or in a public transit vehicle or facility); [617.246](#) (use of minors in sexual performance prohibited); or [617.247](#) (possession of pictorial representations of minors). An individual also is disqualified under section [245C.14](#) regardless of how much time has passed since the involuntary termination of the individual's parental rights under section [260C.301](#).

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

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

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

Subd. 2. 15-year disqualification. (a) An individual is disqualified under section [245C.14](#) if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: sections [256.98](#) (wrongfully obtaining assistance); [268.182](#) (false representation; concealment of facts); [393.07, subdivision 10](#), paragraph (c) (federal Food Stamp Program fraud); [609.165](#) (felon ineligible to possess firearm); [609.21](#) (criminal vehicular homicide and injury); [609.215](#) (suicide); [609.223](#) or [609.2231](#) (assault in the third or fourth degree); repeat offenses under [609.224](#) (assault in the fifth degree); [609.2325](#) (criminal abuse of a vulnerable adult); [609.2335](#) (financial exploitation of a vulnerable adult); [609.235](#) (use of drugs to injure or facilitate crime); [609.24](#) (simple robbery); [609.255](#) (false imprisonment); [609.2664](#) (manslaughter of an unborn child in the first degree); [609.2665](#) (manslaughter of an unborn child in the second

degree); [609.267](#) (assault of an unborn child in the first degree); [609.2671](#) (assault of an unborn child in the second degree); [609.268](#) (injury or death of an unborn child in the commission of a crime); [609.27](#) (coercion); [609.275](#) (attempt to coerce); repeat offenses under [609.3451](#) (criminal sexual conduct in the fifth degree); [609.466](#) (medical assistance fraud); [609.498, subdivision 1](#) or 1b (aggravated first degree or first degree tampering with a witness); [609.52](#) (theft); [609.521](#) (possession of shoplifting gear); [609.525](#) (bringing stolen goods into Minnesota); [609.527](#) (identity theft); [609.53](#) (receiving stolen property); [609.535](#) (issuance of dishonored checks); [609.562](#) (arson in the second degree); [609.563](#) (arson in the third degree); [609.582](#) (burglary); [609.611](#) (insurance fraud); [609.625](#) (aggravated forgery); [609.63](#) (forgery); [609.631](#) (check forgery; offering a forged check); [609.635](#) (obtaining signature by false pretense); [609.66](#) (dangerous weapons); [609.67](#) (machine guns and short-barreled shotguns); [609.687](#) (adulteration); [609.71](#) (riot); [609.713](#) (terroristic threats); [609.82](#) (fraud in obtaining credit); [609.821](#) (financial transaction card fraud); repeat offenses under [617.23](#) (indecent exposure; penalties); repeat offenses under [617.241](#) (obscene materials and performances; distribution and exhibition prohibited; penalty); chapter 152 (drugs; controlled substance); or a felony-level conviction involving alcohol or drug use.

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

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

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

(e) If the individual studied is convicted of one of the felonies listed in paragraph (a), but the sentence is a gross misdemeanor or misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the conviction is the period applicable to the gross misdemeanor or misdemeanor disposition.

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

Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section [245C.14](#) if: (1) less than ten years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a gross misdemeanor-level violation of any of the following offenses: sections [256.98](#) (wrongfully obtaining assistance); [268.182](#) (false

representation; concealment of facts); [393.07, subdivision 10](#), paragraph (c) (federal Food Stamp Program fraud); [609.224](#) (assault in the fifth degree); [609.224, subdivision 2](#), paragraph (c) (assault in the fifth degree by a caregiver against a vulnerable adult); [609.2242](#) and [609.2243](#) (domestic assault); [609.23](#) (mistreatment of persons confined); [609.231](#) (mistreatment of residents or patients); [609.2325](#) (criminal abuse of a vulnerable adult); [609.233](#) (criminal neglect of a vulnerable adult); [609.2335](#) (financial exploitation of a vulnerable adult); [609.234](#) (failure to report maltreatment of a vulnerable adult); [609.265](#) (abduction); [609.275](#) (attempt to coerce); [609.324, subdivision 1a](#) (other prohibited acts; minor engaged in prostitution); [609.33](#) (disorderly house); [609.3451](#) (criminal sexual conduct in the fifth degree); [609.377](#) (malicious punishment of a child); [609.378](#) (neglect or endangerment of a child); 609.466 (medical assistance fraud); [609.52](#) (theft); [609.525](#) (bringing stolen goods into Minnesota); [609.527](#) (identity theft); [609.53](#) (receiving stolen property); [609.535](#) (issuance of dishonored checks); [609.582](#) (burglary); [609.611](#) (insurance fraud); [609.631](#) (check forgery; offering a forged check); [609.66](#) (dangerous weapons); [609.71](#) (riot); [609.72, subdivision 3](#) (disorderly conduct against a vulnerable adult); repeat offenses under [609.746](#) (interference with privacy); [609.749, subdivision 2](#) (harassment; stalking); repeat offenses under [617.23](#) (indecent exposure); [617.241](#) (obscene materials and performances); [617.243](#) (indecent literature, distribution); [617.293](#) (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section 518B.01, subdivision 14 .

(b) An individual is disqualified under section [245C.14](#) if less than ten years has passed since the individual's aiding and abetting, attempt, or conspiracy to commit any of the offenses listed in

paragraph (a), as each of these offenses is defined in Minnesota Statutes.

(c) An individual is disqualified under section [245C.14](#) if less than ten years has passed since the discharge of the sentence imposed for an offense in any other state or country, the elements of

which are substantially similar to the elements of any of the offenses listed in paragraph (a).

(d) If the defendant is convicted of one of the gross misdemeanors listed in paragraph (a), but the sentence is a misdemeanor disposition, the individual is disqualified but the disqualification lookback period for the conviction is the period applicable to misdemeanors.

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

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

of the following offenses: sections [256.98](#) (wrongfully obtaining assistance); [268.182](#) (false representation; concealment of facts); [393.07, subdivision 10](#), paragraph (c) (federal Food Stamp Program fraud); [609.224](#) (assault in the fifth degree); [609.2242](#) (domestic assault); [609.2335](#) (financial exploitation of a vulnerable adult); [609.234](#) (failure to report maltreatment of a vulnerable adult); [609.2672](#) (assault of an unborn child in the third degree); [609.27](#) (coercion); violation of an order for protection under [609.3232](#) (protective order authorized; procedures; penalties); [609.466](#) (medical assistance fraud); [609.52](#) (theft); [609.525](#) (bringing stolen goods into

Minnesota); [609.527](#) (identity theft); [609.53](#) (receiving stolen property); [609.535](#) (issuance of dishonored checks); [609.611](#) (insurance fraud); [609.66](#) (dangerous weapons); [609.665](#) (spring guns); [609.746](#) (interference with privacy); [609.79](#) (obscene or harassing telephone calls); [609.795](#) (letter, telegram, or package; opening; harassment); [609.82](#) (fraud in obtaining credit); [609.821](#) (financial transaction card fraud); [617.23](#) (indecent exposure; penalties); [617.293](#) (harmful materials; dissemination and display to minors prohibited); or violation of an order for protection under section [518B.01](#) (Domestic Abuse Act).

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

(1) failure to make required reports under section [626.556, subdivision 3](#), or [626.557, subdivision 3](#), for incidents in which: (i) the final disposition under section [626.556](#) or [626.557](#) was substantiated maltreatment, and (ii) the maltreatment was recurring or serious; or
(2) substantiated serious or recurring maltreatment of a minor under section [626.556](#), a vulnerable adult under section [626.557](#), or serious or recurring maltreatment in any other state, the

elements of which are substantially similar to the elements of maltreatment under section [626.556](#)

or [626.557](#) for which: (i) there is a preponderance of evidence that the maltreatment occurred, and

(ii) the subject was responsible for the maltreatment.

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

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

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

Subd. 5. Mental illness. The commissioner may not disqualify an individual subject to a background study under this chapter because that individual has, or has had, a mental illness as defined in section [245.462, subdivision 20](#).

History: 2003 c 15 art 1 s 15; 1Sp2003 c 14 art 6 s 7; 2004 c 288 art 1 s 51-53; 2005 c 136 art 6 s 2; 1Sp2005 c 4 art 1 s 30-33; 2006 c 212 art 3 s 17

245C.16 DISQUALIFIED INDIVIDUAL'S RISK OF HARM.

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

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

- (1) the recency of the disqualifying characteristic;
- (2) the recency of discharge from probation for the crimes;
- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic;
- (6) the similarity of the victim to the persons served by the program where the individual studied will have direct contact; and
- (7) whether the individual has a disqualification from a previous background study that has not been set aside.

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

(d) If the commissioner has reason to believe, based on arrest information or an active maltreatment investigation, that an individual poses an imminent risk of harm to persons receiving

services, the commissioner may order that the person be continuously supervised or immediately removed pending the conclusion of the maltreatment investigation or criminal proceedings.

Subd. 2. **Findings.** (a) After evaluating the information immediately available under subdivision 1, the commissioner may have reason to believe one of the following:

- (1) the individual poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact;
- (2) the individual poses a risk of harm requiring continuous, direct supervision while providing direct contact services during the period in which the subject may request a reconsideration; or
- (3) the individual does not pose an imminent risk of harm or a risk of harm requiring continuous, direct supervision while providing direct contact services during the period in which the subject may request a reconsideration.

(b) After determining an individual's risk of harm under this section, the commissioner must notify the subject of the background study and the applicant or license holder as required under section [245C.17](#).

Subd. 3. **County agency.** (a) County licensing agencies performing duties under this section may develop an alternative system for determining the subject's immediate risk of harm to persons served by the program, providing the notices under subdivision 2, paragraph (b), and documenting the action taken by the county licensing agency.

