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**Senate**  

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**State of Minnesota**

**S.F. No. 2042 - Adoption Information Requests  
Information and Procedures Rules (The Delete-Everything  
Amendment)**

**Author:** Senator Ann Rest

**Prepared by:** Joan White, Senate Counsel (651/296-3814) 

**Date:** April 6, 2005

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**Section 1 (259.88)** modifies the adoption chapter of law, by adding a new statutory section related to adoption data and best practices. The new section requires the Commissioner of Human Services to collect data from all adoption agencies for six months in order to establish benchmarks to evaluate postadoption search services. This section lists what data the commissioner must collect.

**Subdivision 2** requires the commissioner of human services, in consultation with the commissioner of health, to develop best practice guidelines for conducting postadoption services.

**Section 2** requires the commissioner to report to the legislature by February 1, 2006. The report must include an assessment of the data gathered under section 1, subdivision 1, and the best practices guidelines developed under section 1, subdivision 2.

JW:rdr

Senator Rest introduced--

S.F. No. 2042: Referred to the Committee on Health and Family Security.

1                                   A bill for an act

2           relating to adoption; requiring the commissioner of

3           human services to adopt certain rules.

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

5           Section 1. [RULES.]

6           By February 1, 2006, the commissioner of human services, in

7 consultation with the commissioner of health, shall adopt rules:

8           (1) to establish required information and procedures for

9 requests for affidavits of disclosure and affidavits of

10 nondisclosure; and

11           (2) establishing required information and procedures for

12 medical history forms related to birth parents of adopted

13 children.

1 Senator ..... moves to amend S.F. No. 2042 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [259.88] [DATA AND BEST PRACTICES.]

4 Subdivision 1. [REQUIRED DATA FOR POSTADOPTION SEARCH  
5 SERVICES.] (a) The commissioner of human services must collect  
6 data from all adoption agencies for six months in order to  
7 establish benchmarks to evaluate postadoption search services.  
8 The data must include, but is not limited to:

9 (1) the percentage of requests resulting in successful  
10 location of the other party;

11 (2) the percentage of requests resulting in successful  
12 completion of the commissioner's designated form for family  
13 medical and social history;

14 (3) the time from request for search to completion of  
15 search; and

16 (4) the number and type of efforts used to complete the  
17 search.

18 (b) Agencies must provide the number of search requests  
19 received during the six-month period prior to the effective date  
20 of this bill to the commissioner of human services.

21 (c) The data must be used to establish reasonable efforts  
22 in developing the best practices under subdivision 2.

23 Subd. 2. [BEST PRACTICES.] The commissioner of human  
24 services, in consultation with the commissioner of health, must  
25 develop best practice guidelines for conducting postadoption  
26 services.

27 Sec. 2. [REPORT.]

28 The commissioner must report to the legislature by February  
29 1, 2006. The report must include an assessment of the data  
30 gathered under section 1, subdivision 1, and the best practices  
31 guidelines developed under section 1, subdivision 2.

32 Sec. 3. [EFFECTIVE DATE.]

33 Section 1 is effective the day following final enactment."

4 Delete the title and insert:

35 "A bill for an act relating to adoption; providing for data  
36 collection and best practice guidelines for conducting  
37 postadoption services; requiring a report; proposing coding for

1 new law in Minnesota Statutes, chapter 259."



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**State of Minnesota**

**S.F. No. 1857 - DHS Mental Health Bill**

**Author:** Senator Linda Berglin

**Prepared by:** Joan White, Senate Counsel (651/296-3814)

**Date:** April 6, 2005



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**Article 1  
Mental Health Services**

**Section 1 (148C.11, subdivision 1)** extends the authority until July 1, 2007, for individuals to continue to provide dual diagnosis treatment in the adult mental health rehabilitative program.

**Section 2 (245.4885, subdivision 1)** modifies the statute relating to screening for inpatient and residential treatment, by changing terminology from "screening" to "determining the needed level of care," which more accurately describes the duty of the county board under this section. This section also requires the county board to determine the needed level of care for all children referred for treatment of severe emotional disturbance in a treatment foster care setting.

**Section 3 (245.4885, subdivision 1a)** creates a new subdivision related to a child who is admitted to a treatment foster care setting, residential treatment facility, or acute care hospital for emergency treatment, or held for emergency care by a regional treatment center, by requiring that the level of care determination occur within three working days of admission.

**Section 4 (245.4885, subdivision 2)** strikes outdated language and incorporates new terminology.

**Section 5 (256.9693)** allows the commissioner to authorize additional hospital inpatient days beyond the 45-day cap under this section based on an individual review of medical necessity.

**Section 6 (256B.0622, subdivision 3a)** amends the intensive rehabilitative mental health services statute, by making certain youth eligible for the services. This section is effective July 1, 2006.

**Section 7 (256B.0624, subdivision 4a)** modifies the adult mental health crisis response services, by allowing the commissioner to approve a crisis response provider based on an alternative plan proposed by a county or group of counties, if a county demonstrates that, due to geographic barriers, it is not feasible to provide mobile crisis intervention services in accordance with this section.

**Sections 8, 9, and 10 (256B.0625, subdivision 46; 256B.0625, subdivision 47; 256B.0625, subdivision 48)** expand the services covered under Medical Assistance to include mental health telemedicine, treatment foster care services, and psychiatric consultation to primary care practitioners.

**Section 11 (256B.0946)** amends the Medical Assistance chapter of law by adding a new section of law, which establishes standards governing treatment foster care services. Treatment foster care integrates case management, psychotherapy, and mental health rehabilitative services provided to children in the home of trained foster parents.

**Sections 12 and 13 (256D.03, subdivision 4; 256L.03, subdivision 1)** expand the services covered under general assistance medical care and MinnesotaCare, respectively, to include mental health telemedicine and psychiatric consultation.

**Section 14** repeals a civil commitment cost report, which was due in 2001, and a report on the mental health system, which was due January 15, 2003.

## **Article 2 Children's Mental Health**

This article amends the child protection chapter of law.

**Section 1 (260C.141, subdivision 2)** relates to the review of the status of a child in foster care. The new subdivision 2a requires that the child be in foster care for 13 consecutive months before filing a "child in need of protection and services" (CHIPS) petition, if the child was placed in foster care due to the child's developmental disability or emotional disturbance. In lieu of a petition, the county must report to the court on the child's status in placement. This section also amends the contents in the county social services agency report to the court and requires that the report include the child's individual mental health treatment plan.

This section also modifies provisions that apply when a child with a developmental disability or emotional disturbance continues in foster care for more than 13 months. Federal law requires that a petition be filed and the court make a judicial determination that continued out-of-home placement is in the child's best interests. When the court finds it is in the best interests of the child, the court will continue the voluntary nature of the placement. This section also requires that the court not adjudicate the child in need of protection or services and not order the child placed in foster care nor transfer legal custody to the county. The county must continue to have legal responsibility for the care, placement, and supervision of the child. In cases where a child is in out-of-home placement for both treatment purposes and the existence of a child protection matter, and child protection

matters are corrected but placement still is needed for treatment, the court may move to vacate the finding of protection and the award of custody, and convert the order to a voluntary placement agreement.

**Section 2 (260C.193, subdivision 2)** allows the court to consider a report or recommendation by a child's health or mental health care provider before making a disposition in the case, terminating parental rights, or appointing a guardian for the child.

**Section 3 (260C.201, subdivision 1)** clarifies that children in foster care for treatment of a "mental disability" includes children with "emotional disturbance."

**Section 4 (260C.201, subdivision 2)** specifies what must be included in the written findings of the court when a child has been adjudicated in need of protection or services, and needs treatment services.

**Section 5 (260C.205)** requires the court to provide notice by registered mail to parents regarding legal requirements and consequences if a child continues in placement 12 months or longer.

**Section 6 (260C.212, subdivision 1)** requires that the preparation of the out-of-home placement plan for a child in placement due solely or in part to the child's emotional disturbance include the child's mental health treatment provider, and also requires the plan include specific services relating to meeting the mental health care needs of the child, and treatment outcomes.

**Section 7** makes sections 1 to 6 effective the day following final enactment.

### **Article 3 Civil Commitment**

**Sections 1 and 2 (253B.02, subdivision 7; 253B.02, subdivision 9)** amend the definitions of "examiner" and "health officer" in the Civil Commitment Act to include an advanced practice registered nurse (APRN).

**Section 3 (253B.05, subdivision 2)** makes clarifying modifications to the statute related to peace or health officer authority.

JW:rdr



Senator Berglin introduced--

S.F. No. 1857: Referred to the Committee on Health and Family Security.

A bill for an act

relating to human services; extending coverage of certain mental health services; amending Minnesota Statutes 2004, sections 148C.11, subdivision 1; 245.4885, subdivisions 1, 2, by adding a subdivision; 253B.02, subdivisions 7, 9; 253B.05, subdivision 2; 256.9693; 256B.0622, by adding a subdivision; 256B.0624, by adding a subdivision; 256B.0625, by adding subdivisions; 256D.03, subdivision 4; 256L.03, subdivision 1; 260C.141, subdivision 2; 260C.193, subdivision 2; 260C.201, subdivisions 1, 2; 260C.205; 260C.212, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 256B; repealing Laws 2001, First Special Session chapter 9, article 9, section 52; Laws 2002, chapter 335, section 4.

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

ARTICLE 1

MENTAL HEALTH SERVICES

Section 1. Minnesota Statutes 2004, section 148C.11, subdivision 1, is amended to read:

Subdivision 1. [OTHER PROFESSIONALS.] (a) Nothing in this chapter prevents members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes, but is not limited to, licensed physicians, registered nurses, licensed practical nurses, licensed psychological practitioners, members of the clergy, American Indian medicine men and women, licensed attorneys, probation officers, licensed marriage and family therapists, licensed social workers, licensed professional counselors, licensed school counselors, registered occupational

1 therapists or occupational therapy assistants, and until July 1,  
2 ~~2005~~ 2007, individuals providing integrated dual-diagnosis  
3 treatment in adult mental health rehabilitative programs  
4 certified by the Department of Human Services under section  
5 256B.0622 or 256B.0623.

6 (b) Nothing in this chapter prohibits technicians and  
7 resident managers in programs licensed by the Department of  
8 Human Services from discharging their duties as provided in  
9 Minnesota Rules, chapter 9530.

10 (c) Any person who is exempt under this section but who  
11 elects to obtain a license under this chapter is subject to this  
12 chapter to the same extent as other licensees.

13 (d) These persons must not, however, use a title  
14 incorporating the words "alcohol and drug counselor" or  
15 "licensed alcohol and drug counselor" or otherwise hold  
16 themselves out to the public by any title or description stating  
17 or implying that they are engaged in the practice of alcohol and  
18 drug counseling, or that they are licensed to engage in the  
19 practice of alcohol and drug counseling. Persons engaged in the  
20 practice of alcohol and drug counseling are not exempt from the  
21 commissioner's jurisdiction solely by the use of one of the  
22 above titles.

23 Sec. 2. Minnesota Statutes 2004, section 245.4885,  
24 subdivision 1, is amended to read:

25 Subdivision 1. [~~SCREENING-REQUIRED~~ ADMISSION CRITERIA.]  
26 The county board shall, prior to admission, except in the case  
27 of emergency admission, ~~screen~~ determine the needed level of  
28 care for all children referred for treatment of severe emotional  
29 disturbance to in a treatment foster care setting, residential  
30 treatment facility, or informally admitted to a regional  
31 treatment center if public funds are used to pay for the  
32 services. The county board shall also ~~screen~~ determine the  
33 needed level of care for all children admitted to an acute care  
34 hospital for treatment of severe emotional disturbance if public  
35 funds other than reimbursement under chapters 256B and 256D are  
36 used to pay for the services. ~~if-a-child-is-admitted-to-a~~

~~1 residential-treatment-facility-or-acute-care-hospital-for~~  
~~2 emergency-treatment-or-held-for-emergency-care-by-a-regional~~  
~~3 treatment-center-under-section-253B.05, subdivision 17, screening~~  
~~4 must-occur-within-three-working-days-of-admission.~~

5 Screening The level of care determination shall determine  
6 whether the proposed treatment:

7 (1) is necessary;

8 (2) is appropriate to the child's individual treatment  
9 needs;

10 (3) cannot be effectively provided in the child's home; and

11 (4) provides a length of stay as short as possible  
12 consistent with the individual child's need.

13 When a screening level of care determination is conducted,  
14 the county board may not determine that referral or admission to  
15 a treatment foster care setting, residential treatment facility,  
16 or acute care hospital is not appropriate solely because  
17 services were not first provided to the child in a less  
18 restrictive setting and the child failed to make progress toward  
19 or meet treatment goals in the less restrictive  
20 setting. ~~Screening shall include both~~ The level of care  
21 determination must be based on a diagnostic assessment and that  
22 includes a functional assessment which evaluates family, school,  
23 and community living situations; and an assessment of the  
24 child's need for care out of the home using a tool approved by  
25 the commissioner of human services. If a diagnostic  
26 assessment ~~or including a functional assessment~~ has been  
27 completed by a mental health professional within the past 180  
28 days, a new diagnostic ~~or functional~~ assessment need not be  
29 completed unless in the opinion of the current treating mental  
30 health professional the child's mental health status has changed  
31 markedly since the assessment was completed. The child's parent  
32 shall be notified if an assessment will not be completed and of  
33 the reasons. A copy of the notice shall be placed in the  
34 child's file. Recommendations developed as part of  
35 the screening level of care determination process shall include  
36 specific community services needed by the child and, if

1 appropriate, the child's family, and shall indicate whether or  
2 not these services are available and accessible to the child and  
3 family.

4 During the ~~screening~~ level of care determination process,  
5 the child, child's family, or child's legal representative, as  
6 appropriate, must be informed of the child's eligibility for  
7 case management services and family community support services  
8 and that an individual family community support plan is being  
9 developed by the case manager, if assigned.

10 ~~Screening~~ The level of care determination shall be-in  
11 ~~compliance~~ comply with section 260C.212. Wherever possible, the  
12 parent shall be consulted in the ~~screening~~ process, unless  
13 clinically inappropriate.

14 The ~~screening-process~~ level of care determination, and  
15 placement decision, and recommendations for mental health  
16 services must be documented in the child's record.

17 An alternate review process may be approved by the  
18 commissioner if the county board demonstrates that an alternate  
19 review process has been established by the county board and the  
20 times of review, persons responsible for the review, and review  
21 criteria are comparable to the standards in clauses (1) to (4).

22 Sec. 3. Minnesota Statutes 2004, section 245.4885, is  
23 amended by adding a subdivision to read:

24 Subd. 1a. [EMERGENCY ADMISSION.] If a child is admitted to  
25 a treatment foster care setting, residential treatment facility,  
26 or acute care hospital for emergency treatment or held for  
27 emergency care by a regional treatment center under section  
28 253B.05, subdivision 1, the level of care determination must  
29 occur within three working days of admission.

30 Sec. 4. Minnesota Statutes 2004, section 245.4885,  
31 subdivision 2, is amended to read:

32 Subd. 2. [QUALIFICATIONS.] ~~No-later-than-July-17-1991,~~  
33 Screening Level of care determination of children for treatment  
34 foster care, residential, and inpatient services must be  
35 conducted by a mental health professional. Where appropriate  
36 and available, culturally informed mental health consultants

1 must participate in the screening level of care determination.  
 2 Mental health professionals providing screening level of care  
 3 determination for treatment foster care, inpatient, and  
 4 residential services must not be financially affiliated with any  
 5 ~~acute-care-inpatient-hospital, residential-treatment-facility,~~  
 6 ~~or-regional-treatment-center~~ nongovernment entity which may be  
 7 providing those services. ~~The-commissioner-may-waive-this~~  
 8 ~~requirement-for-mental-health-professional-participation-after~~  
 9 ~~July-1, 1991, if-the-county-documents-that:~~

10 ~~(1)-mental-health-professionals-or-mental-health~~  
 11 ~~practitioners-are-unavailable-to-provide-this-service, and~~  
 12 ~~(2)-services-are-provided-by-a-designated-person-with~~  
 13 ~~training-in-human-services-who-receives-clinical-supervision~~  
 14 ~~from-a-mental-health-professional.~~

15 [EFFECTIVE DATE.] This section is effective July 1, 2006.