(b) Each county licensing agency's implementation of the alternative system is subject to approval by the commissioner.

(c) Notwithstanding this alternative system, county licensing agencies shall complete the requirements of section [245C.17](#).

History: 2003 c 15 art 1 s 16; 2004 c 288 art 1 s 54

245C.17 NOTICE OF BACKGROUND STUDY RESULTS.

Subdivision 1. **Time frame for notice of study results.** (a) Within 15 working days after the commissioner's receipt of the background study form, the commissioner shall notify the individual who is the subject of the study in writing or by electronic transmission of the results of the study or that more time is needed to complete the study.

(b) Within 15 working days after the commissioner's receipt of the background study form submitted on paper, the commissioner shall notify the applicant, license holder, or other entity as provided in this chapter in writing or by electronic transmission of the results of the study or that more time is needed to complete the study.

(c) Within three days after the commissioner's receipt of a request for a background study submitted through the commissioner's online system, the commissioner shall provide an electronic notification to the applicant, license holder, or other entity as provided in this chapter. The electronic notification shall disclose the results of the study or that more time is needed to complete the study.

(d) When the commissioner has completed a prior background study on an individual that resulted in an order for immediate removal and more time is necessary to complete a subsequent study, the notice that more time is needed that is issued under paragraphs (a), (b), and (c) shall include an order for immediate removal of the individual from any position allowing direct contact with or access to people receiving services pending completion of the background study.

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

- (1) the information causing disqualification;
- (2) instructions on how to request a reconsideration of the disqualification;
- (3) an explanation of any restrictions on the commissioner's discretion to set aside the disqualification under section [245C.24](#), when applicable to the individual;
- (4) a statement indicating that if the individual's disqualification is set aside or the facility is granted a variance under section [245C.30](#), the individual's identity and the reason for the individual's disqualification will become public data under section [245C.22, subdivision 7](#), when applicable to the individual; and
- (5) the commissioner's determination of the individual's immediate risk of harm under section [245C.16](#).

(b) If the commissioner determines under section [245C.16](#) that an individual poses an imminent risk of harm to persons served by the program where the individual will have direct contact, the commissioner's notice must include an explanation of the basis of this determination.

(c) If the commissioner determines under section [245C.16](#) that an individual studied does not pose a risk of harm that requires immediate removal, the individual shall be informed of the conditions under which the agency that initiated the background study may allow the individual to provide direct contact services as provided under subdivision 3.

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

- (1) that the commissioner has found information that disqualifies the individual studied from

direct contact with, or from access to, persons served by the program; and

(2) the commissioner's determination of the individual's risk of harm under section [245C.16](#).

(b) If the commissioner determines under section [245C.16](#) that an individual studied poses an imminent risk of harm to persons served by the program where the individual studied will have direct contact, the commissioner shall order the license holder to immediately remove the individual studied from direct contact.

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

(1) immediately remove the individual studied from direct contact services; or

(2) before allowing the disqualified individual to provide direct contact services, the applicant, license holder, or other entity, as provided in this chapter, must:

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

(ii) ensure that the individual studied is under continuous, direct supervision when providing direct contact services during the period in which the individual may request a reconsideration of the disqualification under section [245C.21](#); and

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

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

(1) immediately remove the individual studied from direct contact services; or

(2) before allowing the disqualified individual to provide direct contact services, the applicant, license holder, or other entity as provided in this chapter must:

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

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

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

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

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

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

Subd. 4. Disqualification notice to family child care or foster care provider. For studies on individuals pertaining to a license to provide family child care or group family child care, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home, the commissioner is not required to provide a separate notice of the background study results to the individual who is the subject of the study unless the study results in a disqualification of the individual.

History: 2003 c 15 art 1 s 17; 2004 c 288 art 1 s 55,56; 2005 c 136 art 6 s 3-5

245C.18 OBLIGATION TO REMOVE DISQUALIFIED INDIVIDUAL FROM DIRECT CONTACT.

Upon receipt of notice from the commissioner, the license holder must remove a disqualified individual from direct contact with persons served by the licensed program if:

- (1) the individual does not request reconsideration under section [245C.21](#) within the prescribed time;
- (2) the individual submits a timely request for reconsideration, the commissioner does not set aside the disqualification under section [245C.22, subdivision 4](#), and the individual does not submit a timely request for a hearing under sections [245C.27](#) and [256.045](#), or [245C.28](#) and chapter 14; or
- (3) the individual submits a timely request for a hearing under sections [245C.27](#) and [256.045](#), or [245C.28](#) and chapter 14, and the commissioner does not set aside or rescind the disqualification under section [245A.08, subdivision 5](#), or [256.045](#).

History: 2003 c 15 art 1 s 18; 2004 c 288 art 1 s 57

245C.21 REQUESTING RECONSIDERATION OF DISQUALIFICATION.

Subdivision 1. **Who may request reconsideration.** An individual who is the subject of a disqualification may request a reconsideration of the disqualification. The individual must submit the request for reconsideration to the commissioner in writing.

Subd. 2. **Time frame for requesting reconsideration.** (a) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the disqualified individual must submit the request for a reconsideration within 30 calendar days of the individual's receipt of the notice of disqualification.

If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for

reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification. Upon showing that the

information under subdivision 3 cannot be obtained within 30 days, the disqualified individual may request additional time, not to exceed 30 days, to obtain the information.

(b) When the commissioner sends an individual a notice of disqualification based on a finding under section [245C.16, subdivision 2](#), paragraph (a), clause (3), the disqualified individual

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

(c) An individual who was determined to have maltreated a child under section [626.556](#) or a vulnerable adult under section [626.557](#), and who is disqualified on the basis of serious or recurring maltreatment, may request a reconsideration of both the maltreatment and the

disqualification determinations. The request must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification.

Subd. 3. Information disqualified individuals must provide when requesting reconsideration. The disqualified individual requesting reconsideration must submit information showing that:

- (1) the information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect;
- (2) for maltreatment, the information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect; or
- (3) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter, by addressing the information required under section [245C.22, subdivision 4](#).

Subd. 4. Notice of request for reconsideration. Upon request, the commissioner may inform the applicant, license holder, or other entities as provided in this chapter who received a notice of the individual's disqualification under section [245C.17, subdivision 3](#), or has the consent

of the disqualified individual, whether the disqualified individual has requested reconsideration.

History: 2003 c 15 art 1 s 21; 2004 c 288 art 1 s 59,60; 1Sp2005 c 4 art 1 s 34

245C.22 REVIEW AND ACTION ON A RECONSIDERATION REQUEST.

Subdivision 1. Commissioner's time frame for responding to disqualification reconsideration requests. (a) The commissioner shall respond in writing or by electronic transmission to all reconsideration requests for which the basis for the request is that the information the commissioner relied upon to disqualify is incorrect or inaccurate within 30 working days of receipt of a request and all relevant information.

(b) If the basis for a disqualified individual's reconsideration request is that the individual does not pose a risk of harm, the commissioner shall respond to the request within 15 working days after receiving the request for reconsideration and all relevant information.

(c) If the disqualified individual's reconsideration request is based on both the correctness or accuracy of the information the commissioner relied upon to disqualify the individual and the individual's risk of harm, the commissioner shall respond to the request within 45 working days after receiving the request for reconsideration and all relevant information.

Subd. 2. Incorrect information; rescission. The commissioner shall rescind the disqualification if the commissioner finds that the information relied upon to disqualify the subject is incorrect.

Subd. 3. Preeminent weight given to safety of persons being served. In reviewing a request for reconsideration of a disqualification, the commissioner shall give preeminent weight to the safety of each person served by the license holder, applicant, or other entities as provided in

this chapter over the interests of the disqualified individual, license holder, applicant, or other entity as provided in this chapter, and any single factor under subdivision 4, paragraph (b), may

be

determinative of the commissioner's decision whether to set aside the individual's disqualification.

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

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

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) the similarity between the victim and persons served by the program;
- (6) the time elapsed without a repeat of the same or similar event;
- (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (8) any other information relevant to reconsideration.

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

Subd. 5. Scope of set aside. If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. The commissioner's set aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section [245C.23](#), unless otherwise specified in the notice.

Subd. 6. Rescission of set aside. The commissioner may rescind a previous set aside of a disqualification under this section based on new information that indicates the individual may pose a risk of harm to persons served by the applicant, license holder, or other entities as provided in this chapter. If the commissioner rescinds a set aside of a disqualification under this subdivision, the appeal rights under sections [245C.21](#), [245C.27, subdivision 1](#), and [245C.28, subdivision 3](#), shall apply.

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

- (1) for any disqualifying characteristic under section [245C.15](#), when the set-aside relates to a child care center or a family child care provider licensed under chapter 245A; or
- (2) for a disqualifying characteristic under section [245C.15, subdivision 2](#).

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

- (1) is issued to a child care center or a family child care provider licensed under chapter

245A; or

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

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

(1) a disqualification is not set aside and no variance is granted;

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

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

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

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

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

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

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

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

History: 2003 c 15 art 1 s 22; 1Sp2003 c 14 art 6 s 6; 2004 c 288 art 1 s 61-64; 2005 c 136 art 6 s 6; 1Sp2005 c 4 art 1 s 35-37; 2006 c 264 s 9

245C.23 COMMISSIONER'S RECONSIDERATION NOTICE.

Subdivision 1. **Disqualification that is rescinded or set aside.** If the commissioner rescinds or sets aside a disqualification, the commissioner shall notify the applicant, license holder, or other

entity in writing or by electronic transmission of the decision. In the notice from the commissioner

that a disqualification has been rescinded, the commissioner must inform the applicant, license holder, or other entity that the information relied upon to disqualify the individual was incorrect. In the notice from the commissioner that a disqualification has been set aside, the commissioner must inform the applicant, license holder, or other entity of the reason for the individual's disqualification and that information about which factors under section [245C.22, subdivision 4](#), were the basis of the decision to set aside the disqualification are available to the license holder upon request without the consent of the background study subject.

Subd. 2. **Commissioner's notice of disqualification that is not set aside.** (a) The commissioner shall notify the license holder of the disqualification and order the license holder to immediately remove the individual from any position allowing direct contact with persons receiving services from the license holder if:

(1) the individual studied does not submit a timely request for reconsideration under section [245C.21](#);

(2) the individual submits a timely request for reconsideration, but the commissioner does not set aside the disqualification for that license holder under section [245C.22](#);

(3) an individual who has a right to request a hearing under sections [245C.27](#) and [256.045](#), or [245C.28](#) and chapter 14 for a disqualification that has not been set aside, does not request a hearing within the specified time; or

(4) an individual submitted a timely request for a hearing under sections [245C.27](#) and

[256.045](#), or [245C.28](#) and chapter 14, but the commissioner does not set aside the disqualification under section [245A.08, subdivision 5](#), or [256.045](#).

(b) If the commissioner does not set aside the disqualification under section [245C.22](#), and the license holder was previously ordered under section [245C.17](#) to immediately remove the disqualified individual from direct contact with persons receiving services or to ensure that the individual is under continuous, direct supervision when providing direct contact services, the order remains in effect pending the outcome of a hearing under sections [245C.27](#) and [256.045](#), or [245C.28](#) and chapter 14.

History: 2003 c 15 art 1 s 23; 2004 c 288 art 1 s 65,66; 1Sp2005 c 4 art 1 s 38

245C.24 DISQUALIFICATION: BAR TO SET ASIDE A DISQUALIFICATION; REQUEST FOR VARIANCE.

Subdivision 1. **Minimum disqualification periods.** The disqualification periods under subdivisions 3 and 4 are the minimum applicable disqualification periods. The commissioner may determine that an individual should continue to be disqualified from licensure because the individual continues to pose a risk of harm to persons served by that individual, even after the minimum disqualification period has passed.

Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in paragraph (b), the commissioner may not set aside the disqualification of any individual disqualified pursuant

to this chapter, regardless of how much time has passed, if the individual was disqualified for a crime or conduct listed in section [245C.15, subdivision 1](#).

(b) For an individual in the chemical dependency field who was disqualified for a crime or conduct listed under section [245C.15, subdivision 1](#), and whose disqualification was set aside prior

to July 1, 2005, the commissioner must consider granting a variance pursuant to section [245C.30](#) for the license holder for a program dealing primarily with adults. A request for reconsideration evaluated under this paragraph must include a letter of recommendation from the license holder that was subject to the prior set-aside decision addressing the individual's quality of care to children or vulnerable adults and the circumstances of the individual's departure from that service.

Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if: (1) less than ten years has passed since the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based on a preponderance of evidence determination under section [245A.14, subdivision 1](#), paragraph (a), clause (2), or an admission under section [245A.14, subdivision 1](#), paragraph (a), clause (1), and less than ten years

has passed since the individual committed the act or admitted to committing the act, whichever is later; and (3) the individual has committed a violation of any of the following offenses: sections [609.165](#) (felon ineligible to possess firearm); criminal vehicular homicide under [609.21](#) (criminal vehicular homicide and injury); [609.215](#) (aiding suicide or aiding attempted suicide); felony violations under [609.223](#) or [609.2231](#) (assault in the third or fourth degree); [609.713](#) (terroristic threats); [609.235](#) (use of drugs to injure or to facilitate crime); [609.24](#) (simple robbery); [609.255](#) (false imprisonment); [609.562](#) (arson in the second degree); [609.71](#) (riot); [609.498, subdivision 1](#)

or 1b (aggravated first degree or first degree tampering with a witness); burglary in the first or second degree under [609.582](#) (burglary); [609.66](#) (dangerous weapon); [609.665](#) (spring guns); [609.67](#) (machine guns and short-barreled shotguns); [609.749, subdivision 2](#) (gross misdemeanor harassment; stalking); [152.021](#) or [152.022](#) (controlled substance crime in the first or second degree); [152.023, subdivision 1](#), clause (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third degree); [152.024, subdivision 1](#), clause (2), (3), or (4) (controlled substance crime in the fourth degree); [609.224, subdivision 2](#), paragraph (c) (fifth-degree assault by a caregiver against a vulnerable adult); [609.23](#) (mistreatment of persons confined); [609.231](#) (mistreatment of residents or patients); [609.2325](#) (criminal abuse of a vulnerable adult); [609.233](#) (criminal neglect of a vulnerable adult); [609.2335](#) (financial exploitation of a vulnerable adult); [609.234](#) (failure to report); [609.265](#) (abduction); [609.2664](#) to [609.2665](#) (manslaughter of an unborn child in the first or second degree); [609.267](#) to [609.2672](#) (assault of an unborn child in the first, second, or third degree); [609.268](#) (injury or death of an unborn child in the commission of a crime); [617.293](#) (disseminating or displaying harmful material to minors); a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense under 609.324, subdivision

1 (other prohibited acts); a gross misdemeanor offense under [609.378](#) (neglect or endangerment of a child); a gross misdemeanor offense under [609.377](#) (malicious punishment of a child); or [609.72, subdivision 3](#) (disorderly conduct against a vulnerable adult).

(b) The commissioner may not set aside the disqualification of an individual if less than ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to commit any

of the offenses listed in paragraph (a) as each of these offenses is defined in Minnesota Statutes.

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

Subd. 4. Seven-year bar to set aside disqualification. The commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care for children, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home if within seven years preceding the study:

(1) the individual committed an act that constitutes maltreatment of a child under section [626.556, subdivision 10e](#), and the maltreatment resulted in substantial bodily harm as defined in section [609.02, subdivision 7a](#), or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence; or

(2) the individual was determined under section [626.557](#) to be the perpetrator of a substantiated incident of maltreatment of a vulnerable adult that resulted in substantial bodily harm as defined in section [609.02, subdivision 7a](#), or substantial mental or emotional harm as supported by competent psychological or psychiatric evidence.

History: 2003 c 15 art 1 s 24; 2005 c 136 art 6 s 7; 1Sp2005 c 4 art 1 s 39,40; 2006 c 264 s 10

245C.25 CONSOLIDATED RECONSIDERATION OF MALTREATMENT DETERMINATION AND DISQUALIFICATION.

(a) If an individual is disqualified on the basis of a determination of maltreatment under section [626.556](#) or [626.557](#), which was serious or recurring, and the individual requests

reconsideration of the maltreatment determination under section [626.556, subdivision 10i](#), or [626.557, subdivision 9d](#), and also requests reconsideration of the disqualification under section [245C.21](#), the commissioner shall consolidate the reconsideration of the maltreatment determination and the disqualification into a single reconsideration.

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

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

(c) If the county has previously conducted a consolidated reconsideration under paragraph (b) of a maltreatment determination and a disqualification based on serious or recurring maltreatment,

and the county subsequently disqualifies the individual based on that determination, the county shall conduct the reconsideration of the subsequent disqualification. The scope of the subsequent disqualification shall be limited to whether the individual poses a risk of harm in accordance with section [245C.22, subdivision 4](#).

History: 2003 c 15 art 1 s 25; 2004 c 288 art 1 s 67

245C.26 RECONSIDERATION OF A DISQUALIFICATION FOR AN INDIVIDUAL LIVING IN A LICENSED HOME.

In the case of any ground for disqualification under this chapter, if the act was committed by an individual other than the applicant or license holder residing in the applicant's or license holder's home, the applicant or license holder may seek reconsideration when the individual who committed the act no longer resides in the home.

History: 2003 c 15 art 1 s 26; 2004 c 288 art 1 s 68

245C.27 FAIR HEARING RIGHTS.

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

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

(c) If the individual was disqualified based on a conviction or admission to any crimes listed in section [245C.15, subdivisions 1 to 4](#), the reconsideration decision under section [245C.22](#) is the final agency determination for purposes of appeal by the disqualified individual and is not subject to a hearing under section [256.045](#). If the individual was disqualified based on a judicial determination, that determination is treated the same as a conviction for purposes of appeal.

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

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

Subd. 2. Consolidated fair hearing for maltreatment determination and disqualification not set aside. (a) If an individual who is disqualified on the bases of serious or recurring maltreatment requests a fair hearing on the maltreatment determination under section 626.556, subdivision 10i, or [626.557, subdivision 9d](#), and requests a fair hearing under this section on the disqualification, which has not been set aside, the scope of the fair hearing under section [256.045](#) shall include the maltreatment determination and the disqualification.

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

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

History: 2003 c 15 art 1 s 27; 1Sp2003 c 14 art 6 s 6; 2004 c 288 art 1 s 69,70; 1Sp2005 c 4 art 1 s 41

245C.28 CONTESTED CASE HEARING RIGHTS.

Subdivision 1. **License holder.** (a) If a maltreatment determination or a disqualification for which reconsideration was requested and which was not set aside is the basis for a denial of a license under section [245A.05](#) or a licensing sanction under section [245A.07](#), the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.

(b) The license holder must submit the appeal in accordance with section [245A.05](#) or [245A.07, subdivision 3](#). As provided under section [245A.08, subdivision 2a](#), the scope of the consolidated contested case hearing must include the disqualification and the licensing sanction or denial of a license.