16 Sec. 5. Minnesota Statutes 2004, section 256.9693, is  
 17 amended to read:

18 256.9693 [CONTINUING CARE PROGRAM FOR PERSONS WITH MENTAL  
 19 ILLNESS.]

20 The commissioner shall establish a continuing care benefit  
 21 program for persons with mental illness in which persons with  
 22 mental illness may obtain acute care hospital inpatient  
 23 treatment for mental illness for up to 45 days beyond that  
 24 allowed by section 256.969. The commissioner may authorize  
 25 additional days beyond 45 based on an individual review of  
 26 medical necessity. Persons with mental illness who are eligible  
 27 for medical assistance may obtain inpatient treatment under this  
 28 program in hospital beds for which the commissioner contracts  
 29 under this section. The commissioner may selectively contract  
 30 with hospitals to provide this benefit through competitive  
 31 bidding when reasonable geographic access by recipients can be  
 32 assured. Payments under this section shall not affect payments  
 33 under section 256.969. The commissioner may contract externally  
 34 with a utilization review organization to authorize persons with  
 35 mental illness to access the continuing care benefit program.  
 36 The commissioner, as part of the contracts with hospitals, shall

1 establish admission criteria to allow persons with mental  
2 illness to access the continuing care benefit program. If a  
3 court orders acute care hospital inpatient treatment for mental  
4 illness for a person, the person may obtain the treatment under  
5 the continuing care benefit program. The commissioner shall not  
6 require, as part of the admission criteria, any commitment or  
7 petition under chapter 253B as a condition of accessing the  
8 program. This benefit is not available for people who are also  
9 eligible for Medicare and who have not exhausted their annual or  
10 lifetime inpatient psychiatric benefit under Medicare. If a  
11 recipient is enrolled in a prepaid plan, this program is  
12 included in the plan's coverage.

13 Sec. 6. Minnesota Statutes 2004, section 256B.0622, is  
14 amended by adding a subdivision to read:

15 Subd. 3a. [ELIGIBILITY FOR TRANSITIONAL YOUTH.] An  
16 eligible recipient under the age of 18 is an individual who:

17 (1) is age 16 or 17;

18 (2) is diagnosed with a medical condition, such as an  
19 emotional disturbance or traumatic brain injury, for which  
20 intensive nonresidential rehabilitative mental health services  
21 are needed;

22 (3) has substantial disability and functional impairment in  
23 three or more of the areas listed in section 245.462,  
24 subdivision 11a, so that self-sufficiency upon adulthood or  
25 emancipation is unlikely; and

26 (4) has had a recent diagnostic assessment by a qualified  
27 professional that documents that intensive nonresidential  
28 rehabilitative mental health services are medically necessary to  
29 address identified disability and functional impairments and  
30 individual recipient goals.

31 [EFFECTIVE DATE.] This section is effective July 1, 2006.

32 Sec. 7. Minnesota Statutes 2004, section 256B.0624, is  
33 amended by adding a subdivision to read:

34 Subd. 4a. [ALTERNATIVE PROVIDER STANDARDS FOR ADULT MENTAL  
35 HEALTH CRISIS RESPONSE SERVICES.] If a county demonstrates that,  
36 due to geographic or other barriers, it is not feasible to

1 provide mobile crisis intervention services according to the  
2 standards in subdivision 4, paragraph (b), clause (9), the  
3 commissioner may approve a crisis response provider based on an  
4 alternative plan proposed by a county or group of counties. The  
5 alternative plan must:

6 (1) result in increased access and a reduction in  
7 disparities in the availability of crisis services;

8 (2) provide mobile services outside of the usual  
9 nine-to-five office hours and on weekends and holidays; and

10 (3) comply with standards for emergency mental health  
11 services in section 245.469.

12 Sec. 8. Minnesota Statutes 2004, section 256B.0625, is  
13 amended by adding a subdivision to read:

14 Subd. 46. [MENTAL HEALTH TELEMEDICINE.] Subject to federal  
15 approval, mental health services that are otherwise covered by  
16 medical assistance as direct face-to-face services may be  
17 provided via two-way interactive video. Use of two-way  
18 interactive video must be medically appropriate to the condition  
19 and needs of the person being served. Reimbursement is at the  
20 same rates and under the same conditions that would otherwise  
21 apply to the service. The interactive video equipment and  
22 connection must comply with Medicare standards in effect at the  
23 time the service is provided.

24 [EFFECTIVE DATE.] This section is effective January 1, 2006.

25 Sec. 9. Minnesota Statutes 2004, section 256B.0625, is  
26 amended by adding a subdivision to read:

27 Subd. 47. [TREATMENT FOSTER CARE SERVICES.] Subject to  
28 federal approval, medical assistance covers treatment foster  
29 care services according to section 256B.0946.

30 [EFFECTIVE DATE.] This section is effective July 1, 2006.

31 Sec. 10. Minnesota Statutes 2004, section 256B.0625, is  
32 amended by adding a subdivision to read:

33 Subd. 48. [PSYCHIATRIC CONSULTATION TO PRIMARY CARE  
34 PRACTITIONERS.] Medical assistance covers consultation provided  
35 by a psychiatrist via telephone, e-mail, facsimile, or other  
36 means of communication to primary care practitioners, including

1 pediatricians. The need for consultation and the receipt of the  
2 consultation must be documented in the patient record maintained  
3 by the primary care practitioner. If the patient consents, and  
4 subject to federal limitations and data privacy provisions, the  
5 consultation may be provided without the patient present.

6 [EFFECTIVE DATE.] This section is effective January 1, 2006.

7 Sec. 11. [256B.0946] [TREATMENT FOSTER CARE.]

8 Subdivision 1. [COVERED SERVICE.] (a) Subject to federal  
9 approval, medical assistance covers medically necessary services  
10 described under paragraph (b) that are provided by a provider  
11 entity eligible under subdivision 3 to a client eligible under  
12 subdivision 2 who is placed in a treatment foster home licensed  
13 under Minnesota Rules, parts 2960.3000 to 2960.3340.

14 (b) Services to children with severe emotional disturbance  
15 residing in treatment foster care settings must meet the  
16 relevant standards for mental health services under sections  
17 245.487 to 245.4887. In addition, specific service components  
18 reimbursed by medical assistance must meet the following  
19 standards:

20 (1) case management service component must meet the  
21 standards in Minnesota Rules, parts 9520.0900 to 9520.0926 and  
22 9505.0322, excluding subparts 6 and 10;

23 (2) psychotherapy and skills training components must meet  
24 the standards for children's therapeutic services and supports  
25 in section 256B.0943; and

26 (3) family psychoeducation services under supervision of a  
27 mental health professional.

28 Subd. 2. [DETERMINATION OF CLIENT ELIGIBILITY.] A client's  
29 eligibility to receive treatment foster care under this section  
30 shall be determined by a diagnostic assessment, an evaluation of  
31 level of care needed, and development of an individual treatment  
32 plan, as defined in paragraphs (a) to (c).

33 (a) The diagnostic assessment must:

34 (1) be conducted by a psychiatrist, licensed psychologist,  
35 or licensed independent clinical social worker that is performed  
36 within 180 days prior to the start of service;



1 (2) include current diagnoses on all five axes of the  
2 client's current mental health status;

3 (3) determine whether or not a child meets the criteria for  
4 severe emotional disturbance in section 245.4871, subdivision 6,  
5 or for serious and persistent mental illness in section 245.462,  
6 subdivision 20; and

7 (4) be completed annually until age 18. For individuals  
8 between age 18 and 21, unless a client's mental health condition  
9 has changed markedly since the client's most recent diagnostic  
10 assessment, annual updating is necessary. For the purpose of  
11 this section, "updating" means a written summary, including  
12 current diagnoses on all five axes, by a mental health  
13 professional of the client's current mental status and service  
14 needs.

15 (b) The evaluation of level of care must be conducted by  
16 the placing county with an instrument approved by the  
17 commissioner of human services. The commissioner shall update  
18 the list of approved level of care instruments annually.

19 (c) The individual treatment plan must be:

20 (1) based on the information in the client's diagnostic  
21 assessment;

22 (2) developed through a child-centered, family-driven  
23 planning process that identifies service needs and  
24 individualized, planned, and culturally appropriate  
25 interventions that contain specific measurable treatment goals  
26 and objectives for the client and treatment strategies for the  
27 client's family and foster family;

28 (3) reviewed at least once every 90 days and revised; and

29 (4) signed by the client or, if appropriate, by the  
30 client's parent or other person authorized by statute to consent  
31 to mental health services for the client.

32 Subd. 3. [ELIGIBLE PROVIDERS.] For purposes of this  
33 section, a provider agency must have an individual placement  
34 agreement for each recipient and must be a licensed child  
35 placing agency, under Minnesota Rules, parts 9543.0010 to  
36 9543.0150, and either:

1 (1) a county;

2 (2) an Indian Health Services facility operated by a tribe  
3 or tribal organization under funding authorized by United States  
4 Code, title 25, sections 450f to 450n, or title 3 of the Indian  
5 Self-Determination Act, Public Law 93-638, section 638  
6 (facilities or providers); or

7 (3) a noncounty entity under contract with a county board.

8 Subd. 4. [ELIGIBLE PROVIDER RESPONSIBILITIES.] (a) To be  
9 an eligible provider under this section, a provider must develop  
10 written policies and procedures for treatment foster care  
11 services consistent with subdivision 1, paragraph (b), clauses  
12 (1), (2), and (3).

13 (b) In delivering services under this section, a treatment  
14 foster care provider must ensure that staff caseload size  
15 reasonably enables the provider to play an active role in  
16 service planning, monitoring, delivering, and reviewing for  
17 discharge planning to meet the needs of the client, the client's  
18 foster family, and the birth family, as specified in each  
19 client's individual treatment plan.

20 Subd. 5. [SERVICE AUTHORIZATION.] The commissioner will  
21 administer authorizations for services under this section in  
22 compliance with section 256B.0625, subdivision 25.

23 Subd. 6. [EXCLUDED SERVICES.] (a) Services in clauses (1)  
24 to (4) are not eligible as components of treatment foster care  
25 services:

26 (1) treatment foster care services provided in violation of  
27 medical assistance policy in Minnesota Rules, part 9505.0220;

28 (2) service components of children's therapeutic services  
29 and supports simultaneously provided by more than one treatment  
30 foster care provider;

31 (3) home and community-based waiver services; and

32 (4) treatment foster care services provided to a child  
33 without a level of care determination according to section  
34 245.4885, subdivision 1.

35 (b) Children receiving treatment foster care services are  
36 not eligible for medical assistance reimbursement for the

1 following services while receiving treatment foster care:

2 (1) mental health case management services under section  
3 256B.0625, subdivision 20; and

4 (2) psychotherapy and skill training components of  
5 children's therapeutic services and supports under section  
6 256B.0625, subdivision 35b.

7 [EFFECTIVE DATE.] This section is effective July 1, 2006.

8 Sec. 12. Minnesota Statutes 2004, section 256D.03,  
9 subdivision 4, is amended to read:

10 Subd. 4. [GENERAL ASSISTANCE MEDICAL CARE; SERVICES.]

11 (a)(i) For a person who is eligible under subdivision 3,  
12 paragraph (a), clause (2), item (i), general assistance medical  
13 care covers, except as provided in paragraph (c):

14 (1) inpatient hospital services;

15 (2) outpatient hospital services;

16 (3) services provided by Medicare certified rehabilitation  
17 agencies;

18 (4) prescription drugs and other products recommended  
19 through the process established in section 256B.0625,  
20 subdivision 13;

21 (5) equipment necessary to administer insulin and  
22 diagnostic supplies and equipment for diabetics to monitor blood  
23 sugar level;

24 (6) eyeglasses and eye examinations provided by a physician  
25 or optometrist;

26 (7) hearing aids;

27 (8) prosthetic devices;

28 (9) laboratory and X-ray services;

29 (10) physician's services;

30 (11) medical transportation except special transportation;

31 (12) chiropractic services as covered under the medical  
32 assistance program;

33 (13) podiatric services;

34 (14) dental services and dentures, subject to the

35 limitations specified in section 256B.0625, subdivision 9;

36 (15) outpatient services provided by a mental health center

1 or clinic that is under contract with the county board and is  
2 established under section 245.62;

3 (16) day treatment services for mental illness provided  
4 under contract with the county board;

5 (17) prescribed medications for persons who have been  
6 diagnosed as mentally ill as necessary to prevent more  
7 restrictive institutionalization;

8 (18) psychological services, medical supplies and  
9 equipment, and Medicare premiums, coinsurance and deductible  
10 payments;

11 (19) medical equipment not specifically listed in this  
12 paragraph when the use of the equipment will prevent the need  
13 for costlier services that are reimbursable under this  
14 subdivision;

15 (20) services performed by a certified pediatric nurse  
16 practitioner, a certified family nurse practitioner, a certified  
17 adult nurse practitioner, a certified obstetric/gynecological  
18 nurse practitioner, a certified neonatal nurse practitioner, or  
19 a certified geriatric nurse practitioner in independent  
20 practice, if (1) the service is otherwise covered under this  
21 chapter as a physician service, (2) the service provided on an  
22 inpatient basis is not included as part of the cost for  
23 inpatient services included in the operating payment rate, and  
24 (3) the service is within the scope of practice of the nurse  
25 practitioner's license as a registered nurse, as defined in  
26 section 148.171;

27 (21) services of a certified public health nurse or a  
28 registered nurse practicing in a public health nursing clinic  
29 that is a department of, or that operates under the direct  
30 authority of, a unit of government, if the service is within the  
31 scope of practice of the public health nurse's license as a  
32 registered nurse, as defined in section 148.171; and

33 (22) telemedicine consultations, to the extent they are  
34 covered under section 256B.0625, subdivision 3b; and

35 (23) mental health telemedicine and psychiatric  
36 consultation as covered under section 256B.0625, subdivisions 46

1 and 48.

2 (ii) Effective October 1, 2003, for a person who is  
3 eligible under subdivision 3, paragraph (a), clause (2), item  
4 (ii), general assistance medical care coverage is limited to  
5 inpatient hospital services, including physician services  
6 provided during the inpatient hospital stay. A \$1,000  
7 deductible is required for each inpatient hospitalization.

8 (b) Gender reassignment surgery and related services are  
9 not covered services under this subdivision unless the  
10 individual began receiving gender reassignment services prior to  
11 July 1, 1995.

12 (c) In order to contain costs, the commissioner of human  
13 services shall select vendors of medical care who can provide  
14 the most economical care consistent with high medical standards  
15 and shall where possible contract with organizations on a  
16 prepaid capitation basis to provide these services. The  
17 commissioner shall consider proposals by counties and vendors  
18 for prepaid health plans, competitive bidding programs, block  
19 grants, or other vendor payment mechanisms designed to provide  
20 services in an economical manner or to control utilization, with  
21 safeguards to ensure that necessary services are provided.  
22 Before implementing prepaid programs in counties with a county  
23 operated or affiliated public teaching hospital or a hospital or  
24 clinic operated by the University of Minnesota, the commissioner  
25 shall consider the risks the prepaid program creates for the  
26 hospital and allow the county or hospital the opportunity to  
27 participate in the program in a manner that reflects the risk of  
28 adverse selection and the nature of the patients served by the  
29 hospital, provided the terms of participation in the program are  
30 competitive with the terms of other participants considering the  
31 nature of the population served. Payment for services provided  
32 pursuant to this subdivision shall be as provided to medical  
33 assistance vendors of these services under sections 256B.02,  
34 subdivision 8, and 256B.0625. For payments made during fiscal  
35 year 1990 and later years, the commissioner shall consult with  
36 an independent actuary in establishing prepayment rates, but

1 shall retain final control over the rate methodology.