(c) If the disqualification was based on a determination of substantiated serious or recurring maltreatment under section [626.556](#) or [626.557](#), the appeal must be submitted in accordance with sections [245A.07, subdivision 3](#), and [626.556, subdivision 10i](#), or [626.557, subdivision 9d](#). As provided for under section [245A.08, subdivision 2a](#), the scope of the contested case hearing must include the maltreatment determination, the disqualification, and the licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section [256.045](#).

Subd. 2. Individual other than license holder. If the basis for the commissioner's denial of a license under section [245A.05](#) or a licensing sanction under section [245A.07](#) is a maltreatment determination or disqualification that was not set aside under section [245C.22](#), and the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under section [245C.03](#), the hearing of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

Subd. 3. **Employees of public employer.** (a) If the commissioner does not set aside the disqualification of an individual who is an employee of an employer, as defined in section [179A.03, subdivision 15](#), the individual may request a contested case hearing under chapter 14. The request for a contested case hearing must be made in writing and must be postmarked and sent within 30 calendar days after the employee receives notice that the disqualification has not been set aside. If the individual was disqualified based on a conviction or admission to any crimes listed in section [245C.15](#), the scope of the contested case hearing shall be limited solely to whether the individual poses a risk of harm pursuant to section [245C.22](#).

(b) If the commissioner does not set aside a disqualification that is based on a maltreatment determination, the scope of the contested case hearing must include the maltreatment determination and the disqualification. In such cases, a fair hearing must not be conducted under section [256.045](#).

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

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

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

Subd. 4. **Final agency order.** The commissioner's final order under section 245A.08, subdivision 5, is conclusive on the issue of maltreatment and disqualification, including for purposes of subsequent background studies. The contested case hearing under this section is the only administrative appeal of the final agency determination, specifically, including a challenge to the accuracy and completeness of data under section [13.04](#).

History: 2003 c 15 art 1 s 28; 2004 c 288 art 1 s 71-73; 1Sp2005 c 4 art 1 s 42

245C.29 CONCLUSIVE DETERMINATIONS OR DISPOSITIONS.

Subdivision 1. **Conclusive maltreatment determination or disposition.** Unless otherwise specified in statute, a maltreatment determination or disposition under section [626.556](#) or [626.557](#)

is conclusive, if:

- (1) the commissioner has issued a final order in an appeal of that determination or disposition under section [245A.08, subdivision 5](#), or [256.045](#);
- (2) the individual did not request reconsideration of the maltreatment determination or disposition under section [626.556](#) or [626.557](#); or
- (3) the individual did not request a hearing of the maltreatment determination or disposition under section [256.045](#).

Subd. 2. Conclusive disqualification determination. (a) Unless otherwise specified in statute, a determination that:

(1) the information the commissioner relied upon to disqualify an individual under section [245C.14](#) was correct based on serious or recurring maltreatment;

(2) a preponderance of the evidence shows that the individual committed an act or acts that meet the definition of any of the crimes listed in section [245C.15](#); or

(3) the individual failed to make required reports under section [626.556, subdivision 3](#), or [626.557, subdivision 3](#), is conclusive if:

(i) the commissioner has issued a final order in an appeal of that determination under section [245A.08, subdivision 5](#), or [256.045](#), or a court has issued a final decision;

(ii) the individual did not request reconsideration of the disqualification under section [245C.21](#); or

(iii) the individual did not request a hearing on the disqualification under section [256.045](#) or chapter 14.

(b) When a licensing action under section [245A.05](#), [245A.06](#), or [245A.07](#) is based on the disqualification of an individual in connection with a license to provide family child care, foster care for children in the provider's own home, or foster care services for adults in the provider's own home, that disqualification shall be conclusive for purposes of the licensing action if a request for reconsideration was not submitted within 30 calendar days of the individual's receipt of the notice of disqualification.

(c) If a determination that the information relied upon to disqualify an individual was correct and is conclusive under this section, and the individual is subsequently disqualified under section [245C.15](#), the individual has a right to request reconsideration on the risk of harm under section [245C.21](#). Subsequent determinations regarding the risk of harm shall be made according to section [245C.22](#) and are not subject to another hearing under section [256.045](#) or chapter 14.

History: 2003 c 15 art 1 s 29; 2004 c 288 art 1 s 74

245C.30 VARIANCE FOR A DISQUALIFIED INDIVIDUAL.

Subdivision 1. License holder variance. (a) Except for any disqualification under section [245C.15, subdivision 1](#), when the commissioner has not set aside a background study subject's disqualification, and there are conditions under which the disqualified individual may provide direct contact services or have access to people receiving services that minimize the risk of harm to

people receiving services, the commissioner may grant a time-limited variance to a license holder.

(b) The variance shall state the reason for the disqualification, the services that may be provided by the disqualified individual, and the conditions with which the license holder or applicant must comply for the variance to remain in effect.

(c) Except for programs licensed to provide family child care, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home, the

variance must be requested by the license holder.

Subd. 2. Disclosure of reason for disqualification. (a) The commissioner may not grant a variance for a disqualified individual unless the applicant or license holder requests the variance and the disqualified individual provides written consent for the commissioner to disclose to the applicant or license holder the reason for the disqualification.

(b) This subdivision does not apply to programs licensed to provide family child care for children, foster care for children in the provider's own home, or foster care or day care services for adults in the provider's own home. When the commissioner grants a variance for a disqualified individual in connection with a license to provide the services specified in this paragraph, the disqualified individual's consent is not required to disclose the reason for the disqualification to the license holder in the variance issued under subdivision 1.

Subd. 3. **Consequences for failing to comply with conditions of variance.** When a license holder permits a disqualified individual to provide any services for which the subject is disqualified without complying with the conditions of the variance, the commissioner may terminate the variance effective immediately and subject the license holder to a licensing action under sections [245A.06](#) and [245A.07](#).

Subd. 4. **Termination of a variance.** The commissioner may terminate a variance for a disqualified individual at any time for cause.

Subd. 5. **Final decision.** The commissioner's decision to grant or deny a variance is final and not subject to appeal under the provisions of chapter 14.

History: 2003 c 15 art 1 s 30; 1Sp2005 c 4 art 1 s 43,44

245C.31 INDIVIDUAL REGULATED BY A HEALTH-RELATED LICENSING BOARD; DISQUALIFICATION BASED ON MALTREATMENT.

Subdivision 1. **Board determines disciplinary or corrective action.** (a) When the subject of a background study is regulated by a health-related licensing board as defined in chapter 214, and the commissioner determines that the regulated individual is responsible for substantiated maltreatment under section [626.556](#) or [626.557](#), instead of the commissioner making a decision regarding disqualification, the board shall make a determination whether to impose disciplinary or corrective action under chapter 214.

(b) This section does not apply to a background study of an individual regulated by a health-related licensing board if the individual's study is related to child foster care, adult foster care, or family child care licensure.

Subd. 2. **Commissioner's notice to board.** (a) The commissioner shall notify the health-related licensing board:

- (1) upon completion of a background study that produces a record showing that the individual was determined to have been responsible for substantiated maltreatment;
- (2) upon the commissioner's completion of an investigation that determined the individual was responsible for substantiated maltreatment; or
- (3) upon receipt from another agency of a finding of substantiated maltreatment for which the individual was responsible.

(b) The commissioner's notice to the health-related licensing board shall indicate whether the commissioner would have disqualified the individual for the substantiated maltreatment if the individual were not regulated by the board.

(c) The commissioner shall concurrently send the notice under this subdivision to the individual who is the subject of the background study.

Subd. 3. **Commissioner's or local agency's referral to board.** (a) When the commissioner or a local agency has reason to believe that the direct contact services provided by an individual

may fall within the jurisdiction of a health-related licensing board, the commissioner or local agency shall refer the matter to the board as provided in this section.

(b) If, upon review of the information provided by the commissioner, a health-related licensing board informs the commissioner that the board does not have jurisdiction to take disciplinary or corrective action, the commissioner shall make the appropriate disqualification decision regarding the individual as otherwise provided in this chapter.

Subd. 4. Facility monitoring. (a) The commissioner has the authority to monitor the facility's compliance with any requirements that the health-related licensing board places on regulated individuals practicing in a facility either during the period pending a final decision on a disciplinary or corrective action or as a result of a disciplinary or corrective action. The commissioner has the authority to order the immediate removal of a regulated individual from direct contact or access when a board issues an order of temporary suspension based on a determination that the regulated individual poses an immediate risk of harm to persons receiving services in a licensed facility.

(b) A facility that allows a regulated individual to provide direct contact services while not complying with the requirements imposed by the health-related licensing board is subject to action by the commissioner as specified under sections [245A.06](#) and [245A.07](#).

(c) The commissioner shall notify a health-related licensing board immediately upon receipt of knowledge of a facility's or individual's noncompliance with requirements the board placed on a facility or upon an individual regulated by the board.

History: 2003 c 15 art 1 s 31

256.045 ADMINISTRATIVE AND JUDICIAL REVIEW OF HUMAN SERVICE MATTERS.

Subdivision 1. **Powers of the state agency.** The commissioner of human services may appoint one or more state human services referees to conduct hearings and recommend orders in accordance with subdivisions 3, 3a, 3b, 4a, and 5. Human services referees designated pursuant to this section may administer oaths and shall be under the control and supervision of the commissioner of human services and shall not be a part of the Office of Administrative Hearings established pursuant to sections [14.48](#) to [14.56](#).

Subd. 2. [Repealed, 1987 c 148 s 9]

Subd. 3. **State agency hearings.** (a) State agency hearings are available for the following: (1) any person applying for, receiving or having received public assistance, medical care, or a program of social services granted by the state agency or a county agency or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid; (2) any patient or relative aggrieved by an order of the commissioner under section [252.27](#); (3) a party aggrieved by a ruling of a prepaid health plan; (4) except as provided under chapter 245C, any individual or facility determined by a lead agency to have maltreated a vulnerable adult under section [626.557](#) after they have exercised their right to administrative reconsideration under section [626.557](#); (5) any person whose claim for foster care payment according to a placement of the child resulting from a child protection assessment under section [626.556](#) is denied or not acted upon with reasonable promptness, regardless of funding source; (6) any person to whom a right of appeal according to this section is given by other provision of law; (7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section [256B.15](#); (8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section [256B.04, subdivision 4a](#); (9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section [626.556](#), after the individual or facility has exercised the right to administrative reconsideration under section [626.556](#); or (10) except as provided under chapter 245C, an individual disqualified under sections [245C.14](#) and [245C.15](#), on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section [245C.15, subdivisions 1 to 4](#); or for failing to make reports required under section [626.556, subdivision 3](#), or [626.557, subdivision 3](#). Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, which has not been set aside under sections [245C.22](#) and [245C.23](#), shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good

cause why the request was not submitted within the 30-day time limit.

The hearing for an individual or facility under clause (4), (9), or (10) is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section [13.04](#). Hearings requested under clause (4) apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested

by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a contested case proceeding under the provisions of chapter 14. Hearings requested under clause (9) apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under clause (9) is only available when there is no juvenile court or adult criminal action pending. If such action is filed in either court while an administrative review is pending, the administrative review must be suspended until the judicial actions are completed. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

The scope of hearings involving claims to foster care payments under clause (5) shall be limited to the issue of whether the county is legally responsible for a child's placement under court

order or voluntary placement agreement and, if so, the correct amount of foster care payment to be made on the child's behalf and shall not include review of the propriety of the county's child protection determination or child placement decision.

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

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

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

Subd. 3a. Prepaid health plan appeals. (a) All prepaid health plans under contract to the commissioner under chapter 256B or 256D must provide for a complaint system according to section [62D.11](#). When a prepaid health plan denies, reduces, or terminates a health service or denies a request to authorize a previously authorized health service, the prepaid health plan must notify the recipient of the right to file a complaint or an appeal. The notice must include the name

and telephone number of the ombudsman and notice of the recipient's right to request a hearing under paragraph (b). Recipients may request the assistance of the ombudsman in the complaint system process. The prepaid health plan must issue a written resolution of the complaint to the recipient within 30 days after the complaint is filed with the prepaid health plan. A recipient is not required to exhaust the complaint system procedures in order to request a hearing under paragraph (b).

(b) Recipients enrolled in a prepaid health plan under chapter 256B or 256D may contest a prepaid health plan's denial, reduction, or termination of health services, a prepaid health plan's denial of a request to authorize a previously authorized health service, or the prepaid health plan's written resolution of a complaint by submitting a written request for a hearing according

to subdivision 3. A state human services referee shall conduct a hearing on the matter and shall recommend an order to the commissioner of human services. The commissioner need not grant a hearing if the sole issue raised by a recipient is the commissioner's authority to require mandatory enrollment in a prepaid health plan in a county where prepaid health plans are under contract with the commissioner. The state human services referee may order a second medical opinion from the prepaid health plan or may order a second medical opinion from a nonprepaid health plan provider at the expense of the prepaid health plan. Recipients may request the assistance of the ombudsman in the appeal process.

(c) In the written request for a hearing to appeal from a prepaid health plan's denial, reduction, or termination of a health service, a prepaid health plan's denial of a request to authorize a previously authorized service, or the prepaid health plan's written resolution to a complaint, a recipient may request an expedited hearing. If an expedited appeal is warranted, the state human services referee shall hear the appeal and render a decision within a time commensurate with the level of urgency involved, based on the individual circumstances of the case.

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

(1) committed maltreatment under section [626.556](#) or [626.557](#), which is serious or recurring;

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

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

(b) If the disqualification is affirmed, the state human services referee shall determine whether the individual poses a risk of harm in accordance with the requirements of section [245C.16](#), and whether the disqualification should be set aside or not set aside. In determining whether the disqualification should be set aside, the human services referee shall consider all of the

characteristics that cause the individual to be disqualified, including those characteristics that were

not subject to review under paragraph (a), in order to determine whether the individual poses a risk

of harm. A decision to set aside a disqualification that is the subject of the hearing constitutes a determination that the individual does not pose a risk of harm and that the individual may provide

direct contact services in the individual program specified in the set aside. If a determination that the information relied upon to disqualify an individual was correct and is conclusive under section

[245C.29](#), and the individual is subsequently disqualified under section [245C.14](#), the individual

has

a right to again request reconsideration on the risk of harm under section [245C.21](#). Subsequent determinations regarding risk of harm are not subject to another hearing under this section.

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

Subd. 3c.[Repealed, 2005 c 98 art 2 s 18]

Subd. 4. **Conduct of hearings.** (a) All hearings held pursuant to subdivision 3, 3a, 3b, or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants-in-aid, and according to the rules and written policies of the commissioner of human services. County agencies shall install equipment necessary to conduct telephone hearings. A state human services referee may schedule a telephone conference hearing when the distance or time required to travel to the county agency offices will cause a delay in the issuance of an order, or to promote efficiency, or at the mutual request of the parties. Hearings may be conducted by telephone conferences unless the applicant, recipient, former recipient, person, or facility contesting maltreatment objects. The hearing shall not be held earlier than five days after filing of the required notice with the county or state agency. The state human services referee shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice, including a provider of therapy services, at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, former recipient, person, or facility contesting maltreatment shall have the opportunity to examine the contents of the case file and all documents and records to be used by the county or state agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), either party may subpoena the private data relating to the investigation prepared by the agency under section [626.556](#) or [626.557](#) that is not otherwise accessible under section [13.04](#), provided the identity of the reporter may not be disclosed.

(b) The private data obtained by subpoena in a hearing under subdivision 3, paragraph (a), clause (4), (8), or (9), must be subject to a protective order which prohibits its disclosure for any other purpose outside the hearing provided for in this section without prior order of the district court. Disclosure without court order is punishable by a sentence of not more than 90 days

imprisonment or a fine of not more than \$1,000, or both. These restrictions on the use of private data do not prohibit access to the data under section [13.03, subdivision 6](#). Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (8), and (9), upon request, the county agency shall provide reimbursement for transportation, child care, photocopying, medical assessment, witness fee, and other necessary and reasonable costs incurred by the applicant, recipient, or former recipient in connection with the appeal. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be

"a contested case" within the meaning of section [14.02, subdivision 3](#). The agency must present its evidence prior to or at the hearing, and may not submit evidence after the hearing except by agreement of the parties at the hearing, provided the petitioner has the opportunity to respond.

(c) In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), involving determinations of maltreatment or disqualification made by more than one county agency, by a county agency and a state agency, or by more than one state agency, the hearings may be consolidated into a single fair hearing upon the consent of all parties and the state human services referee.

Subd. 4a. Case management appeals. Any recipient of case management services pursuant to section [256B.092](#), who contests the county agency's action or failure to act in the provision of those services, other than a failure to act with reasonable promptness or a suspension, reduction, denial, or termination of services, must submit a written request for a conciliation conference to the county agency. The county agency shall inform the commissioner of the receipt of a request when it is submitted and shall schedule a conciliation conference. The county agency shall notify the recipient, the commissioner, and all interested persons of the time, date, and location of the conciliation conference. The commissioner may assist the county by providing mediation services

or by identifying other resources that may assist in the mediation between the parties. Within 30 days, the county agency shall conduct the conciliation conference and inform the recipient in writing of the action the county agency is going to take and when that action will be taken and notify the recipient of the right to a hearing under this subdivision. The conciliation conference shall be conducted in a manner consistent with the commissioner's instructions. If the county fails

to conduct the conciliation conference and issue its report within 30 days, or, at any time up to 90 days after the conciliation conference is held, a recipient may submit to the commissioner a written request for a hearing before a state human services referee to determine whether case management services have been provided in accordance with applicable laws and rules or whether

the county agency has assured that the services identified in the recipient's individual service plan

have been delivered in accordance with the laws and rules governing the provision of those services. The state human services referee shall recommend an order to the commissioner, who shall, in accordance with the procedure in subdivision 5, issue a final order within 60 days of the receipt of the request for a hearing, unless the commissioner refuses to accept the recommended order, in which event a final order shall issue within 90 days of the receipt of that request. The order may direct the county agency to take those actions necessary to comply with applicable laws or rules. The commissioner may issue a temporary order prohibiting the demission of a recipient of case management services from a residential or day habilitation program licensed under chapter 245A, while a county agency review process or an appeal brought by a recipient under this subdivision is pending, or for the period of time necessary for the county agency to implement the commissioner's order. The commissioner shall not issue a final order staying the demission of a recipient of case management services from a residential or day habilitation program licensed under chapter 245A.

Subd. 5. Orders of the commissioner of human services. A state human services referee shall conduct a hearing on the appeal and shall recommend an order to the commissioner of human services. The recommended order must be based on all relevant evidence and must not

be limited to a review of the propriety of the state or county agency's action. A referee may take official notice of adjudicative facts. The commissioner of human services may accept the recommended order of a state human services referee and issue the order to the county agency and the applicant, recipient, former recipient, or prepaid health plan. The commissioner on refusing to accept the recommended order of the state human services referee, shall notify the petitioner, the agency, or prepaid health plan of that fact and shall state reasons therefor and shall allow each party ten days' time to submit additional written argument on the matter. After the expiration of the ten-day period, the commissioner shall issue an order on the matter to the petitioner, the agency, or prepaid health plan.