2 (d) Recipients eligible under subdivision 3, paragraph (a),  
3 clause (2), item (i), shall pay the following co-payments for  
4 services provided on or after October 1, 2003:

5 (1) \$3 per nonpreventive visit. For purposes of this  
6 subdivision, a visit means an episode of service which is  
7 required because of a recipient's symptoms, diagnosis, or  
8 established illness, and which is delivered in an ambulatory  
9 setting by a physician or physician ancillary, chiropractor,  
10 podiatrist, nurse midwife, advanced practice nurse, audiologist,  
11 optician, or optometrist;

12 (2) \$25 for eyeglasses;

13 (3) \$25 for nonemergency visits to a hospital-based  
14 emergency room;

15 (4) \$3 per brand-name drug prescription and \$1 per generic  
16 drug prescription, subject to a \$20 per month maximum for  
17 prescription drug co-payments. No co-payments shall apply to  
18 antipsychotic drugs when used for the treatment of mental  
19 illness; and

20 (5) 50 percent coinsurance on restorative dental services.

21 (e) Co-payments shall be limited to one per day per  
22 provider for nonpreventive visits, eyeglasses, and nonemergency  
23 visits to a hospital-based emergency room. Recipients of  
24 general assistance medical care are responsible for all  
25 co-payments in this subdivision. The general assistance medical  
26 care reimbursement to the provider shall be reduced by the  
27 amount of the co-payment, except that reimbursement for  
28 prescription drugs shall not be reduced once a recipient has  
29 reached the \$20 per month maximum for prescription drug  
30 co-payments. The provider collects the co-payment from the  
31 recipient. Providers may not deny services to recipients who  
32 are unable to pay the co-payment, except as provided in  
33 paragraph (f).

34 (f) If it is the routine business practice of a provider to  
35 refuse service to an individual with uncollected debt, the  
36 provider may include uncollected co-payments under this

1 section. A provider must give advance notice to a recipient  
2 with uncollected debt before services can be denied.

3 (g) Any county may, from its own resources, provide medical  
4 payments for which state payments are not made.

5 (h) Chemical dependency services that are reimbursed under  
6 chapter 254B must not be reimbursed under general assistance  
7 medical care.

8 (i) The maximum payment for new vendors enrolled in the  
9 general assistance medical care program after the base year  
10 shall be determined from the average usual and customary charge  
11 of the same vendor type enrolled in the base year.

12 (j) The conditions of payment for services under this  
13 subdivision are the same as the conditions specified in rules  
14 adopted under chapter 256B governing the medical assistance  
15 program, unless otherwise provided by statute or rule.

16 (k) Inpatient and outpatient payments shall be reduced by  
17 five percent, effective July 1, 2003. This reduction is in  
18 addition to the five percent reduction effective July 1, 2003,  
19 and incorporated by reference in paragraph (i).

20 (l) Payments for all other health services except  
21 inpatient, outpatient, and pharmacy services shall be reduced by  
22 five percent, effective July 1, 2003.

23 (m) Payments to managed care plans shall be reduced by five  
24 percent for services provided on or after October 1, 2003.

25 (n) A hospital receiving a reduced payment as a result of  
26 this section may apply the unpaid balance toward satisfaction of  
27 the hospital's bad debts.

28 [EFFECTIVE DATE.] This section is effective January 1, 2006.

29 Sec. 13. Minnesota Statutes 2004, section 256L.03,  
30 subdivision 1, is amended to read:

31 Subdivision 1. [COVERED HEALTH SERVICES.] For individuals  
32 under section 256L.04, subdivision 7, with income no greater  
33 than 75 percent of the federal poverty guidelines or for  
34 families with children under section 256L.04, subdivision 1, all  
35 subdivisions of this section apply. "Covered health services"  
36 means the health services reimbursed under chapter 256B, with

1 the exception of inpatient hospital services, special education  
 2 services, private duty nursing services, adult dental care  
 3 services other than services covered under section 256B.0625,  
 4 subdivision 9, paragraph (b), orthodontic services, nonemergency  
 5 medical transportation services, personal care assistant and  
 6 case management services, nursing home or intermediate care  
 7 facilities services, inpatient mental health services, and  
 8 chemical dependency services. Outpatient mental health services  
 9 covered under the MinnesotaCare program are limited to  
 10 diagnostic assessments, psychological testing, explanation of  
 11 findings, mental health telemedicine, psychiatric consultation,  
 12 medication management by a physician, day treatment, partial  
 13 hospitalization, and individual, family, and group psychotherapy.

14 No public funds shall be used for coverage of abortion  
 15 under MinnesotaCare except where the life of the female would be  
 16 endangered or substantial and irreversible impairment of a major  
 17 bodily function would result if the fetus were carried to term;  
 18 or where the pregnancy is the result of rape or incest.

19 Covered health services shall be expanded as provided in  
 20 this section.

21 [EFFECTIVE DATE.] This section is effective January 1, 2006.

22 Sec. 14. [REPEALER.]

23 Laws 2001, First Special Session chapter 9, article 9,  
 24 section 52; and Laws 2002, chapter 335, section 4, are repealed  
 25 effective the day following final enactment.

## 26 ARTICLE 2

### 27 CHILDREN'S MENTAL HEALTH

28 Section 1. Minnesota Statutes 2004, section 260C.141,  
 29 subdivision 2, is amended to read:

30 Subd. 2. [REVIEW OF FOSTER CARE STATUS.] ~~The social~~  
 31 ~~services agency responsible for the placement of a child in a~~  
 32 ~~residential facility, as defined in section 260C.212,~~  
 33 ~~subdivision 17, pursuant to a voluntary release by the child's~~  
 34 ~~parent or parents must proceed in juvenile court to review the~~  
 35 ~~foster care status of the child in the manner provided in this~~  
 36 ~~section.~~



1       (a) Except for a child in placement foster care due solely  
2 to the child's developmental disability or emotional  
3 disturbance, when a child continues in voluntary placement  
4 according to section 260C.212, subdivision 8, a petition shall  
5 be filed alleging the child to be in need of protection or  
6 services or seeking termination of parental rights or other  
7 permanent placement of the child away from the parent within 90  
8 days of the date of the voluntary placement agreement. The  
9 petition shall state the reasons why the child is in placement,  
10 the progress on the out-of-home placement plan required under  
11 section 260C.212, subdivision 1, and the statutory basis for the  
12 petition under section 260C.007, subdivision 6, 260C.201,  
13 subdivision 11, or 260C.301.

14       (1) In the case of a petition alleging the child to be in  
15 need of protection or services filed under this paragraph, if  
16 all parties agree and the court finds it is in the best  
17 interests of the child, the court may find the petition states a  
18 prima facie case that:

- 19       (i) the child's needs are being met;  
20       (ii) the placement of the child in foster care is in the  
21 best interests of the child;  
22       (iii) reasonable efforts to reunify the child and the  
23 parent or guardian are being made; and  
24       (iv) the child will be returned home in the next three  
25 months.

26       (2) If the court makes findings under paragraph (1), the  
27 court shall approve the voluntary arrangement and continue the  
28 matter for up to three more months to ensure the child returns  
29 to the parents' home. The responsible social services agency  
30 shall:

- 31       (i) report to the court when the child returns home and the  
32 progress made by the parent on the out-of-home placement plan  
33 required under section 260C.212, in which case the court shall  
34 dismiss jurisdiction;  
35       (ii) report to the court that the child has not returned  
36 home, in which case the matter shall be returned to the court

1 for further proceedings under section 260C.163; or

2 (iii) if any party does not agree to continue the matter  
3 under this paragraph and paragraph (1) and this paragraph, the  
4 matter shall proceed under section 260C.163.

5 ~~(b)~~ Subd. 2a. [VOLUNTARY FOSTER CARE PLACEMENT.] In the  
6 case of a child in voluntary placement due solely to the child's  
7 developmental disability or emotional disturbance according to  
8 section 260C.212, subdivision 9, ~~the following procedures apply:~~  
9 a petition under subdivision 1 shall not be filed unless a child  
10 continues in foster care for 13 consecutive months from the date  
11 of the voluntary placement, in which case, the responsible  
12 social services agency shall proceed under clause (2). In lieu  
13 of filing a petition to obtain judicial review of a child's  
14 voluntary placement due solely to disability and within 165 days  
15 of the placement, the responsible social services agency must  
16 report to the court as follows:

17 (1) [REPORT TO COURT.] (i) ~~Unless the county attorney~~  
18 ~~determines that a petition under subdivision 1 is appropriate,~~  
19 ~~without filing a petition,~~ A written report shall be forwarded  
20 to the court within 165 days of the date of the voluntary  
21 placement agreement. The written report shall contain necessary  
22 identifying information for the court to proceed, a copy of the  
23 out-of-home placement plan required under section 260C.212,  
24 subdivision 1, a written summary of the proceedings of any  
25 administrative review required under section 260C.212,  
26 subdivision 7, and any other information the responsible social  
27 services agency, parent or guardian, the child or the foster  
28 parent or other residential facility wants the court to  
29 consider. In the case of a child in placement due solely to an  
30 emotional disturbance, the written report shall include as an  
31 attachment the child's individual treatment plan developed by  
32 the child's treatment professional, as provided in section  
33 245.4871, subdivision 21, or the child's individual interagency  
34 intervention plan, as provided in section 125A.023, subdivision  
35 3, paragraph (c). In the case of a child in placement due  
36 solely to a developmental disability, the written report shall

1 include as an attachment the child's individual service plan, as  
2 provided in section 256B.092, subdivision 1b; the child's  
3 individual program plan, as provided in Minnesota Rules, part  
4 9525.0004, subpart 11; the child's waiver care plan; or the  
5 child's individual interagency intervention plan, as provided in  
6 section 125A.023, subdivision 3, paragraph (c).

7 (ii) The responsible social services agency, where  
8 appropriate, must advise the child, parent or guardian, the  
9 foster parent, or representative of the residential facility of  
10 the requirements of this section and of their right to submit  
11 information to the court. If the child, parent or guardian,  
12 foster parent, or representative of the residential facility  
13 wants to send information to the court, the responsible social  
14 services agency shall advise those persons of the reporting date  
15 and the identifying information necessary for the court  
16 administrator to accept the information and submit it to a judge  
17 with the agency's report. The responsible social services  
18 agency must also notify those persons that they have the right  
19 to be heard in person by the court and how to exercise that  
20 right. The responsible social services agency must also provide  
21 notice that an in-court hearing will not be held unless  
22 requested by a parent or guardian, foster parent, or the child.

23 (iii) After receiving the required report, the court has  
24 jurisdiction to make the following determinations and must do so  
25 within ten days of receiving the forwarded report: (A) whether  
26 or not the placement of the child is in the child's best  
27 interests; and (B) whether the parent and agency are  
28 appropriately planning for the child. Unless requested by a  
29 parent or guardian, foster parent, or child, no in-court hearing  
30 need shall be held in order for the court to make findings and  
31 issue an order under this paragraph.

32 (iv) If the court finds the placement is in the child's  
33 best interests and that the agency and parent are appropriately  
34 planning for the child, the court shall issue an order  
35 containing explicit, individualized findings to support its  
36 determination. The court shall send a copy of the order to the

1 county attorney, the responsible social services agency, the  
2 parent or guardian, the child, and the foster parents. The  
3 court shall also send the parent or guardian, the child, and the  
4 foster parent notice of the required review under clause (2).

5 (v) If the court finds continuing the placement not to be  
6 in the child's best interests or that the agency or the parent  
7 or guardian is not appropriately planning for the child, the  
8 court shall notify the county attorney, the responsible social  
9 services agency, the parent or guardian, the foster parent, the  
10 child, and the county attorney of the court's determinations and  
11 the basis for the court's determinations.

12 (2) [PERMANENCY REVIEW BY PETITION.] If a child with a  
13 developmental disability or an emotional disturbance continues  
14 in out-of-home placement for 13 months from the date of a  
15 voluntary placement, a petition alleging the child to be in need  
16 of protection or services, for termination of parental rights,  
17 or for permanent placement of the child away from the parent  
18 under section 260C.201 shall be filed. The court shall conduct  
19 a permanency hearing on the petition no later than 14 months  
20 after the date of the voluntary placement. At the permanency  
21 hearing, the court shall determine the need for an order  
22 permanently placing the child away from the parent or determine  
23 whether there are compelling reasons that continued voluntary  
24 placement is in the child's best interests. A petition alleging  
25 the child to be in need of protection or services shall state  
26 the date of the voluntary placement agreement, the nature of the  
27 child's developmental disability or emotional disturbance, the  
28 plan for the ongoing care of the child, the parents'  
29 participation in the plan, the responsible social services  
30 agency's efforts to finalize a plan for the permanent placement  
31 of the child, and the statutory basis for the petition.

32 (i) If a petition alleging the child to be in need of  
33 protection or services is filed under this paragraph, the court  
34 may find, based on the contents of the sworn petition, and the  
35 agreement of all parties, including the child, where  
36 appropriate, that there are compelling reasons that the

1 voluntary arrangement is in the best interests of the child and  
2 that the responsible social services agency has made reasonable  
3 efforts to finalize a plan for the permanent placement of the  
4 child, approve the continued voluntary placement, and continue  
5 the matter under the court's jurisdiction for the purpose of  
6 reviewing the child's placement as a continued voluntary  
7 arrangement every 12 months as long as the child continues in  
8 out-of-home placement.

9 (ii) When the court finds compelling reasons and approves  
10 the continued voluntary placement under this subdivision, the  
11 court shall not adjudicate the child in need of protection or  
12 services and shall not order the child placed in foster care or  
13 transfer legal custody of the child to the responsible social  
14 services agency. A finding that the court approves the  
15 continued voluntary placement means the responsible social  
16 services agency has continued legal responsibility for the  
17 child's placement due to the voluntary placement agreement and  
18 that the parent may terminate the voluntary agreement as  
19 provided in section 260C.212, subdivision 4, paragraph (c),  
20 clause (2), or, in the case of an Indian child, as provided in  
21 section 260.765, subdivision 4.

22 (iii) The matter must be returned to the court for further  
23 review every 12 months as long as the child remains in  
24 placement. The court shall give notice to the parent or  
25 guardian of the continued review requirements under this  
26 section. Nothing in this paragraph shall be construed to mean  
27 the court must order permanent placement for the child under  
28 section 260C.201, subdivision 11, as long as the court finds  
29 compelling reasons at the first review required under this  
30 section.

31 (iv) If a child diagnosed with developmental disability or  
32 emotional disturbance has been ordered into foster care under  
33 section 260C.178 or 260C.201 and the conditions which led to the  
34 court's order have been corrected so that the child could safely  
35 return to the care of the parent or guardian except for the  
36 child's need for continued placement to access necessary

1 treatment or services, the responsible social services agency  
2 may file a motion with the court in the child in need of  
3 protection or services matter to vacate the finding that the  
4 child is in need of protection or services and to vacate the  
5 award of custody to the responsible agency. The motion shall be  
6 supported by affidavit setting forth: (A) the agency's  
7 reasonable efforts to finalize a permanent plan for the child  
8 including returning the child home; (B) the agency's compelling  
9 reasons why a permanent placement need not be ordered under  
10 section 260C.201, subdivision 11; and (C) why the voluntary  
11 placement is in the child's best interests. This motion must be  
12 filed no later than the time a permanency placement  
13 determination hearing is required under section 260C.201,  
14 subdivision 11. At the time scheduled for the court to hear the  
15 agency's motion, the parent or guardian and agency may execute a  
16 voluntary placement agreement when the court approves the  
17 child's continued foster care placement as a voluntary  
18 arrangement. The court may approve the continued foster care  
19 placement as a voluntary arrangement if it finds there are  
20 compelling reasons why continued placement on a voluntary basis  
21 is in the child's best interests and that the responsible social  
22 services agency has made reasonable efforts to finalize a plan  
23 for the permanent placement of the child. The matter shall  
24 continue under the court's jurisdiction for the purpose of  
25 reviewing the child's placement as a continued voluntary  
26 arrangement every 12 months as long as the child continues in  
27 out-of-home placement due solely to the child's disability. A  
28 finding that the court approves the continued voluntary  
29 placement means the responsible social services agency has  
30 continued legal responsibility for the child's placement due to  
31 the voluntary placement agreement and that the parent may  
32 terminate the voluntary agreement as provided in section  
33 260C.212, subdivision 4, paragraph (c), clause (2), or, in the  
34 case of an Indian child, as provided in section 260.765,  
35 subdivision 4.