A party aggrieved by an order of the commissioner may appeal under subdivision 7, or request reconsideration by the commissioner within 30 days after the date the commissioner issues the order. The commissioner may reconsider an order upon request of any party or on the commissioner's own motion. A request for reconsideration does not stay implementation of the commissioner's order. Upon reconsideration, the commissioner may issue an amended order or an order affirming the original order.

Any order of the commissioner issued under this subdivision shall be conclusive upon the parties unless appeal is taken in the manner provided by subdivision 7. Any order of the commissioner is binding on the parties and must be implemented by the state agency, a county agency, or a prepaid health plan according to subdivision 3a, until the order is reversed by the district court, or unless the commissioner or a district court orders monthly assistance or aid or services paid or provided under subdivision 10.

A vendor of medical care as defined in section [256B.02, subdivision 7](#), or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing or seek judicial review of an order issued under this section, unless assisting a recipient as provided in subdivision 4. A prepaid health plan is a party to an appeal under subdivision 3a, but cannot seek judicial review of an order issued under this section.

Subd. 6. Additional powers of commissioner; subpoenas. (a) The commissioner of human services, or the commissioner of health for matters within the commissioner's jurisdiction under subdivision 3b, may initiate a review of any action or decision of a county agency and direct that the matter be presented to a state human services referee for a hearing held under subdivision 3, 3a, 3b, or 4a. In all matters dealing with human services committed by law to the discretion of the county agency, the commissioner's judgment may be substituted for that of the county agency. The commissioner may order an independent examination when appropriate.

(b) Any party to a hearing held pursuant to subdivision 3, 3a, 3b, or 4a may request that the commissioner issue a subpoena to compel the attendance of witnesses and the production of records at the hearing. A local agency may request that the commissioner issue a subpoena to compel the release of information from third parties prior to a request for a hearing under section [256.046](#) upon a showing of relevance to such a proceeding. The issuance, service, and enforcement of subpoenas under this subdivision is governed by section [357.22](#) and the Minnesota Rules of Civil Procedure.

(c) The commissioner may issue a temporary order staying a proposed demission by a residential facility licensed under chapter 245A while an appeal by a recipient under subdivision 3 is pending or for the period of time necessary for the county agency to implement the

commissioner's order.

Subd. 7. **Judicial review.** Except for a prepaid health plan, any party who is aggrieved by an order of the commissioner of human services, or the commissioner of health in appeals within the commissioner's jurisdiction under subdivision 3b, may appeal the order to the district court of the county responsible for furnishing assistance, or, in appeals under subdivision 3b, the county where the maltreatment occurred, by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record within 30 days after the date the commissioner issued the order, the amended order, or order affirming the original order, and by filing the original notice and proof of service with the court administrator of the district court. Service may be made personally or by mail; service by mail is complete upon mailing; no filing fee shall be required by the court administrator in appeals taken pursuant to this subdivision, with the exception of appeals taken under subdivision 3b. The commissioner may elect to become a party to the proceedings in the district court. Except for appeals under subdivision 3b, any party may demand that the commissioner furnish all parties to the proceedings with a copy of the decision, and a transcript of any testimony, evidence, or other supporting papers from the hearing held before the human services referee, by serving a written demand upon the commissioner within 30 days after service of the notice of appeal. Any party aggrieved by the failure of an adverse party to obey an order issued by the commissioner under subdivision 5 may compel performance according to the order in the manner prescribed in sections [586.01](#) to [586.12](#).

Subd. 8. **Hearing.** Any party may obtain a hearing at a special term of the district court by serving a written notice of the time and place of the hearing at least ten days prior to the date of the hearing. The court may consider the matter in or out of chambers, and shall take no new or additional evidence unless it determines that such evidence is necessary for a more equitable disposition of the appeal.

Subd. 9. **Appeal.** Any party aggrieved by the order of the district court may appeal the order as in other civil cases. Except for appeals under subdivision 3b, no costs or disbursements shall be taxed against any party nor shall any filing fee or bond be required of any party.

Subd. 10. **Payments pending appeal.** If the commissioner of human services or district court orders monthly assistance or aid or services paid or provided in any proceeding under this section, it shall be paid or provided pending appeal to the commissioner of human services, district court, court of appeals, or supreme court. The human services referee may order the local human services agency to reduce or terminate medical assistance or general assistance medical care to a recipient before a final order is issued under this section if: (1) the human services referee determines at the hearing that the sole issue on appeal is one of a change in state or federal law; and (2) the commissioner or the local agency notifies the recipient before the action. The state or county agency has a claim for food stamps, food support, cash payments, medical assistance, general assistance medical care, and MinnesotaCare program payments made to or on behalf of a recipient or former recipient while an appeal is pending if the recipient or former recipient is determined ineligible for the food stamps, food support, cash payments, medical assistance,

general assistance medical care, or MinnesotaCare as a result of the appeal, except for medical assistance and general assistance medical care made on behalf of a recipient pursuant to a court order. In enforcing a claim on MinnesotaCare program payments, the state or county agency shall

reduce the claim amount by the value of any premium payments made by a recipient or former recipient during the period for which the recipient or former recipient has been determined to be ineligible. Provision of a health care service by the state agency under medical assistance, general assistance medical care, or MinnesotaCare pending appeal shall not render moot the state agency's position in a court of law.

History: 1976 c 131 s 1; 1978 c 560 s 7; 1982 c 424 s 130; 1983 c 247 s 108,109; 1983 c 312 art 5 s 4; 1984 c 534 s 14-18; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 148 s 1-8; 1987 c 403 art 2 s 61; 1989 c 282 art 5 s 12-20; 1990 c 568 art 4 s 84; 1991 c 94 s 11; 1991 c 292 art 4 s 16; art 6 s 58 subd 2; 1993 c 247 art 4 s 1; 1993 c 339 s 9; 1994 c 625 art 8 s 72; 1995 c 207 art 2 s 27-29; art 11 s 5; 1995 c 229 art 3 s 6-14; 1996 c 408 art 10 s 6; 1996 c 416 s 1; 1996 c 451 art 5 s 9; 1997 c 85 art 5 s 5; 1997 c 203 art 4 s 11; art 5 s 6-10; art 9 s 5; 1997 c 225 art 2 s 55; 1999 c 205 art 1 s 49-51; 2001 c 178 art 2 s 6; 1Sp2001 c 9 art 14 s 26-28; 2002 c 375 art 1 s 19,20; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 1Sp2003 c 14 art 1 s 106; art 11 s 11; 2004 c 228 art 1 s 72; 2004 c 288 art 1 s 76,77; 2005 c 98 art 1 s 9,10; art 3 s 18; 1Sp2005 c 4 art 8 s 8,9

EXCERPT FROM MINN STAT CHAPTER 626.556

626.556 REPORTING OF MALTREATMENT OF MINORS.

Subd. 3a. **Report of deprivation of parental rights or kidnapping.** A person mandated to report under subdivision 3, who knows or has reason to know of a violation of section [609.25](#) or [609.26](#), shall report the information to the local police department or the county sheriff. Receipt by a local welfare agency of a report or notification of a report of a violation of section [609.25](#) or [609.26](#) shall not be construed to invoke the duties of subdivision 10, 10a, or 10b.

Subd. 3b. **Agency responsible for assessing or investigating reports of maltreatment.** The Department of Education is the agency responsible for assessing or investigating allegations of child maltreatment in schools as defined in sections [120A.05, subdivisions 9, 11, subdivision 13](#); and [124D.10](#).

Subd. 3c. **Local welfare agency, Department of Human Services or Department of Health responsible for assessing or investigating reports of maltreatment.** (a) The county local welfare agency is the agency responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, and legally unlicensed child care and in juvenile correctional

facilities licensed under section 241.021 located in the local welfare agency's county.

(b) The Department of Human Services is the agency responsible for assessing or investigating allegations of maltreatment in facilities licensed under chapters 245A and 245B,

except for child foster care and family child care.

(c) The Department of Health is the agency responsible for assessing or investigating allegations of child maltreatment in facilities licensed under sections 144.50 to 144.58, and in unlicensed home health care.

(d) The commissioners of human services, public safety, and education must jointly submit a written report by January 15, 2007, to the education policy and finance committees of the legislature recommending the most efficient and effective allocation of agency responsibility for assessing or investigating reports of maltreatment and must specifically address allegations of maltreatment that currently are not the responsibility of a designated agency.

Subd. 3d. **Authority to interview.** The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan.

Subd. 4. **Immunity from liability.** (a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section [626.5561](#) or assisting in an assessment under this section or under section [626.5561](#);

(2) any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency, the commissioner of an agency responsible for operating or supervising a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections [144.50](#) to [144.58](#); [241.021](#); [245A.01](#) to [245A.16](#); or 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13 ; and [124D.10](#); or a nonlicensed personal care provider organization as defined in sections [256B.04, subdivision 16](#); and [256B.0625, subdivision 19a](#), complying with subdivision 10d; and

(3) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency, the Department of Education, or a local law enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section [626.5561](#).

(b) A person who is a supervisor or person with responsibility for performing duties under this section employed by a local welfare agency, the commissioner of human services, or the commissioner of education complying with subdivisions 10 and 11 or section [626.5561](#) or any related rule or provision of law is immune from any civil or criminal liability that might otherwise

result from the person's actions, if the person is (1) acting in good faith and exercising due care, or

(2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

(c) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

Subd. 4a. **Retaliation prohibited.** (a) An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith abuse or

neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

(b) The employer of any person required to report under subdivision 3 who retaliates against the person because of a report of abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to \$10,000.

(c) There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term "adverse action" refers to action taken by an

employer of a person required to report under subdivision 3 which is involved in a report against the person making the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

(1) discharge, suspension, termination, or transfer from the facility, institution, school, or agency;

(2) discharge from or termination of employment;

(3) demotion or reduction in remuneration for services; or

(4) restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

Subd. 5. Malicious and reckless reports. Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

Subd. 6. Failure to report. (a) A person mandated by this section to report who knows or has reason to believe that a child is neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, and fails to report is guilty of a misdemeanor.

(b) A person mandated by this section to report who knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, as defined in subdivision 2, by the same perpetrator within the preceding ten years, and fails to report is guilty of a gross misdemeanor.

(c) A parent, guardian, or caretaker who knows or reasonably should know that the child's health is in serious danger and who fails to report as required by subdivision 2, paragraph (c), is guilty of a gross misdemeanor if the child suffers substantial or great bodily harm because of the lack of medical care. If the child dies because of the lack of medical care, the person is guilty of a

felony and may be sentenced to imprisonment for not more than two years or to payment of a fine

of not more than \$4,000, or both. The provision in section [609.378, subdivision 1](#), paragraph (a), clause (1), providing that a parent, guardian, or caretaker may, in good faith, select and depend on

spiritual means or prayer for treatment or care of a child, does not exempt a parent, guardian, or caretaker from the duty to report under this subdivision.

Subd. 6a. Failure to notify. If a local welfare agency receives a report under subdivision 3, paragraph (a) or (b) and fails to notify the local police department or county sheriff as required by subdivision 3, paragraph (a) or (b), the person within the agency who is responsible for ensuring

that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees. If a local police department or a county sheriff receives a report under subdivision 3, paragraph (a) or (b) and fails to notify the local welfare agency as required by subdivision 3, paragraph (a) or (b), the person within the police department or county sheriff's office who is responsible for ensuring that

notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees.

Subd. 7. Report. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency, unless the appropriate agency has informed the reporter that the oral information does not constitute a report under subdivision 10. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. If requested, the local welfare agency or the agency responsible for assessing or investigating the report shall inform the reporter within ten days after the report is made, either orally or in writing, whether the report was accepted for assessment or investigation. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency or the agency responsible for assessing or investigating the report. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff.

A written copy of a report maintained by personnel of agencies, other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject

of the report may obtain access to the original report as provided by subdivision 11.

Subd. 8. Evidence not privileged. No evidence relating to the neglect or abuse of a child or to any prior incidents of neglect or abuse involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of privilege set forth in section [595.02, subdivision 1](#), paragraph (a), (d), or (g).

Subd. 9. Mandatory reporting to a medical examiner or coroner. When a person required to report under the provisions of subdivision 3 knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the person shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department, or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff

and the local welfare agency. If the child was receiving services or treatment for mental illness, developmentally disabled, chemical dependency, or emotional disturbance from an agency, facility, or program as defined in section [245.91](#), the medical examiner or coroner shall also

notify

and report findings to the ombudsman established under sections [245.91](#) to [245.97](#).

Subd. 10. Duties of local welfare agency and local law enforcement agency upon receipt of a report. (a) Upon receipt of a report, the local welfare agency shall determine whether to

conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for

child maltreatment. The local welfare agency:

(1) shall conduct an investigation on reports involving substantial child endangerment;

(2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;

(3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response;

and

(4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation.

If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the local welfare agency shall immediately conduct a family assessment or investigation as identified in clauses (1) to (4). In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section [609.378](#), the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews.

Each

agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred.

When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615.

The local welfare agency shall report the determination of the chemical use assessment, and the recommendations and referrals for alcohol and other drug treatment services to the state authority

on alcohol and drug abuse.

(b) When a local agency receives a report or otherwise has information indicating that a child

who is a client, as defined in section [245.91](#), has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section [245.91](#), it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections [245.91](#) to [245.97](#). The commissioner of education shall inform the ombudsman established under sections [245.91](#) to [245.97](#) of reports regarding a child defined as a client in section [245.91](#) that maltreatment occurred at a school as defined in sections [120A.05, subdivisions 9, 11, subdivision 13](#), and [124D.10](#).

(c) Authority of the local welfare agency responsible for assessing or investigating the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment. Except as provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule [49.02](#) of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified

in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school

officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary

by agreement between the school officials and the local welfare or law enforcement agency.

Where

the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(e) Where the alleged offender or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(g) The commissioner of human services, the ombudsman for mental health and developmental disabilities, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency responsible for conducting a family assessment shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs. The local welfare agency or the agency responsible

for investigating the report shall collect available and relevant information to ascertain whether

maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for assessing or investigating the report may make a determination of no maltreatment early in an assessment, and close the case and retain immunity, if the collected information shows no basis for a full assessment or investigation.

Information relevant to the assessment or investigation must be asked for, and may include:

(1) the child's sex and age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;

(2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child.

Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding section [13.384](#) or [144.335](#), the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) Upon receipt of a report, the local welfare agency shall conduct a face-to-face contact with the child reported to be maltreated and with the child's primary caregiver sufficient to complete a

safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) When conducting an investigation, the local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit spontaneous responses. For investigations only, the following interviewing methods and procedures must be used whenever possible when collecting information:

(1) audio recordings of all interviews with witnesses and collateral sources; and

(2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (i), (k), and subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (i) and (k), and subdivision 3d.

Subd. 10a. **Abuse outside family unit.** If the report alleges neglect, physical abuse, or sexual abuse by a person responsible for the child's care functioning outside the family unit in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify

the appropriate law enforcement agency, which shall conduct an investigation of the alleged abuse

or neglect. The local welfare agency shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

Subd. 10b. **Duties of commissioner; neglect or abuse in facility.** (a) This section applies to the commissioners of human services, health, and education. The commissioner of the agency responsible for assessing or investigating the report shall immediately assess or investigate if the report alleges that:

(1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in that facility, or has been so neglected or abused, or been the victim of maltreatment in a facility by an individual in that facility within the three years preceding the report; or

(2) a child was neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in a facility defined in subdivision 2, while in the care of that facility

within the three years preceding the report.

The commissioner of the agency responsible for assessing or investigating the report shall

arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies

under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian

of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a).
If

reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j). In conducting assessments or investigations under this subdivision, the commissioner of education shall obtain access to reports and investigative data that are relevant to a report of maltreatment and are in the possession of a school facility as defined in subdivision 2, paragraph (i), notwithstanding the classification of the data as educational or personnel data under chapter 13. This includes, but is not limited to, school investigative reports, information concerning the conduct of school personnel alleged to have committed maltreatment of students, information about witnesses, and any protective or corrective action taken by the school facility regarding the school personnel alleged to have committed maltreatment.

(d) The commissioner may request assistance from the local social services agency.

Subd. 10c. Duties of local social service agency upon receipt of a report of medical neglect. If the report alleges medical neglect as defined in section [260C.007, subdivision 4](#), clause (5), the local welfare agency shall, in addition to its other duties under this section, immediately consult with designated hospital staff and with the parents of the infant to verify that

appropriate nutrition, hydration, and medication are being provided; and shall immediately secure

an independent medical review of the infant's medical charts and records and, if necessary, seek a

court order for an independent medical examination of the infant. If the review or examination leads to a conclusion of medical neglect, the agency shall intervene on behalf of the infant by initiating legal proceedings under section [260C.141](#) and by filing an expedited motion to prevent the withholding of medically indicated treatment.

Subd. 10d. Notification of neglect or abuse in facility. (a) When a report is received that alleges neglect, physical abuse, sexual abuse, or maltreatment of a child while in the care of a

licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed according to sections [144.50](#) to [144.58](#); [241.021](#); or [245A.01](#) to [245A.16](#); or chapter 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13 ; and [124D.10](#); or a nonlicensed personal care provider organization as defined in section [256B.04, subdivision 16](#), and [256B.0625, subdivision 19a](#), the commissioner of the agency responsible for assessing or investigating the report or local welfare agency investigating the report shall provide the following information to the parent, guardian, or legal custodian of a child alleged to have been neglected, physically abused, sexually abused, or the victim of maltreatment of a child in the facility: the name of the facility; the fact that a report alleging neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has been received; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; that the agency is conducting an assessment or investigation; any protective or corrective measures being taken pending the outcome of the investigation; and that a written memorandum will be provided when the investigation is completed.

(b) The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may also provide the information in paragraph (a) to the parent, guardian, or legal custodian of any other child in the facility if the investigative agency knows or has reason to believe the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility

has occurred. In determining whether to exercise this authority, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall consider the seriousness of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the number of children allegedly neglected, physically abused, sexually abused, or victims of maltreatment of a child in the facility; the number of alleged perpetrators; and the length of the investigation. The facility shall be notified whenever this discretion is exercised.

(c) When the commissioner of the agency responsible for assessing or investigating the report or local welfare agency has completed its investigation, every parent, guardian, or legal custodian previously notified of the investigation by the commissioner or local welfare agency shall be provided with the following information in a written memorandum: the name of the facility investigated; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the investigator's name; a summary of the investigation findings; a statement whether maltreatment was found; and the protective or corrective measures that are being or will be taken. The memorandum shall be written in a manner that protects the identity of the reporter and the child and shall not contain the name, or to the extent possible, reveal the identity of the alleged perpetrator or of those interviewed during the investigation. If maltreatment is determined to exist, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child in the facility who had contact with the individual responsible for the maltreatment. When the facility is the responsible party for maltreatment, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child who received services in the population of the facility where the maltreatment occurred. This notification must be provided to the parent, guardian, or legal custodian of each child receiving services from the time the maltreatment occurred until either the individual responsible for maltreatment is no longer in contact with a child or children in the facility or the conclusion of the investigation. In

the case of maltreatment within a school facility, as defined in sections 120A.05, subdivisions 9, 11, and 13 , and [124D.10](#), the commissioner of education need not provide notification to parents, guardians, or legal custodians of each child in the facility, but may provide notification to the parent, guardian, or legal custodian of any student alleged to have been maltreated or involved as a witness to alleged maltreatment.