36 ~~{++}~~ (v) If a petition for termination of parental rights,

1 for transfer of permanent legal and physical custody to a  
2 relative, for long-term foster care, or for foster care for a  
3 specified period of time is filed, the court must proceed under  
4 section 260C.201, subdivision 11.

5 (3) If any party, including the child, disagrees with the  
6 voluntary arrangement, the court shall proceed under section  
7 260C.163.

8 Sec. 2. Minnesota Statutes 2004, section 260C.193,  
9 subdivision 2, is amended to read:

10 Subd. 2. [CONSIDERATION OF REPORTS.] Before making a  
11 disposition in a case, terminating parental rights, or  
12 appointing a guardian for a child, the court may consider any  
13 report or recommendation made by the responsible social services  
14 agency, probation officer, licensed child-placing agency, foster  
15 parent, guardian ad litem, tribal representative, the child's  
16 health or mental health care provider, or other authorized  
17 advocate for the child or child's family, a school district  
18 concerning the effect on student transportation of placing a  
19 child in a school district in which the child is not a resident,  
20 or any other information deemed material by the court.

21 Sec. 3. Minnesota Statutes 2004, section 260C.201,  
22 subdivision 1, is amended to read:

23 Subdivision 1. [DISPOSITIONS.] (a) If the court finds that  
24 the child is in need of protection or services or neglected and  
25 in foster care, it shall enter an order making any of the  
26 following dispositions of the case:

27 (1) place the child under the protective supervision of the  
28 responsible social services agency or child-placing agency in  
29 the home of a parent of the child under conditions prescribed by  
30 the court directed to the correction of the child's need for  
31 protection or services:

32 (i) the court may order the child into the home of a parent  
33 who does not otherwise have legal custody of the child, however,  
34 an order under this section does not confer legal custody on  
35 that parent;

36 (ii) if the court orders the child into the home of a

1 father who is not adjudicated, he must cooperate with paternity  
2 establishment proceedings regarding the child in the appropriate  
3 jurisdiction as one of the conditions prescribed by the court  
4 for the child to continue in his home;

5 (iii) the court may order the child into the home of a  
6 noncustodial parent with conditions and may also order both the  
7 noncustodial and the custodial parent to comply with the  
8 requirements of a case plan under subdivision 2; or

9 (2) transfer legal custody to one of the following:

10 (i) a child-placing agency; or

11 (ii) the responsible social services agency. In placing a  
12 child whose custody has been transferred under this paragraph,  
13 the agencies shall make an individualized determination of how  
14 the placement is in the child's best interests using the  
15 consideration for relatives and the best interest factors in  
16 section 260C.212, subdivision 2, paragraph (b); or

17 (3) if the child has been adjudicated as a child in need of  
18 protection or services because the child is in need of special  
19 services or care to treat or ameliorate a physical or mental  
20 disability or emotional disturbance as defined in section  
21 245.4871, subdivision 15, the court may order the child's  
22 parent, guardian, or custodian to provide it. The court may  
23 order the child's health plan company to provide mental health  
24 services to the child. Section 62Q.535 applies to an order for  
25 mental health services directed to the child's health plan  
26 company. If the health plan, parent, guardian, or custodian  
27 fails or is unable to provide this treatment or care, the court  
28 may order it provided. Absent specific written findings by the  
29 court that the child's disability is the result of abuse or  
30 neglect by the child's parent or guardian, the court shall not  
31 transfer legal custody of the child for the purpose of obtaining  
32 special treatment or care solely because the parent is unable to  
33 provide the treatment or care. If the court's order for mental  
34 health treatment is based on a diagnosis made by a treatment  
35 professional, the court may order that the diagnosing  
36 professional not provide the treatment to the child if it finds



1 that such an order is in the child's best interests; or

2 (4) if the court believes that the child has sufficient  
3 maturity and judgment and that it is in the best interests of  
4 the child, the court may order a child 16 years old or older to  
5 be allowed to live independently, either alone or with others as  
6 approved by the court under supervision the court considers  
7 appropriate, if the county board, after consultation with the  
8 court, has specifically authorized this dispositional  
9 alternative for a child.

10 (b) If the child was adjudicated in need of protection or  
11 services because the child is a runaway or habitual truant, the  
12 court may order any of the following dispositions in addition to  
13 or as alternatives to the dispositions authorized under  
14 paragraph (a):

15 (1) counsel the child or the child's parents, guardian, or  
16 custodian;

17 (2) place the child under the supervision of a probation  
18 officer or other suitable person in the child's own home under  
19 conditions prescribed by the court, including reasonable rules  
20 for the child's conduct and the conduct of the parents,  
21 guardian, or custodian, designed for the physical, mental, and  
22 moral well-being and behavior of the child; or with the consent  
23 of the commissioner of corrections, place the child in a group  
24 foster care facility which is under the commissioner's  
25 management and supervision;

26 (3) subject to the court's supervision, transfer legal  
27 custody of the child to one of the following:

28 (i) a reputable person of good moral character. No person  
29 may receive custody of two or more unrelated children unless  
30 licensed to operate a residential program under sections 245A.01  
31 to 245A.16; or

32 (ii) a county probation officer for placement in a group  
33 foster home established under the direction of the juvenile  
34 court and licensed pursuant to section 241.021;

35 (4) require the child to pay a fine of up to \$100. The  
36 court shall order payment of the fine in a manner that will not

1 impose undue financial hardship upon the child;

2 (5) require the child to participate in a community service  
3 project;

4 (6) order the child to undergo a chemical dependency  
5 evaluation and, if warranted by the evaluation, order  
6 participation by the child in a drug awareness program or an  
7 inpatient or outpatient chemical dependency treatment program;

8 (7) if the court believes that it is in the best interests  
9 of the child and of public safety that the child's driver's  
10 license or instruction permit be canceled, the court may order  
11 the commissioner of public safety to cancel the child's license  
12 or permit for any period up to the child's 18th birthday. If  
13 the child does not have a driver's license or permit, the court  
14 may order a denial of driving privileges for any period up to  
15 the child's 18th birthday. The court shall forward an order  
16 issued under this clause to the commissioner, who shall cancel  
17 the license or permit or deny driving privileges without a  
18 hearing for the period specified by the court. At any time  
19 before the expiration of the period of cancellation or denial,  
20 the court may, for good cause, order the commissioner of public  
21 safety to allow the child to apply for a license or permit, and  
22 the commissioner shall so authorize;

23 (8) order that the child's parent or legal guardian deliver  
24 the child to school at the beginning of each school day for a  
25 period of time specified by the court; or

26 (9) require the child to perform any other activities or  
27 participate in any other treatment programs deemed appropriate  
28 by the court.

29 To the extent practicable, the court shall enter a  
30 disposition order the same day it makes a finding that a child  
31 is in need of protection or services or neglected and in foster  
32 care, but in no event more than 15 days after the finding unless  
33 the court finds that the best interests of the child will be  
34 served by granting a delay. If the child was under eight years  
35 of age at the time the petition was filed, the disposition order  
36 must be entered within ten days of the finding and the court may

1 not grant a delay unless good cause is shown and the court finds  
2 the best interests of the child will be served by the delay.

3 (c) If a child who is 14 years of age or older is  
4 adjudicated in need of protection or services because the child  
5 is a habitual truant and truancy procedures involving the child  
6 were previously dealt with by a school attendance review board  
7 or county attorney mediation program under section 260A.06 or  
8 260A.07, the court shall order a cancellation or denial of  
9 driving privileges under paragraph (b), clause (7), for any  
10 period up to the child's 18th birthday.

11 (d) In the case of a child adjudicated in need of  
12 protection or services because the child has committed domestic  
13 abuse and been ordered excluded from the child's parent's home,  
14 the court shall dismiss jurisdiction if the court, at any time,  
15 finds the parent is able or willing to provide an alternative  
16 safe living arrangement for the child, as defined in Laws 1997,  
17 chapter 239, article 10, section 2.

18 (e) When a parent has complied with a case plan ordered  
19 under subdivision 6 and the child is in the care of the parent,  
20 the court may order the responsible social services agency to  
21 monitor the parent's continued ability to maintain the child  
22 safely in the home under such terms and conditions as the court  
23 determines appropriate under the circumstances.

24 Sec. 4. Minnesota Statutes 2004, section 260C.201,  
25 subdivision 2, is amended to read:

26 Subd. 2. [WRITTEN FINDINGS.] (a) Any order for a  
27 disposition authorized under this section shall contain written  
28 findings of fact to support the disposition and case plan  
29 ordered and shall also set forth in writing the following  
30 information:

31 (1) Why the best interests and safety of the child are  
32 served by the disposition and case plan ordered;

33 (2) What alternative dispositions or services under the  
34 case plan were considered by the court and why such dispositions  
35 or services were not appropriate in the instant case;

36 (3) When legal custody of the child is transferred, the

1 appropriateness of the particular placement made or to be made  
2 by the placing agency using the factors in section 260C.212,  
3 subdivision 2, paragraph (b); and

4 (4) Whether reasonable efforts consistent with section  
5 260.012 were made to prevent or eliminate the necessity of the  
6 child's removal and to reunify the family after removal. The  
7 court's findings must include a brief description of what  
8 preventive and reunification efforts were made and why further  
9 efforts could not have prevented or eliminated the necessity of  
10 removal or that reasonable efforts were not required under  
11 section 260.012 or 260C.178, subdivision 1; and

12 (5) If the child has been adjudicated as a child in need of  
13 protection or services because the child is in need of special  
14 services or care to treat or ameliorate a mental disability or  
15 emotional disturbance as defined in section 245.4871,  
16 subdivision 15, the written findings shall also set forth:

17 (i) whether the child has mental health needs that must be  
18 addressed by the case plan;

19 (ii) what consideration was given to the diagnostic and  
20 functional assessments performed by the child's mental health  
21 professional and to health and mental health care professionals'  
22 treatment recommendations;

23 (iii) what consideration was given to the requests or  
24 preferences of the child's parent or guardian with regard to the  
25 child's interventions, services, or treatment; and

26 (iv) what consideration was given to the cultural  
27 appropriateness of the child's treatment or services.

28 (b) If the court finds that the social services agency's  
29 preventive or reunification efforts have not been reasonable but  
30 that further preventive or reunification efforts could not  
31 permit the child to safely remain at home, the court may  
32 nevertheless authorize or continue the removal of the child.

33 (c) If the child has been identified by the responsible  
34 social services agency as the subject of concurrent permanency  
35 planning, the court shall review the reasonable efforts of the  
36 agency to recruit, identify, and make a placement in a home

1 where the foster parent or relative that has committed to being  
2 the legally permanent home for the child in the event  
3 reunification efforts are not successful.

4 Sec. 5. Minnesota Statutes 2004, section 260C.205, is  
5 amended to read:

6 260C.205 [DISPOSITIONS; VOLUNTARY FOSTER CARE PLACEMENTS.]

7 Unless the court disposes of the petition under section  
8 260C.141, subdivision 2, upon a petition for review of the  
9 foster care status of a child, the court may:

10 (a) Find that the child's needs are not being met, in which  
11 case the court shall order the social services agency or the  
12 parents to take whatever action is necessary and feasible to  
13 meet the child's needs, including, when appropriate, the  
14 provision by the social services agency of services to the  
15 parents which would enable the child to live at home, and order  
16 a disposition under section 260C.201.

17 (b) Find that the child has been abandoned by parents  
18 financially or emotionally, or that the developmentally disabled  
19 child does not require out-of-home care because of the  
20 handicapping condition, in which case the court shall order the  
21 social services agency to file an appropriate petition pursuant  
22 to section 260C.141, subdivision 1, or 260C.307.

23 (c) When a child is in placement due solely to the child's  
24 developmental disability or emotional disturbance and the court  
25 finds that there are compelling reasons which permit the court  
26 to approve the continued voluntary placement of the child and  
27 retain jurisdiction to conduct reviews as required under section  
28 260C.141, subdivision 2, the court shall give the parent notice  
29 by registered United States mail of the review requirements of  
30 section 260C.141, subdivision 2, in the event the child  
31 continues in placement 12 months or longer.

32 Nothing in this section shall be construed to prohibit  
33 bringing a petition pursuant to section 260C.141, subdivision 1  
34 or 4, sooner than required by court order pursuant to this  
35 section.

36 Sec. 6. Minnesota Statutes 2004, section 260C.212,

1 subdivision 1, is amended to read:

2 Subdivision 1. [OUT-OF-HOME PLACEMENT; PLAN.] (a) An  
3 out-of-home placement plan shall be prepared within 30 days  
4 after any child is placed in a residential facility by court  
5 order or by the voluntary release of the child by the parent or  
6 parents.

7 For purposes of this section, a residential facility means  
8 any group home, family foster home or other publicly supported  
9 out-of-home residential facility, including any out-of-home  
10 residential facility under contract with the state, county or  
11 other political subdivision, or any agency thereof, to provide  
12 those services or foster care as defined in section 260C.007,  
13 subdivision 18.

14 (b) An out-of-home placement plan means a written document  
15 which is prepared by the responsible social services agency  
16 jointly with the parent or parents or guardian of the child and  
17 in consultation with the child's guardian ad litem, the child's  
18 tribe, if the child is an Indian child, the child's foster  
19 parent or representative of the residential facility, and, where  
20 appropriate, the child. For a child in placement due solely or  
21 in part to the child's emotional disturbance, preparation of the  
22 out-of-home placement plan shall additionally include the  
23 child's mental health treatment provider. As appropriate, the  
24 plan shall be:

25 (1) submitted to the court for approval under section  
26 260C.178, subdivision 7;

27 (2) ordered by the court, either as presented or modified  
28 after hearing, under section 260C.178, subdivision 7, or  
29 260C.201, subdivision 6; and

30 (3) signed by the parent or parents or guardian of the  
31 child, the child's guardian ad litem, a representative of the  
32 child's tribe, the responsible social services agency, and, if  
33 possible, the child.

34 (c) The out-of-home placement plan shall be explained to  
35 all persons involved in its implementation, including the child  
36 who has signed the plan, and shall set forth:

1 (1) a description of the residential facility including how  
2 the out-of-home placement plan is designed to achieve a safe  
3 placement for the child in the least restrictive, most  
4 family-like, setting available which is in close proximity to  
5 the home of the parent or parents or guardian of the child when  
6 the case plan goal is reunification, and how the placement is  
7 consistent with the best interests and special needs of the  
8 child according to the factors under subdivision 2, paragraph  
9 (b);

10 (2) the specific reasons for the placement of the child in  
11 a residential facility, and when reunification is the plan, a  
12 description of the problems or conditions in the home of the  
13 parent or parents which necessitated removal of the child from  
14 home and the changes the parent or parents must make in order  
15 for the child to safely return home;

16 (3) a description of the services offered and provided to  
17 prevent removal of the child from the home and to reunify the  
18 family including:

19 (i) the specific actions to be taken by the parent or  
20 parents of the child to eliminate or correct the problems or  
21 conditions identified in clause (2), and the time period during  
22 which the actions are to be taken; and

23 (ii) the reasonable efforts, or in the case of an Indian  
24 child, active efforts to be made to achieve a safe and stable  
25 home for the child including social and other supportive  
26 services to be provided or offered to the parent or parents or  
27 guardian of the child, the child, and the residential facility  
28 during the period the child is in the residential facility;

29 (4) a description of any services or resources that were  
30 requested by the child or the child's parent, guardian, foster  
31 parent, or custodian since the date of the child's placement in  
32 the residential facility, and whether those services or  
33 resources were provided and if not, the basis for the denial of  
34 the services or resources;

35 (5) the visitation plan for the parent or parents or  
36 guardian, other relatives as defined in section 260C.007,

1 subdivision 27, and siblings of the child if the siblings are  
2 not placed together in the residential facility, and whether  
3 visitation is consistent with the best interest of the child,  
4 during the period the child is in the residential facility;

5 (6) documentation of steps to finalize the adoption or  
6 legal guardianship of the child if the court has issued an order  
7 terminating the rights of both parents of the child or of the  
8 only known, living parent of the child, and a copy of this  
9 documentation shall be provided to the court in the review  
10 required under section 260C.317, subdivision 3, paragraph (b);

11 (7) to the extent available and accessible, the health and  
12 educational records of the child including:

13 (i) the names and addresses of the child's health and  
14 educational providers;

15 (ii) the child's grade level performance;

16 (iii) the child's school record;

17 (iv) assurances that the child's placement in foster care  
18 takes into account proximity to the school in which the child is  
19 enrolled at the time of placement;

20 (v) a record of the child's immunizations;

21 (vi) the child's known medical problems, including any  
22 known communicable diseases, as defined in section 144.4172,  
23 subdivision 2;

24 (vii) the child's medications; and

25 (viii) any other relevant health and education information;  
26 and

27 (8) an independent living plan for a child age 16 or older  
28 who is in placement as a result of a permanency disposition.  
29 The plan should include, but not be limited to, the following  
30 objectives:

31 (i) educational, vocational, or employment planning;

32 (ii) health care planning and medical coverage;

33 (iii) transportation including, where appropriate,  
34 assisting the child in obtaining a driver's license;

35 (iv) money management;

36 (v) planning for housing;



1 (vi) social and recreational skills; and  
 2 (vii) establishing and maintaining connections with the  
 3 child's family and community; and  
 4 (9) for a child in placement due solely or in part to the  
 5 child's emotional disturbance, diagnostic and assessment  
 6 information, specific services relating to meeting the mental  
 7 health care needs of the child, and treatment outcomes.

8 (d) The parent or parents or guardian and the child each  
 9 shall have the right to legal counsel in the preparation of the  
 10 case plan and shall be informed of the right at the time of  
 11 placement of the child. The child shall also have the right to  
 12 a guardian ad litem. If unable to employ counsel from their own  
 13 resources, the court shall appoint counsel upon the request of  
 14 the parent or parents or the child or the child's legal  
 15 guardian. The parent or parents may also receive assistance  
 16 from any person or social services agency in preparation of the  
 17 case plan.

18 After the plan has been agreed upon by the parties involved  
 19 or approved or ordered by the court, the foster parents shall be  
 20 fully informed of the provisions of the case plan and shall be  
 21 provided a copy of the plan.

22 Sec. 7. [EFFECTIVE DATE.]

23 Sections 1 to 6 shall be effective the day following final  
 24 enactment.

### 25 ARTICLE 3

#### 26 CIVIL COMMITMENT

27 Section 1. Minnesota Statutes 2004, section 253B.02,  
 28 subdivision 7, is amended to read:

29 Subd. 7. [EXAMINER.] "Examiner" means a person who is  
 30 knowledgeable, trained, and practicing in the diagnosis and  
 31 assessment or in the treatment of the alleged impairment, and  
 32 who is:

33 (1) a licensed physician; or

34 (2) a licensed psychologist who has a doctoral degree in  
 35 psychology or who became a licensed consulting psychologist  
 36 before July 2, 1975; or

1       (3) an advanced practice registered nurse (APRN) certified  
2 in mental health.

3       Sec. 2. Minnesota Statutes 2004, section 253B.02,  
4 subdivision 9, is amended to read:

5       Subd. 9. [HEALTH OFFICER.] "Health officer" means a  
6 licensed physician, licensed psychologist, licensed social  
7 worker, registered nurse working in an emergency room of a  
8 hospital, or psychiatric or public health nurse as defined in  
9 section 145A.02, subdivision 18, or an advanced practice  
10 registered nurse (APRN) as defined in section 148.171,  
11 subdivision 3, and formally designated members of a prepetition  
12 screening unit established by section 253B.07.

13       Sec. 3. Minnesota Statutes 2004, section 253B.05,  
14 subdivision 2, is amended to read:

15       Subd. 2. [PEACE OR HEALTH OFFICER AUTHORITY.] (a) A peace  
16 or health officer may take a person into custody and transport  
17 the person to a licensed physician or treatment facility if the  
18 officer has reason to believe, either through direct observation  
19 of the person's behavior, or upon reliable information of the  
20 person's recent behavior and knowledge of the person's past  
21 behavior or psychiatric treatment, that the person is mentally  
22 ill or mentally retarded and in danger of injuring self or  
23 others if not immediately detained. A peace or health officer  
24 or a person working under such officer's supervision, may take a  
25 person who is believed to be chemically dependent or is  
26 intoxicated in public into custody and transport the person to a  
27 treatment facility. If the person is intoxicated in public or  
28 is believed to be chemically dependent and is not in danger of  
29 causing self-harm or harm to any person or property, the peace  
30 or health officer may transport the person home. The peace or  
31 health officer shall make written application for admission of  
32 the person to the treatment facility. The application shall  
33 contain the peace or health officer's statement specifying the  
34 reasons for and circumstances under which the person was taken  
35 into custody. If danger to specific individuals is a basis for  
36 the emergency hold, the statement must include identifying

1 information on those individuals, to the extent practicable. A  
2 copy of the statement shall be made available to the person  
3 taken into custody.

4 (b) As far as is practicable, a peace officer who provides  
5 transportation for a person placed in a facility under this  
6 subdivision may not be in uniform and may not use a vehicle  
7 visibly marked as a law enforcement vehicle.

8 (c) A person may be admitted to a treatment facility for  
9 emergency care and treatment under this subdivision with the  
10 consent of the head of the facility under the following  
11 circumstances: (1) a written statement ~~is-made-by~~ shall only be  
12 made by the following individuals who are knowledgeable,  
13 trained, and practicing in the diagnosis and treatment of mental  
14 illness or mental retardation; the medical officer, or the  
15 officer's designee on duty at the facility, ~~if-the-designee-is~~  
16 including a licensed physician, a registered physician  
17 assistant, or an advanced practice registered nurse who ~~is~~  
18 ~~knowledgeable, trained, and practicing in the diagnosis and~~  
19 ~~treatment of mental illness or mental retardation, that~~ after  
20 preliminary examination has determined that the person has  
21 symptoms of mental illness or mental retardation and appears to  
22 be in danger of harming self or others if not immediately  
23 detained; or (2) a written statement is made by the institution  
24 program director or the director's designee on duty at the  
25 facility after preliminary examination that the person has  
26 symptoms of chemical dependency and appears to be in danger of  
27 harming self or others if not immediately detained or is  
28 intoxicated in public.

Article 1 MENTAL HEALTH SERVICES.....	page	1
Article 2 CHILDREN'S MENTAL HEALTH.....	page	16
Article 3 CIVIL COMMITMENT.....	page	33

- 1 Senator ..... moves to amend S.F. No. 1857 as follows:
- 2 Pages 2 to 5, delete sections 2, 3, and 4
- 3 Page 6, delete section 6
- 4 Pages 7 to 16, delete sections 8, 9, 10, 11, 12, and 13
- 5 Renumber the sections in sequence and correct the internal
- 6 references
- 7 Amend the title accordingly

1 Senator ..... moves to amend S.F. No. 1857 as follows:

2 Page 8, after line 6, insert:

3 "Sec. 11. Minnesota Statutes 2004, section 256B.0924,  
4 subdivision 3, is amended to read:

5 Subd. 3. [ELIGIBILITY.] Persons are eligible to receive  
6 targeted case management services under this section if the  
7 requirements in paragraphs (a) and (b) are met.

8 (a) The person must be assessed and determined by the local  
9 county agency to:

10 (1) be age 18 or older;

11 (2) be receiving medical assistance;

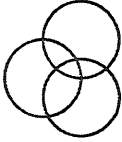
12 (3) have significant functional limitations; and

13 (4) be in need of service coordination to attain or  
14 maintain living in an integrated community setting.

15 (b) The person must be a vulnerable adult in need of adult  
16 protection as defined in section 626.5572, or is an adult with  
17 mental retardation as defined in section 252A.02, subdivision 2,  
18 or a related condition as defined in section 252.27, subdivision  
19 1a, and is not receiving home and community-based waiver  
20 services, or is an adult who lacks a permanent residence and who  
21 has been without a permanent residence for at least one year or  
22 on at least four occasions in the last three years."

23 Renumber the sections in sequence and correct the internal  
24 references

25 Amend the title accordingly



State of Minnesota

## Office of the Ombudsman for Mental Health and Mental Retardation

121 7<sup>th</sup> Place E. Suite 420 Metro Square Building, St. Paul, Minnesota 55101-2117  
651-296-3848 or Toll Free 1-800-657-3506 TTY/Voice – Minnesota Relay Service 711

April 7, 2005

Senator Becky Lourey, Chair  
Senate Health and Family Security Committee  
G24Capitol Building  
75 Martin Luther King Blvd.  
St. Paul, MN 55155

RE: Support for SF 1857

Dear Sen. Lourey and Members of the Committee,

The Office of Ombudsman fully supports SF 1857, authored by Senator Berlin, clarifying aspects of the Children's Mental Health Act.

The Office of Ombudsman for Mental Health and Mental Retardation is charged under MN. Stat. § 245.91 - .97 with promoting the highest attainable standards of treatment, competency, efficiency and justice for persons receiving services from an agency, facility or program, for mental illness, developmental disabilities, chemical dependency and emotional disturbance. The Department of Human Services and all county social service agencies are considered agencies which the Ombudsman has authority to review and make recommendations for appropriate treatment for affected children.

The Ombudsman has been focusing on the Children's Mental Health System for the past year and have some preliminary observations regarding the number of cases that involve the need for children's mental health services and case management that have the county taking custody through the CHIPS process despite Minnesota's policy and statues that address this issue. I have discussed the issues we have observed with DHS on a number of occasions and became aware that the department intended to address this issue through training and legislative clarification. While believe that more needs to be done, but this bill will help address these issues.

I strongly urge your support of this bill as a vehicle to insure that parents do not have to relinquish custody in order to get the needed services for their children. Thank you for your consideration and please do not hesitate to contact me at 651-296-0941 should you have questions.

Sincerely,

Roberta C. Opheim, Ombudsman



State of Minnesota

Senator Lourey introduced--

S.F. No. 1837: Referred to the Committee on Health and Family Security.

1

A bill for an act

2 relating to human services; changing MinnesotaCare  
3 provisions to align with practice; amending Minnesota  
4 Statutes 2004, sections 256.045, subdivision 3a;  
5 256B.02, subdivision 12; 256B.056, subdivisions 5, 5a,  
6 5b, 7, by adding subdivisions; 256B.057, subdivision  
7 1; 256B.0644; 256D.045; 256L.01, subdivisions 4, 5;  
8 256L.03, subdivision 1b; 256L.04, subdivision 2, by  
9 adding subdivisions; 256L.05, subdivisions 3, 3a;  
10 256L.07, subdivisions 1, 3, by adding a subdivision;  
11 256L.15, subdivisions 2, 3; 549.02, by adding a  
12 subdivision; 549.04.

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

14 Section 1. Minnesota Statutes 2004, section 256.045,  
15 subdivision 3a, is amended to read:

16 Subd. 3a. [PREPAID HEALTH PLAN APPEALS.] (a) All prepaid  
17 health plans under contract to the commissioner under chapter  
18 256B or 256D must provide for a complaint system according to  
19 section 62D.11. When a prepaid health plan denies, reduces, or  
20 terminates a health service or denies a request to authorize a  
21 previously authorized health service, the prepaid health plan  
22 must notify the recipient of the right to file a complaint or an  
23 appeal. The notice must include the name and telephone number  
24 of the ombudsman and notice of the recipient's right to request  
25 a hearing under paragraph (b). ~~When a complaint is filed, the~~  
26 ~~prepaid health plan must notify the ombudsman within three~~  
27 ~~working days.~~ Recipients may request the assistance of the  
28 ombudsman in the complaint system process. The prepaid health  
29 plan must issue a written resolution of the complaint to the



1 recipient within 30 days after the complaint is filed with the  
2 prepaid health plan. A recipient is not required to exhaust the  
3 complaint system procedures in order to request a hearing under  
4 paragraph (b).

5 (b) Recipients enrolled in a prepaid health plan under  
6 chapter 256B or 256D may contest a prepaid health plan's denial,  
7 reduction, or termination of health services, a prepaid health  
8 plan's denial of a request to authorize a previously authorized  
9 health service, or the prepaid health plan's written resolution  
10 of a complaint by submitting a written request for a hearing  
11 according to subdivision 3. A state human services referee  
12 shall conduct a hearing on the matter and shall recommend an  
13 order to the commissioner of human services. The commissioner  
14 need not grant a hearing if the sole issue raised by a recipient  
15 is the commissioner's authority to require mandatory enrollment  
16 in a prepaid health plan in a county where prepaid health plans  
17 are under contract with the commissioner. The state human  
18 services referee may order a second medical opinion from the  
19 prepaid health plan or may order a second medical opinion from a  
20 nonprepaid health plan provider at the expense of the prepaid  
21 health plan. Recipients may request the assistance of the  
22 ombudsman in the appeal process.

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

33 Sec. 2. Minnesota Statutes 2004, section 256B.02,  
34 subdivision 12, is amended to read:

35 Subd. 12. [THIRD-PARTY PAYER.] "Third-party payer" means a  
36 person, entity, or agency or government program that has a

1 probable obligation to pay all or part of the costs of a medical  
2 assistance recipient's health services. Third-party payer  
3 includes an entity under contract with the recipient to cover  
4 all or part of the recipient's medical costs.

5 Sec. 3. Minnesota Statutes 2004, section 256B.056, is  
6 amended by adding a subdivision to read:

7 Subd. 3d. [REDUCTION OF EXCESS ASSETS.] Assets in excess  
8 of the limits set forth in subdivisions 3 to 3c may be reduced  
9 to allowable limits as follows:

10 (a) Assets may be reduced in any of the three calendar  
11 months before the month of application in which the applicant  
12 seeks coverage by:

13 (1) designating burial funds up to \$1500 for each  
14 applicant, spouse, and MA-eligible dependent child; and

15 (2) paying health service bills incurred in the retroactive  
16 period for which the applicant seeks eligibility, starting with  
17 the oldest bill. After assets are reduced to allowable limits,  
18 eligibility begins with the next dollar of MA-covered health  
19 services incurred in the retroactive period. Applicants  
20 reducing assets under this subdivision who also have excess  
21 income shall first spend excess assets to pay health service  
22 bills and may meet the income spenddown on remaining bills.

23 (b) Assets may be reduced beginning the month of  
24 application by:

25 (1) paying bills for health services that would otherwise  
26 be paid by medical assistance; and

27 (2) using any means other than a transfer of assets for  
28 less than fair market value as defined in section 256B.0595,  
29 subdivision 1, paragraph (b).