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

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

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

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred,

the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

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

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

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

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

or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu

of medical care. However, if lack of medical care may result in serious danger to the child's health,

the local welfare agency may ensure that necessary medical services are provided to the child.

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

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

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

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

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

Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for assessing or investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and if

applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section or section [256.022](#).

Subd. 10g. **Interstate data exchange.** All reports and records created, collected, or

maintained under this section by a local social service agency or law enforcement agency may be disclosed to a local social service or other child welfare agency of another state when the agency certifies that:

- (1) the reports and records are necessary in order to conduct an investigation of actions that would qualify as sexual abuse, physical abuse, or neglect under this section; and
- (2) the reports and records will be used only for purposes of a child protection assessment or investigation and will not be further disclosed to any other person or agency.

The local social service agency or law enforcement agency in this state shall keep a record of all records or reports disclosed pursuant to this subdivision and of any agency to which the records

or reports are disclosed. If in any case records or reports are disclosed before a determination is made under subdivision 10e, or a disposition of any criminal proceedings is reached, the local social service agency or law enforcement agency in this state shall forward the determination or disposition to any agency that has received any report or record under this subdivision.

Subd. 10h. Child abuse data; release to family court services. The responsible authority or its designee of a local welfare agency may release private or confidential data on an active case involving assessment or investigation of actions that are defined as sexual abuse, physical abuse, or neglect under this section to a court services agency if:

- (1) the court services agency has an active case involving a common client or clients who are the subject of the data; and
- (2) the data are necessary for the court services agency to effectively process the court services' case, including investigating or performing other duties relating to the case required by law.

The data disclosed under this subdivision may be used only for purposes of the active court services case described in clause (1) and may not be further disclosed to any other person or agency, except as authorized by law.

Subd. 10i. Administrative reconsideration of final determination of maltreatment and disqualification based on serious or recurring maltreatment; review panel. (a)

Administrative

reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not

entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency

within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination.

Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections [245C.14](#) and [245C.15](#), may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections [245C.16](#) and [245C.17](#). If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days

after the individual's receipt of the notice of disqualification.

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

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

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

(e) Effective January 1, 2002, if an individual was disqualified under sections [245C.14](#) and [245C.15](#), on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections [245C.21](#) to [245C.27](#), reconsideration of the maltreatment determination and reconsideration of the disqualification shall

be consolidated into a single reconsideration. If reconsideration of the maltreatment determination

is denied or the disqualification is not set aside under sections [245C.21](#) to [245C.27](#), the individual

may request a fair hearing under section [256.045](#). If an individual requests a fair hearing on the

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

(f) Effective January 1, 2002, if a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section [245A.05](#) or a licensing sanction under section [245A.07](#), the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section [245A.08, subdivision 2a](#), the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination shall not be conducted under paragraph (b). When a fine is based on a determination that the license holder is responsible

for maltreatment and the fine is issued at the same time as the maltreatment determination, if the license holder appeals the maltreatment and fine, reconsideration of the maltreatment determination shall not be conducted under this section. If the disqualified subject is an individual

other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

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

Subd. 10j. **Release of data to mandated reporters.** A local social services or child protection agency, or the agency responsible for assessing or investigating the report of maltreatment, may provide relevant private data on individuals obtained under this section to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data, in the best interests of the child. Mandated reporters with ongoing responsibility for the health, education, or welfare of a child affected by the data include the child's teachers or other appropriate school personnel, foster parents, health care providers, respite care workers, therapists, social workers, child care providers, residential care staff, crisis nursery staff, probation officers, and court services personnel. Under this section, a mandated reporter need not have made the report to be considered a person with ongoing responsibility for the health, education, or welfare of a child affected by the data. Data provided under this section must be limited to data pertinent to the individual's responsibility for caring for the child.

Subd. 10k. **Release of certain investigative records to other counties.** Records maintained under subdivision 11c, paragraph (a), may be shared with another local welfare agency that requests the information because it is conducting an investigation under this section of the subject of the records.

Subd. 10l. **Documentation.** When a case is closed that has been open for services, the local welfare agency shall document the outcome of the family assessment or investigation, including a description of services provided and the removal or reduction of risk to the child, if it existed.

Subd. 10m. **Provision of child protective services.** The local welfare agency shall create

a written plan, in collaboration with the family whenever possible, within 30 days of the determination that child protective services are needed or upon joint agreement of the local welfare agency and the family that family support and preservation services are needed. Child protective services for a family are voluntary unless ordered by the court.

Subd. 11. **Records.** (a) Except as provided in paragraph (b) or (d) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to

a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section [13.04, subdivision 2](#), need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision.

Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing work within a school facility

who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties. Notwithstanding section [13.03, subdivision 4](#), data received by a licensing entity under this paragraph are governed by section [13.41](#) or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

(d) The investigating agency shall exchange not public data with the Child Maltreatment Review Panel under section [256.022](#) if the data are pertinent and necessary for a review requested under section [256.022](#). Upon completion of the review, the not public data received by the review panel must be returned to the investigating agency.

Subd. 11a. **Disclosure of information not required in certain cases.** When interviewing a minor under subdivision 10, an individual does not include the parent or guardian of the minor for purposes of section [13.04, subdivision 2](#), when the parent or guardian is the alleged perpetrator of the abuse or neglect.

Subd. 11b. **Data received from law enforcement.** Active law enforcement investigative data received by a local welfare agency or agency responsible for assessing or investigating the report under this section are confidential data on individuals. When this data become inactive in the law enforcement agency, the data are private data on individuals.

Subd. 11c. **Welfare, court services agency, and school records maintained.** Notwithstanding sections [138.163](#) and [138.17](#), records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, court services agencies, or schools under this section shall be destroyed as provided in paragraphs (a) to (d) by the responsible authority.

(a) For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of four years. Records under this paragraph may not be used for employment, background checks, or purposes other than to assist in future risk and safety assessments.

(b) All records relating to reports which, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for at least ten years after the date of the final entry in the case record.

(c) All records regarding a report of maltreatment, including any notification of intent to interview which was received by a school under subdivision 10, paragraph (d), shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed under this subdivision.

(d) Private or confidential data released to a court services agency under subdivision 10h must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed under this subdivision.

Subd. 11d. **Disclosure in child fatality or near fatality cases.** (a) The definitions in this paragraph apply to this section.

(1) "Child fatality" means the death of a child from suspected abuse, neglect, or maltreatment.

(2) "Near fatality" means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) "Findings and information" means a written summary described in paragraph (c) of actions taken or services rendered by a local social services agency following receipt of a report.

(b) Notwithstanding any other provision of law and subject to this subdivision, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) a person is criminally charged with having caused the child fatality or near fatality; or

(2) a county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's death.

(c) Findings and information disclosed under this subdivision consist of a written summary that includes any of the following information the agency is able to provide:

(1) the dates, outcomes, and results of any actions taken or services rendered;

(2) the results of any review of the state child mortality review panel, a local child mortality review panel, a local community child protection team, or any public agency; and

(3) confirmation of the receipt of all reports, accepted or not accepted, by the local welfare agency for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the agency's determination.

(d) Nothing in this subdivision authorizes access to the private data in the custody of a local social services agency, or the disclosure to the public of the records or content of any psychiatric, psychological, or therapeutic evaluations, or the disclosure of information that would reveal the identities of persons who provided information related to suspected abuse, neglect, or maltreatment of the child.

(e) A person whose request is denied may apply to the appropriate court for an order compelling disclosure of all or part of the findings and information of the public agency. The application must set forth, with reasonable particularity, factors supporting the application. The court has jurisdiction to issue these orders. Actions under this section must be set down for immediate hearing, and subsequent proceedings in those actions must be given priority by the appellate courts.

(f) A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

Subd. 12. **Duties of facility operators.** Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section [609.255](#), [609.377](#), or [609.378](#). Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, sexual abuse, or maltreatment of a child in a facility while in the care of that facility may be charged with a violation of section [609.378](#). The facility operator shall inform all mandated reporters employed by or otherwise associated with the facility of the duties required of mandated

reporters and shall inform all mandatory reporters of the prohibition against retaliation for reports made in good faith under this section.

Subd. 13.[Repealed, 1988 c 625 s 9]

Subd. 14. **Conflict of interest.** (a) A potential conflict of interest related to assisting in an assessment under this section resulting in a direct or shared financial interest with a child abuse and neglect treatment provider or resulting from a personal or family relationship with a party in the investigation must be considered by the local welfare agency in an effort to prevent unethical relationships.

(b) A person who conducts an assessment under this section or section [626.5561](#) may not have:

(1) any direct or shared financial interest or referral relationship resulting in a direct shared financial gain with a child abuse and neglect treatment provider; or

(2) a personal or family relationship with a party in the investigation.

If an independent assessor is not available, the person responsible for making the determination under this section may use the services of an assessor with a financial interest, referral, or personal or family relationship.

Subd. 15. **Auditing.** The commissioner of human services shall regularly audit for accuracy the data reported by counties on maltreatment of minors.