30 Sec. 4. Minnesota Statutes 2004, section 256B.056,  
31 subdivision 5, is amended to read:

32 Subd. 5. [EXCESS INCOME.] A person who has excess income  
33 is eligible for medical assistance if the person has expenses  
34 for medical care that are more than the amount of the person's  
35 excess income, computed by deducting incurred medical expenses  
36 from the excess income to reduce the excess to the income

1 standard specified in subdivision 5c. The person shall elect to  
2 have the medical expenses deducted at the beginning of a  
3 one-month budget period or at the beginning of a six-month  
4 budget period. The commissioner shall allow persons eligible  
5 for assistance on a one-month spenddown basis under this  
6 subdivision to elect to pay the monthly spenddown amount in  
7 advance of the month of eligibility to the state agency in order  
8 to maintain eligibility on a continuous basis. If the recipient  
9 does not pay the spenddown amount on or before the 20th last  
10 business day of the month, the recipient is ineligible for this  
11 option for the following month. The local agency shall code the  
12 Medicaid Management Information System (MMIS) to indicate that  
13 the recipient has elected this option. The state agency shall  
14 convey recipient eligibility information relative to the  
15 collection of the spenddown to providers through the Electronic  
16 Verification System (EVS). A recipient electing advance payment  
17 must pay the state agency the monthly spenddown amount on or  
18 before noon on the 20th last business day of the month in order  
19 to be eligible for this option in the following month.

20 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
21 or upon HealthMatch implementation, whichever is later.

22 Sec. 5. Minnesota Statutes 2004, section 256B.056,  
23 subdivision 5a, is amended to read:

24 Subd. 5a. [INDIVIDUALS ON FIXED OR EXCLUDED INCOME.]  
25 Recipients of medical assistance who receive only fixed unearned  
26 or excluded income, when that income is excluded from  
27 consideration as income or unvarying in amount and timing of  
28 receipt throughout the year, shall report and verify their  
29 income annually every 12 months. The 12-month period begins  
30 with the month of application.

31 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
32 or upon HealthMatch implementation, whichever is later.

33 Sec. 6. Minnesota Statutes 2004, section 256B.056,  
34 subdivision 5b, is amended to read:

35 Subd. 5b. [INDIVIDUALS WITH LOW INCOME.] Recipients of  
36 medical assistance not residing in a long-term care facility who

1 have slightly fluctuating income which is below the medical  
2 assistance income limit shall report and verify their income on  
3 a-semiannual-basis every six months. The six-month period  
4 begins the month of application.

5 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
6 or upon HealthMatch implementation, whichever is later.

7 Sec. 7. Minnesota Statutes 2004, section 256B.056,  
8 subdivision 7, is amended to read:

9 Subd. 7. [PERIOD OF ELIGIBILITY.] Eligibility is available  
10 for the month of application and for three months prior to  
11 application if the person was eligible in those prior  
12 months. Eligibility for months prior to application is  
13 determined independently from eligibility for the month of  
14 application and future months. A redetermination of eligibility  
15 must occur every 12 months. The 12-month period begins with the  
16 month of application.

17 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
18 or upon HealthMatch implementation, whichever is later.

19 Sec. 8. Minnesota Statutes 2004, section 256B.056, is  
20 amended by adding a subdivision to read:

21 Subd. 9. [NOTICE.] The state agency must be given notice  
22 of monetary claims against a person, entity, or corporation that  
23 may be liable to pay all or part of the cost of medical care  
24 when the state agency has paid or becomes liable for the cost of  
25 that care. Notice must be given according to paragraphs (a) to  
26 (d).

27 (a) An applicant for medical assistance shall notify the  
28 state or local agency of any possible claims when the applicant  
29 submits the application. A recipient of medical assistance  
30 shall notify the state or local agency of any possible claims  
31 when those claims arise.

32 (b) A person providing medical care services to a recipient  
33 of medical assistance shall notify the state agency when the  
34 person has reason to believe that a third party may be liable  
35 for payment of the cost of medical care.

36 (c) A party to a claim that may be assigned to the state

1 agency under this section shall notify the state agency of its  
2 potential assignment claim in writing at each of the following  
3 stages of a claim:

4 (1) when a claim is filed;

5 (2) when an action is commenced; and

6 (3) when a claim is concluded by payment, award, judgment,  
7 settlement, or otherwise.

8 (d) Every party involved in any stage of a claim under this  
9 subdivision is required to provide notice to the state agency at  
10 that stage of the claim. However, when one of the parties to  
11 the claim provides notice at that stage, every other party to  
12 the claim is deemed to have provided the required notice for  
13 that stage of the claim. If the required notice under this  
14 paragraph is not provided to the state agency, all parties to  
15 the claim are deemed to have failed to provide the required  
16 notice. A party to the claim includes the injured person or the  
17 person's legal representative, the plaintiff, the defendants, or  
18 persons alleged to be responsible for compensating the injured  
19 person or plaintiff, and any other party to the cause of action  
20 or claim, regardless of whether the party knows the state agency  
21 has a potential or actual assignment claim.

22 Sec. 9. Minnesota Statutes 2004, section 256B.057,  
23 subdivision 1, is amended to read:

24 Subdivision 1. [INFANTS AND PREGNANT WOMEN.] (a)~~(1)~~ An  
25 infant less than one year of age is eligible for medical  
26 assistance if countable family income is equal to or less than  
27 275 percent of the federal poverty guideline for the same family  
28 size. A pregnant woman who has written verification of a  
29 positive pregnancy test from a physician or licensed registered  
30 nurse is eligible for medical assistance if countable family  
31 income is equal to or less than ~~200~~ 275 percent of the federal  
32 poverty guideline for the same family size. For purposes of  
33 this subdivision, "countable family income" means the amount of  
34 income considered available using the methodology of the AFDC  
35 program under the state's AFDC plan as of July 16, 1996, as  
36 required by the Personal Responsibility and Work Opportunity

1 Reconciliation Act of 1996 (PRWORA), Public Law 104-193, except  
2 for the earned income disregard and employment deductions.

3 ~~(2) For applications processed within one calendar month  
4 prior to the effective date, eligibility shall be determined by  
5 applying the income standards and methodologies in effect prior  
6 to the effective date for any months in the six-month budget  
7 period before that date and the income standards and  
8 methodologies in effect on the effective date for any months in  
9 the six-month budget period on or after that date.---The income  
10 standards for each month shall be added together and compared to  
11 the applicant's total countable income for the six-month budget  
12 period to determine eligibility.~~

13 (b) ~~(1)---(Expired 7-15p2003-c-14-art-12-s-19)~~

14 ~~(2) For applications processed within one calendar month  
15 prior to July 17, 2003, eligibility shall be determined by  
16 applying the income standards and methodologies in effect prior  
17 to July 17, 2003, for any months in the six-month budget period  
18 before July 17, 2003, and the income standards and methodologies  
19 in effect on the expiration date for any months in the six-month  
20 budget period on or after July 17, 2003.---The income standards  
21 for each month shall be added together and compared to the  
22 applicant's total countable income for the six-month budget  
23 period to determine eligibility.~~

24 (c) ~~Dependent care and child support paid under court order  
25 shall be deducted from the countable income of pregnant  
26 women. An amount equal to the amount of earned income exceeding  
27 275 percent of the federal poverty guideline plus the earned  
28 income disregards and deductions of the AFDC program under the  
29 state's AFDC plan as of July 16, 1996, as required by the  
30 Personal Responsibility and Work Opportunity Reconciliation Act  
31 of 1996 (PRWORA), Public Law 104-193, that exceeds 275 percent  
32 of the federal poverty guideline will be deducted for pregnant  
33 women and infants less than one year of age.~~

34 (d) An infant born on or after January 1, 1991, to a woman  
35 who was eligible for and receiving medical assistance on the  
36 date of the child's birth shall continue to be eligible for

1 medical assistance without redetermination until the child's  
 2 first birthday, as long as the child remains in the woman's  
 3 household.

4 [EFFECTIVE DATE.] The amendment to paragraph (a) is  
 5 effective retroactively from July 1, 2004, and the amendment to  
 6 paragraph (b) is effective retroactively from October 1, 2003.

7 Sec. 10. Minnesota Statutes 2004, section 256B.0644, is  
 8 amended to read:

9 256B.0644 [PARTICIPATION REQUIRED FOR REIMBURSEMENT UNDER  
 10 OTHER STATE HEALTH CARE PROGRAMS.]

11 A vendor of medical care, as defined in section 256B.02,  
 12 subdivision 7, with the exception of a dental provider, and a  
 13 health maintenance organization, as defined in chapter 62D, must  
 14 participate as a provider or contractor in the medical  
 15 assistance program, general assistance medical care program, and  
 16 MinnesotaCare as a condition of participating as a provider in  
 17 health insurance plans and programs or contractor for state  
 18 employees established under section 43A.18, the public employees  
 19 insurance program under section 43A.316, for health insurance  
 20 plans offered to local statutory or home rule charter city,  
 21 county, and school district employees, the workers' compensation  
 22 system under section 176.135, and insurance plans provided  
 23 through the Minnesota Comprehensive Health Association under  
 24 sections 62E.01 to 62E.19. The limitations on insurance plans  
 25 offered to local government employees shall not be applicable in  
 26 geographic areas where provider participation is limited by  
 27 managed care contracts with the Department of Human Services.  
 28 For providers other than health maintenance organizations,  
 29 participation in the medical assistance program means that ~~{1}~~  
 30 the provider accepts new medical assistance, general assistance  
 31 medical care, and MinnesotaCare patients ~~or-{2}-for-providers~~  
 32 ~~other-than-dental-service-providers~~, and at least 20 percent of  
 33 the provider's patients are covered by medical assistance,  
 34 general assistance medical care, and MinnesotaCare as their  
 35 primary source of coverage, ~~or-{3}-for-dental-service-providers,~~  
 36 ~~at-least-ten-percent-of-the-provider's-patients-are-covered-by~~

1 ~~medical-assistance, general-assistance-medical-care, and~~  
 2 ~~MinnesotaCare as their primary source of coverage.~~ Patients  
 3 seen on a volunteer basis by the provider at a location other  
 4 than the provider's usual place of practice may be considered in  
 5 meeting this participation requirement. The commissioner shall  
 6 establish participation requirements for health maintenance  
 7 organizations. The commissioner shall provide lists of  
 8 participating medical assistance providers on a quarterly basis  
 9 to the commissioner of employee relations, the commissioner of  
 10 labor and industry, and the commissioner of commerce. Each of  
 11 the commissioners shall develop and implement procedures to  
 12 exclude as participating providers in the program or programs  
 13 under their jurisdiction those providers who do not participate  
 14 in the medical assistance program. The commissioner of employee  
 15 relations shall implement this section through contracts with  
 16 participating health ~~and dental~~ carriers.

17 Sec. 11. Minnesota Statutes 2004, section 256D.045, is  
 18 amended to read:

19 256D.045 [SOCIAL SECURITY NUMBER REQUIRED.]

20 To be eligible for general assistance under sections  
 21 256D.01 to 256D.21, an individual must provide the individual's  
 22 Social Security number to the county agency or submit proof that  
 23 an application has been made. An individual who refuses to  
 24 provide a Social Security number because of a well-established  
 25 religious objection as described in Code of Federal Regulations,  
 26 title 42, section 435.910, may be eligible for general  
 27 assistance medical care under section 256D.03. The provisions  
 28 of this section do not apply to the determination of eligibility  
 29 for emergency general assistance under section 256D.06,  
 30 subdivision 2. This provision applies to eligible children  
 31 under the age of 18 effective July 1, 1997.

32 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
 33 or upon HealthMatch implementation, whichever is later.

34 Sec. 12. Minnesota Statutes 2004, section 256L.01,  
 35 subdivision 4, is amended to read:

36 Subd. 4. [GROSS INDIVIDUAL OR GROSS FAMILY INCOME.] (a)



1 "Gross individual or gross family income" for nonfarm  
 2 self-employed means income calculated for the six-month period  
 3 of eligibility using as the baseline the adjusted gross income  
 4 reported on the applicant's federal income tax form for the  
 5 previous year and adding back in reported depreciation,  
 6 carryover loss, and net operating loss amounts that apply to the  
 7 business in which the family is currently engaged.

8 (b) "Gross individual or gross family income" for farm  
 9 self-employed means income calculated for the six-month period  
 10 of eligibility using as the baseline the adjusted gross income  
 11 reported on the applicant's federal income tax form for the  
 12 previous year and adding back in reported depreciation amounts  
 13 that apply to the business in which the family is currently  
 14 engaged.

15 ~~(c) Applicants shall report the most recent financial~~  
 16 ~~situation of the family if it has changed from the period of~~  
 17 ~~time covered by the federal income tax form. The report may be~~  
 18 ~~in the form of percentage increase or decrease~~ "Gross individual  
 19 or gross family income" means the total income for all family  
 20 members, calculated for the six-month period of eligibility.

21 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
 22 or upon HealthMatch implementation, whichever is later.

23 Sec. 13. Minnesota Statutes 2004, section 256L.01,  
 24 subdivision 5, is amended to read:

25 Subd. 5. [INCOME.] (a) "Income" has the meaning given for  
 26 earned and unearned income for families and children in the  
 27 medical assistance program, according to the state's aid to  
 28 families with dependent children plan in effect as of July 16,  
 29 1996. The definition does not include medical assistance income  
 30 methodologies and deeming requirements. The earned income of  
 31 full-time and part-time students under age 19 is not counted as  
 32 income. Public assistance payments and supplemental security  
 33 income are not excluded income.

34 (b) For purposes of this subdivision, and unless otherwise  
 35 specified in this section, the commissioner shall use reasonable  
 36 methods to calculate gross earned and unearned income including,

1 but not limited to, projecting income based on income received  
2 within the past 30 days, the last 90 days, or the last 12 months.

3 [EFFECTIVE DATE.] This section is effective July 1, 2005.

4 Sec. 14. Minnesota Statutes 2004, section 256L.03,  
5 subdivision 1b, is amended to read:

6 Subd. 1b. [PREGNANT WOMEN; ELIGIBILITY FOR FULL MEDICAL  
7 ASSISTANCE SERVICES.] ~~Beginning-January-17-1999,~~ A pregnant  
8 woman who-is enrolled in MinnesotaCare ~~when-her-pregnancy-is~~  
9 diagnosed is eligible for coverage of all services provided  
10 under the medical assistance program according to chapter 256B  
11 retroactive to the date the-pregnancy-is-medically-diagnosed of  
12 conception. Co-payments totaling \$30 or more, paid after the  
13 date the-pregnancy-is-diagnosed of conception, shall be refunded.

14 Sec. 15. Minnesota Statutes 2004, section 256L.04, is  
15 amended by adding a subdivision to read:

16 Subd. 1a. [SOCIAL SECURITY NUMBER REQUIRED.] (a)  
17 Individuals and families applying for MinnesotaCare coverage  
18 must provide a Social Security number.

19 (b) The commissioner shall not deny eligibility to an  
20 otherwise eligible applicant who has applied for a Social  
21 Security number and is awaiting issuance of that Social Security  
22 number.

23 (c) Newborns enrolled under section 256L.05, subdivision 3,  
24 are exempt from the requirements of this subdivision.

25 (d) Individuals who refuse to provide a Social Security  
26 number because of well-established religious objections are  
27 exempt from the requirements of this subdivision. The term  
28 "well-established religious objections" has the meaning given in  
29 Code of Federal Regulations, title 42, section 435.910.

30 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
31 or upon HealthMatch implementation, whichever is later.

32 Sec. 16. Minnesota Statutes 2004, section 256L.04,  
33 subdivision 2, is amended to read:

34 Subd. 2. [COOPERATION IN ESTABLISHING THIRD-PARTY  
35 LIABILITY, PATERNITY, AND OTHER MEDICAL SUPPORT.] (a) To be  
36 eligible for MinnesotaCare, individuals and families must

1 cooperate with the state agency to identify potentially liable  
2 third-party payers and assist the state in obtaining third-party  
3 payments. "Cooperation" includes, but is not limited  
4 to, complying with the notice requirements in section 256B.056,  
5 subdivision 9, identifying any third party who may be liable for  
6 care and services provided under MinnesotaCare to the enrollee,  
7 providing relevant information to assist the state in pursuing a  
8 potentially liable third party, and completing forms necessary  
9 to recover third-party payments.

10 (b) A parent, guardian, relative caretaker, or child  
11 enrolled in the MinnesotaCare program must cooperate with the  
12 Department of Human Services and the local agency in  
13 establishing the paternity of an enrolled child and in obtaining  
14 medical care support and payments for the child and any other  
15 person for whom the person can legally assign rights, in  
16 accordance with applicable laws and rules governing the medical  
17 assistance program. A child shall not be ineligible for or  
18 disenrolled from the MinnesotaCare program solely because the  
19 child's parent, relative caretaker, or guardian fails to  
20 cooperate in establishing paternity or obtaining medical support.

21 Sec. 17. Minnesota Statutes 2004, section 256L.04, is  
22 amended by adding a subdivision to read:

23 Subd. 2a. [APPLICATIONS FOR OTHER BENEFITS.] To be  
24 eligible for MinnesotaCare, individuals and families must take  
25 all necessary steps to obtain other benefits as described in  
26 Code of Federal Regulations, title 42, section 435.608.  
27 Applicants and enrollees must apply for other benefits within 30  
28 days.

29 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
30 or upon HealthMatch implementation, whichever is later.

31 Sec. 18. Minnesota Statutes 2004, section 256L.05,  
32 subdivision 3, is amended to read:

33 Subd. 3. [EFFECTIVE DATE OF COVERAGE.] (a) The effective  
34 date of coverage is the first day of the month following the  
35 month in which eligibility is approved and the first premium  
36 payment has been received. As provided in section 256B.057,

1 coverage for newborns is automatic from the date of birth and  
2 must be coordinated with other health coverage. The effective  
3 date of coverage for eligible newly adoptive children added to a  
4 family receiving covered health services is the ~~date-of-entry~~  
5 ~~into-the-family~~ month of placement or the month placement is  
6 reported, whichever is later. The effective date of coverage  
7 for other new recipients members added to the family receiving  
8 ~~covered-health-services~~ is the first day of the month following  
9 the month in which ~~eligibility-is-approved-or-at-renewal,~~  
10 ~~whichever-the-family-receiving-covered-health-services~~  
11 prefers the change is reported. All eligibility criteria must  
12 be met by the family at the time the new family member is  
13 added. The income of the new family member is included with the  
14 family's gross income and the adjusted premium begins in the  
15 month the new family member is added.

16 (b) The initial premium must be received by the last  
17 working day of the month for coverage to begin the first day of  
18 the following month.

19 (c) Benefits are not available until the day following  
20 discharge if an enrollee is hospitalized on the first day of  
21 coverage.

22 (d) Notwithstanding any other law to the contrary, benefits  
23 under sections 256L.01 to 256L.18 are secondary to a plan of  
24 insurance or benefit program under which an eligible person may  
25 have coverage and the commissioner shall use cost avoidance  
26 techniques to ensure coordination of any other health coverage  
27 for eligible persons. The commissioner shall identify eligible  
28 persons who may have coverage or benefits under other plans of  
29 insurance or who become eligible for medical assistance.

30 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
31 or upon HealthMatch implementation, whichever is later.

32 Sec. 19. Minnesota Statutes 2004, section 256L.05,  
33 subdivision 3a, is amended to read:

34 Subd. 3a. [RENEWAL OF ELIGIBILITY.] (a) Beginning January  
35 1, 1999, an enrollee's eligibility must be renewed every 12  
36 months. The 12-month period begins in the month after the month

1 the application is approved.

2 (b) Beginning October 1, 2004, an enrollee's eligibility  
3 must be renewed every six months. The first six-month period of  
4 eligibility begins ~~in-the-month-after~~ the month the application  
5 is approved received by the commissioner. Each new period of  
6 eligibility must take into account any changes in circumstances  
7 that impact eligibility and premium amount. An enrollee must  
8 provide all the information needed to redetermine eligibility by  
9 the first day of the month that ends the eligibility period.  
10 The premium for the new period of eligibility must be received  
11 as provided in section 256L.06 in order for eligibility to  
12 continue.

13 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
14 or upon HealthMatch implementation, whichever is later.

15 Sec. 20. Minnesota Statutes 2004, section 256L.07,  
16 subdivision 1, is amended to read:

17 Subdivision 1. [GENERAL REQUIREMENTS.] (a) Children  
18 enrolled in the original children's health plan as of September  
19 30, 1992, children who enrolled in the MinnesotaCare program  
20 after September 30, 1992, pursuant to Laws 1992, chapter 549,  
21 article 4, section 17, and children who have family gross  
22 incomes that are equal to or less than 150 percent of the  
23 federal poverty guidelines are eligible without meeting the  
24 requirements of subdivision 2 and the four-month requirement in  
25 subdivision 3, as long as they maintain continuous coverage in  
26 the MinnesotaCare program or medical assistance. Children who  
27 apply for MinnesotaCare on or after the implementation date of  
28 the employer-subsidized health coverage program as described in  
29 Laws 1998, chapter 407, article 5, section 45, who have family  
30 gross incomes that are equal to or less than 150 percent of the  
31 federal poverty guidelines, must meet the requirements of  
32 subdivision 2 to be eligible for MinnesotaCare.

33 (b) Families enrolled in MinnesotaCare under section  
34 256L.04, subdivision 1, whose income increases above 275 percent  
35 of the federal poverty guidelines, are no longer eligible for  
36 the program and shall be disenrolled by the commissioner.

1 Individuals enrolled in MinnesotaCare under section 256L.04,  
2 subdivision 7, whose income increases above 175 percent of the  
3 federal poverty guidelines are no longer eligible for the  
4 program and shall be disenrolled by the commissioner. For  
5 persons disenrolled under this subdivision, MinnesotaCare  
6 coverage terminates the last day of the calendar month following  
7 the month in which the commissioner determines that the income  
8 of a family or individual exceeds program income limits.

9 (c)(1) Notwithstanding paragraph (b), families enrolled in  
10 MinnesotaCare under section 256L.04, subdivision 1, may remain  
11 enrolled in MinnesotaCare if ten percent of their annual income  
12 is less than the annual premium for a policy with a \$500  
13 deductible available through the Minnesota Comprehensive Health  
14 Association. Families who are no longer eligible for  
15 MinnesotaCare under this subdivision shall be given an 18-month  
16 notice period from the date that ineligibility is determined  
17 before disenrollment. This clause expires February 1, 2004.

18 (2) Effective February 1, 2004, notwithstanding paragraph  
19 (b), children may remain enrolled in MinnesotaCare if ten  
20 percent of their ~~annual~~ gross individual or gross family income  
21 as defined in section 256L.01, subdivision 4, is less than the  
22 ~~annual~~ premium for a six-month policy with a \$500 deductible  
23 available through the Minnesota Comprehensive Health  
24 Association. Children who are no longer eligible for  
25 MinnesotaCare under this clause shall be given a 12-month notice  
26 period from the date that ineligibility is determined before  
27 disenrollment. The premium for children remaining eligible  
28 under this clause shall be the maximum premium determined under  
29 section 256L.15, subdivision 2, paragraph (b).

30 (d) Effective July 1, 2003, notwithstanding paragraphs (b)  
31 and (c), parents are no longer eligible for MinnesotaCare if  
32 gross household income exceeds ~~\$50,000~~ \$25,000 for the six-month  
33 period of eligibility.

34 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
35 or upon HealthMatch implementation, whichever is later.

36 Sec. 21. Minnesota Statutes 2004, section 256L.07,

1 subdivision 3, is amended to read:

2 Subd. 3. [OTHER HEALTH COVERAGE.] (a) Families and  
3 individuals enrolled in the MinnesotaCare program must have no  
4 health coverage while enrolled or for at least four months prior  
5 to application and renewal. Children enrolled in the original  
6 children's health plan and children in families with income  
7 equal to or less than 150 percent of the federal poverty  
8 guidelines, who have other health insurance, are eligible if the  
9 coverage:

10 (1) lacks two or more of the following:

- 11 (i) basic hospital insurance;  
12 (ii) medical-surgical insurance;  
13 (iii) prescription drug coverage;  
14 (iv) dental coverage; or  
15 (v) vision coverage;

16 (2) requires a deductible of \$100 or more per person per  
17 year; or

18 (3) lacks coverage because the child has exceeded the  
19 maximum coverage for a particular diagnosis or the policy  
20 excludes a particular diagnosis.

21 The commissioner may change this eligibility criterion for  
22 sliding scale premiums in order to remain within the limits of  
23 available appropriations. The requirement of no health coverage  
24 does not apply to newborns.

25 (b) Medical assistance, general assistance medical care,  
26 and the Civilian Health and Medical Program of the Uniformed  
27 Service, CHAMPUS, or other coverage provided under United States  
28 Code, title 10, subtitle A, part II, chapter 55, are not  
29 considered insurance or health coverage for purposes of the  
30 four-month requirement described in this subdivision.

31 (c) For purposes of this subdivision, Medicare Part A or B  
32 coverage under title XVIII of the Social Security Act, United  
33 States Code, title 42, sections 1395c to 1395w-4, is considered  
34 health coverage. An applicant or enrollee may not refuse  
35 Medicare coverage to establish eligibility for MinnesotaCare.

36 (d) Applicants who were recipients of medical assistance or

1 general assistance medical care within one month of application  
2 must meet the provisions of this subdivision and subdivision 2.

3 ~~(e) Effective-October-17-2003, applicants who were~~  
4 ~~recipients of medical assistance and had Cost-effective health~~  
5 ~~insurance which that was paid for by medical assistance are~~  
6 ~~exempt from~~ is not considered health coverage for purposes of  
7 the four-month requirement under this section, except if the  
8 insurance continued after medical assistance no longer  
9 considered it cost-effective or after medical assistance closed.

10 Sec. 22. Minnesota Statutes 2004, section 256L.07, is  
11 amended by adding a subdivision to read:

12 Subd. 5. [VOLUNTARY DISENROLLMENT FOR MEMBERS OF  
13 MILITARY.] Notwithstanding section 256L.05, subdivision 3b,  
14 MinnesotaCare enrollees who are members of the military and  
15 their families, who choose to voluntarily disenroll from the  
16 program when one or more family members are called to active  
17 duty, may reenroll during or following that member's tour of  
18 active duty. Those individuals and families shall be considered  
19 to have good cause for voluntary termination under section  
20 256L.06, subdivision 3, paragraph (d). Income and asset  
21 increases reported at the time of reenrollment shall be  
22 disregarded. All provisions of sections 256L.01 to 256L.18,  
23 shall apply to individuals and families enrolled under this  
24 subdivision upon six-month renewal.

25 [EFFECTIVE DATE.] This section is effective July 1, 2005.

26 Sec. 23. Minnesota Statutes 2004, section 256L.15,  
27 subdivision 2, is amended to read:

28 Subd. 2. [SLIDING FEE SCALE TO DETERMINE PERCENTAGE OF  
29 MONTHLY GROSS INDIVIDUAL OR FAMILY INCOME.] (a) The commissioner  
30 shall establish a sliding fee scale to determine the percentage  
31 of monthly gross individual or family income that households at  
32 different income levels must pay to obtain coverage through the  
33 MinnesotaCare program. The sliding fee scale must be based on  
34 the enrollee's monthly gross individual or family income. The  
35 sliding fee scale must contain separate tables based on  
36 enrollment of one, two, or three or more persons. The sliding



1 fee scale begins with a premium of 1.5 percent of monthly gross  
2 individual or family income for individuals or families with  
3 incomes below the limits for the medical assistance program for  
4 families and children in effect on January 1, 1999, and proceeds  
5 through the following evenly spaced steps: 1.8, 2.3, 3.1, 3.8,  
6 4.8, 5.9, 7.4, and 8.8 percent. These percentages are matched  
7 to evenly spaced income steps ranging from the medical  
8 assistance income limit for families and children in effect on  
9 January 1, 1999, to 275 percent of the federal poverty  
10 guidelines for the applicable family size, up to a family size  
11 of five. The sliding fee scale for a family of five must be  
12 used for families of more than five. Effective October 1, 2003,  
13 the commissioner shall increase each percentage by 0.5  
14 percentage points for enrollees with income greater than 100  
15 percent but not exceeding 200 percent of the federal poverty  
16 guidelines and shall increase each percentage by 1.0 percentage  
17 points for families and children with incomes greater than 200  
18 percent of the federal poverty guidelines. The sliding fee  
19 scale and percentages are not subject to the provisions of  
20 chapter 14. If a family or individual reports increased income  
21 after enrollment, premiums shall not be adjusted until  
22 eligibility renewal.

23 (b)(1) Enrolled families whose gross annual income  
24 increases above 275 percent of the federal poverty guideline  
25 shall pay the maximum premium. This clause expires effective  
26 February 1, 2004.

27 (2) Effective February 1, 2004, children in families whose  
28 gross income is above 275 percent of the federal poverty  
29 guidelines shall pay the maximum premium.

30 (3) The maximum premium is defined as a base charge for  
31 one, two, or three or more enrollees so that if all  
32 MinnesotaCare cases paid the maximum premium, the total revenue  
33 would equal the total cost of MinnesotaCare medical coverage and  
34 administration. In this calculation, administrative costs shall  
35 be assumed to equal ten percent of the total. The costs of  
36 medical coverage for pregnant women and children under age two

1 and the enrollees in these groups shall be excluded from the  
 2 total. The maximum premium for two enrollees shall be twice the  
 3 maximum premium for one, and the maximum premium for three or  
 4 more enrollees shall be three times the maximum premium for one.

5 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
 6 or upon implementation of HealthMatch, whichever is later.

7 Sec. 24. Minnesota Statutes 2004, section 256L.15,  
 8 subdivision 3, is amended to read:

9 Subd. 3. [EXCEPTIONS TO SLIDING SCALE.] An-annual-premium  
 10 of-\$48-is-required-for-all Children in families with income at  
 11 or less-than below 150 percent of the federal poverty guidelines  
 12 pay a monthly premium of \$4.

13 [EFFECTIVE DATE.] This section is effective March 1, 2006,  
 14 or upon implementation of HealthMatch, whichever is later.

15 Sec. 25. Minnesota Statutes 2004, section 549.02, is  
 16 amended by adding a subdivision to read:

17 Subd. 3. [LIMITATION.] Notwithstanding subdivisions 1 and  
 18 2, where the state agency is named or intervenes as a party to  
 19 enforce the agency's rights under section 256B.056, the agency  
 20 shall not be liable for costs to any prevailing defendant.

21 Sec. 26. Minnesota Statutes 2004, section 549.04, is  
 22 amended to read:

23 549.04 [DISBURSEMENTS; TAXATION AND ALLOWANCE.]

24 Subdivision 1. [GENERALLY.] In every action in a district  
 25 court, the prevailing party, including any public employee who  
 26 prevails in an action for wrongfully denied or withheld  
 27 employment benefits or rights, shall be allowed reasonable  
 28 disbursements paid or incurred, including fees and mileage paid  
 29 for service of process by the sheriff or by a private person.

30 Subd. 2. [LIMITATION.] Notwithstanding subdivision 1,  
 31 where the state agency is named or intervenes as a party to  
 32 enforce the agency's rights under section 256B.056, the agency  
 33 shall not be liable for disbursements to any prevailing  
 34 defendant.

35 Sec. 27. [PLANNING PROCESS FOR MANAGED CARE.]

36 The commissioner of human services shall develop a planning

1 process for the purposes of implementing at least one additional  
2 managed care arrangement to provide medical assistance services,  
3 excluding continuing care services, to recipients enrolled in  
4 the medical assistance fee-for-service program, effective  
5 January 1, 2007. This planning process shall include an  
6 advisory committee composed of current fee-for-service  
7 consumers, consumer advocates, and providers, as well as  
8 representatives of health plans and other provider organizations  
9 qualified to provide basic health care services to persons with  
10 disabilities. The department shall seek any additional federal  
11 authority necessary to provide basic health care services  
12 through contracted managed care arrangements.

1 Senator ..... moves to amend S.F. No. 1837 as follows:

2 Page 20, after line 12, insert:

3 "Sec. 28. [CONSUMER-DIRECTED COMMUNITY SUPPORTS  
4 METHODOLOGY.]

5 For persons using the home and community-based waiver for  
6 persons with developmental disabilities whose Consumer-Directed  
7 Community Supports budgets were reduced by the October, 2004,  
8 state-set budget methodology, the commissioner of human services  
9 must allow exceptions to exceed the state-set budget formula up  
10 to the amount being spent by the person as of September 30,  
11 2004, when the individual's county of financial responsibility  
12 determines that:

13 (1) necessary alternative services will cost the same or  
14 more than the person's current budget; and

15 (2) administrative expenses or provider rates will result  
16 in less hours of needed staffing for the person than under the  
17 Consumer-Directed Community Supports option. Any exceptions the  
18 county grants must be within the county's allowable aggregate  
19 amount for the home and community-based waiver for persons with  
20 developmental disabilities.

21 Sec. 29. [COSTS ASSOCIATED WITH PHYSICAL ACTIVITIES.]

22 The expenses allowed for adults under the Consumer-Directed  
23 Community Supports option shall include costs, including  
24 transportation, associated with physical exercise or other  
25 physical activities to maintain or improve the person's health  
26 and functioning.

27 Sec. 30. [WAIVER AMENDMENT.]

28 The commissioner of human services shall submit an  
29 amendment to the Centers for Medicare and Medicaid Services  
30 consistent with sections 28 and 29 by August 1, 2005.

31 Sec. 31. [INDEPENDENT EVALUATION AND REVIEW OF UNALLOWABLE  
32 ITEMS.]

33 The commissioner of human services shall include in the  
34 independent evaluation of the Consumer-Directed Community  
35 Supports option provided through the home and community-based  
36 services waivers for persons with disabilities under 65 years of

1 age:

2 (1) provision for ongoing, regular participation by  
3 stakeholder representatives through June 30, 2007;

4 (2) recommendations on whether changes to the unallowable  
5 items should be made to meet the health, safety, or welfare  
6 needs of participants in the Consumer-Directed Community  
7 Supports option within the allowed budget amounts. The  
8 recommendations on allowable items shall be provided to the  
9 senate and house of representatives committees with jurisdiction  
10 over human services policy and finance issues by January 15,  
11 2006; and

12 (3) a review of the statewide caseload changes for the  
13 disability waiver programs for persons under 65 years of age  
14 that occurred since the state-set budget methodology  
15 implementation on October 1, 2004, and recommendations on the  
16 fiscal impact of the budget methodology on use of the  
17 Consumer-Directed Community Supports option.

18 Sec. 32. [EFFECTIVE DATE.]

19 Sections 28 and 29 are effective upon federal approval of  
20 the waiver amendment in section 30. Sections 30 and 31 are  
21 effective the day following final enactment. "

- 1 Senator ..... moves to amend S.F. No. 1837 as follows:
- 2 Pages 8 and 9, delete section 10
- 3 Page 13, line 5, delete "or the month placement is"
- 4 Page 13, line 6, delete everything before the period
- 5 Renumber the sections in sequence and correct the internal
- 6 references
- 7 Amend the title accordingly

1 Senator ..... moves to amend S.F. No. 1837 as follows:

2 Page 9, after line 16, insert:

3 "Sec. 11. Minnesota Statutes 2004, section 256B.69,  
4 subdivision 4, is amended to read:

5 Subd. 4. [LIMITATION OF CHOICE.] (a) The commissioner  
6 shall develop criteria to determine when limitation of choice  
7 may be implemented in the experimental counties. The criteria  
8 shall ensure that all eligible individuals in the county have  
9 continuing access to the full range of medical assistance  
10 services as specified in subdivision 6.

11 (b) The commissioner shall exempt the following persons  
12 from participation in the project, in addition to those who do  
13 not meet the criteria for limitation of choice:

14 (1) persons eligible for medical assistance according to  
15 section 256B.055, subdivision 1;

16 (2) persons eligible for medical assistance due to  
17 blindness or disability as determined by the Social Security  
18 Administration or the state medical review team, unless:

19 (i) they are 65 years of age or older; or

20 (ii) they reside in Itasca County or they reside in a  
21 county in which the commissioner conducts a pilot project under  
22 a waiver granted pursuant to section 1115 of the Social Security  
23 Act;

24 (3) recipients who currently have private coverage through  
25 a health maintenance organization;

26 (4) recipients who are eligible for medical assistance by  
27 spending down excess income for medical expenses other than the  
28 nursing facility per diem expense;

29 (5) recipients who receive benefits under the Refugee  
30 Assistance Program, established under United States Code, title  
31 8, section 1522(e);

32 (6) children who are both determined to be severely  
33 emotionally disturbed and receiving case management services  
34 according to section 256B.0625, subdivision 20;

35 (7) adults who are both determined to be seriously and  
36 persistently mentally ill and received case management services

1 according to section 256B.0625, subdivision 20;

2 (8) persons eligible for medical assistance according to  
3 section 256B.057, subdivision 10; and

4 (9) persons with access to cost-effective  
5 employer-sponsored private health insurance or persons enrolled  
6 in an non-Medicare individual health plan determined to be  
7 cost-effective according to section 256B.0625, subdivision 15.  
8 Children under age 21 who are in foster placement may enroll in  
9 the project on an elective basis. Individuals excluded under  
10 clauses (1), (6), and (7) may choose to enroll on an elective  
11 basis. The commissioner may enroll recipients in the prepaid  
12 medical assistance program for seniors who are (1) age 65 and  
13 over, and (2) eligible for medical assistance by spending down  
14 excess income.

15 (c) The commissioner may allow persons with a one-month  
16 spenddown who are otherwise eligible to enroll to voluntarily  
17 enroll or remain enrolled, if they elect to prepay their monthly  
18 spenddown to the state.

19 (d) The commissioner may require those individuals to  
20 enroll in the prepaid medical assistance program who otherwise  
21 would have been excluded under paragraph (b), clauses (1), (3),  
22 and (8), and under Minnesota Rules, part 9500.1452, subpart 2,  
23 items H, K, and L.

24 (e) Before limitation of choice is implemented, eligible  
25 individuals shall be notified and after notification, shall be  
26 allowed to choose only among demonstration providers. The  
27 commissioner may assign an individual with private coverage  
28 through a health maintenance organization, to the same health  
29 maintenance organization for medical assistance coverage, if the  
30 health maintenance organization is under contract for medical  
31 assistance in the individual's county of residence. After  
32 initially choosing a provider, the recipient is allowed to  
33 change that choice only at specified times as allowed by the  
34 commissioner. If a demonstration provider ends participation in  
35 the project for any reason, a recipient enrolled with that  
36 provider must select a new provider but may change providers



1 without cause once more within the first 60 days after  
2 enrollment with the second provider.

3 (f) An infant born to a woman who is eligible for and  
4 receiving medical assistance and who is enrolled in the prepaid  
5 medical assistance program shall be retroactively enrolled to  
6 the month of birth in the same managed care plan as the mother  
7 once the child is enrolled in medical assistance unless the  
8 child is determined to be excluded from enrollment in a prepaid  
9 plan under this section."

10 Page 14, line 5, after the period, insert "The effective  
11 date of coverage within the first six-month period of  
12 eligibility is as provided in subdivision 3."

13 Renumber the sections in sequence and correct the internal  
14 references

15 Amend the title accordingly

1 Senator *Foley* moves to amend S.F. No. 1837 as follows:

2 Page 20, after line 12, insert:

3 "Sec. 28. [CONSUMER-DIRECTED COMMUNITY SUPPORTS  
4 METHODOLOGY.]

5 For persons using the home and community-based waiver for  
6 persons with developmental disabilities whose Consumer-Directed  
7 Community Supports budgets were reduced by the October, 2004,  
8 state-set budget methodology, the commissioner of human services  
9 must allow exceptions to exceed the state-set budget formula up  
10 to the amount being spent by the person as of September 30,  
11 2004, when the individual's county of financial responsibility  
12 determines that:

13 (1) necessary alternative services will cost the same or  
14 more than the person's current budget; and

15 (2) administrative expenses or provider rates will result  
16 in less hours of needed staffing for the person than under the  
17 Consumer-Directed Community Supports option. Any exceptions the  
18 county grants must be within the county's allowable aggregate  
19 amount for the home and community-based waiver for persons with  
20 developmental disabilities.

21 Sec. 29. [COSTS ASSOCIATED WITH PHYSICAL ACTIVITIES.]

22 The expenses allowed for adults under the Consumer-Directed  
23 Community Supports option shall include costs, including  
24 transportation, associated with physical exercise or other  
25 physical activities to maintain or improve the person's health  
26 and functioning.

27 Sec. 30. [WAIVER AMENDMENT.]

28 The commissioner of human services shall submit an  
29 amendment to the Centers for Medicare and Medicaid Services  
30 consistent with sections 28 and 29 by August 1, 2005.

31 Sec. 31. [INDEPENDENT EVALUATION AND REVIEW OF UNALLOWABLE  
32 ITEMS.]

33 The commissioner of human services shall include in the  
34 independent evaluation of the Consumer-Directed Community  
35 Supports option provided through the home and community-based  
36 services waivers for persons with disabilities under 65 years of

1 age:

2 (1) provision for ongoing, regular participation by  
3 stakeholder representatives through June 30, 2007;

4 (2) recommendations on whether changes to the unallowable  
5 items should be made to meet the health, safety, or welfare  
6 needs of participants in the Consumer-Directed Community  
7 Supports option within the allowed budget amounts. The  
8 recommendations on allowable items shall be provided to the  
9 senate and house of representatives committees with jurisdiction  
10 over human services policy and finance issues by January 15,  
11 2006; and

12 (3) a review of the statewide caseload changes for the  
13 disability waiver programs for persons under 65 years of age  
14 that occurred since the state-set budget methodology  
15 implementation on October 1, 2004, and recommendations on the  
16 fiscal impact of the budget methodology on use of the  
17 Consumer-Directed Community Supports option.

18 Sec. 32. [EFFECTIVE DATE.]

19 Sections 28 and 29 are effective upon federal approval of  
20 the waiver amendment in section 30. Sections 30 and 31 are  
21 effective the day following final enactment. "

1 Senator <sup>Higgins</sup> moves to amend S.F. No. 1837 as follows:

2 Page 20, after line 12, insert:

3 "Sec. 28. [CLINICAL TRIAL WORK GROUP; REPORT.]

4 The commissioners of health and commerce shall, in  
5 consultation with the commissioner of employee relations,  
6 convene a work group regarding health plan coverage of routine  
7 care associated with clinical trials. The work group must  
8 explore what high-quality clinical trials beyond cancer-only  
9 clinical trials should be covered by health plans. All other  
10 types of clinical trials, disease-based or technology-based such  
11 as drug trials or device trials should be considered. The work  
12 group shall use the current, cancer-only model voluntary  
13 agreement that includes definitions of high-quality clinical  
14 trials, protocol induced costs, and routine care costs as a  
15 starting point for discussions. As determined appropriate, the  
16 work group shall establish model voluntary agreement guidelines  
17 for health plan coverage of routine patient care costs incurred  
18 by patients participating in high quality clinical trials. The  
19 work group shall be made up of representatives of consumers,  
20 patient advocates, health plan companies, fully insured and  
21 self-insured purchasers, providers, and other health care  
22 professionals involved in the care and treatment of patients.  
23 The commissioners shall submit the findings and recommendations  
24 of the work group to the chairs of the senate and house  
25 committees having jurisdiction over health policy and finance by  
26 January 15, 2006."

27 Amend the title accordingly

- Anita Gooding, is 30 years old and has Down Syndrome.
- I have been her guardian the past four years.
- Anita receives the Mental Retardation/Related Conditions Home and Community Based Waiver (MR/RC waiver).
- Anita has Consumer Directed Community Supports (CDCS) option under this waiver.
- Anita received 24 hour care through two agencies (for three years) before I began coordinating her care through CDCS.
- The care that my sister received through traditional agencies put her health, safety and welfare in jeopardy. My examples of her life then and her life now are below.

<b>During <u>three years</u> of Traditional agency services</b>	<b>After <u>one year</u> of Consumer Directed Community Support</b>
Anita weighed 203 pounds and grew to 259 pounds by the time she went to CDCS.	Anita now weighs 189 pounds, a 70 pound loss.
On psychotropic medications by the time she left agencies.	After only <u>2 months</u> Anita's Dr. was able to cut the dose in half due to significant decrease in symptoms.
The agency had 14 caregivers 'trained' to work with Anita; 9 scheduled in one week	Anita has four full time caregivers providing consistency and personal attention.
Anita could not be left alone at any time due to her 'behaviors' and staffing schedules	Anita has had NO behaviors since starting CDCS. Anita Has gradually built alone time with safety training and can now receive 2 hours per day of alone time as she chooses.
Anita's apartment was dirty and unkempt, bed unmade, dirty clothes in drawer, no chore rituals	Anita's home is well kept. She has learned through consistency and repetition how to vacuum, dust, make her bed, and clean her windows. After <u>three months</u> Anita became independent in doing her own laundry and with staff assistance keeps her drawers and closets tidy.
Made \$2.07 per hour at a "supported employment" provider.	Staff helped Anita find direct employment doing cleaning (which she learned from staff) for \$6.50 per hour.
Anita was mostly unkempt. Her hair was not washed well (no one helped her and she didn't know how to do it) and she often had an odor.	After <u>two months</u> Anita learned how to wash herself and her hair thoroughly and established a routine with personal care tasks. She always has makeup on and her hair done nice. She likes to look good.

Senators, there are more examples, but no more room.

If SF 1837 is not amended my sister's budget will be reduced by 69% and she will have no choice but to return to agency care which I believe threatened her health, safety and welfare. If history is any teacher it is safe to assume that Anita would again regress behaviorally, hygienically, socially and in all skill areas.

I have signed affidavits from agency staff and our CDCS staff affirming all I have said here. CDCS did in one year what agencies failed to do in THREE.

Please vote to amend SF 1837.

**Senate Counsel, Research,  
and Fiscal Analysis**

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**State of Minnesota**

**S.F. No. 1722 - Human Services Licensing Provisions  
Modified (The Delete-Everything Amendment)**

**Author:** Senator Becky Lourey

**Prepared by:** Joan White, Senate Counsel (651/296-3814)

**Date:** April 7, 2005

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**Section 1 (13.46, subdivision 4)** amends the Data Practices Act to allow the exchange of all nonpublic data collected, maintained, used, or disseminated under this licensing subdivision between the Department of Human Services Licensing Division and the Department of Corrections in order to adequately regulate services.

**Section 2 (243.166, subdivision 7)** amends the corrections chapter of law, specifically the use of data related to the registration of predatory offenders, by allowing state-operated services to have access to data for purposes of the requirements under Minnesota Statutes, section 246.13, subdivision 2, paragraph c, which is section 37 in this bill.

**Sections 3 to 16 amend the Department of Human Services Licensing Act.**

**Section 3 (245A.02, subdivision 17)** strikes language and moves it to **section 4 (245A.03, subdivision 2)**, to clarify that programs for children such as scouting, boys club, girls club, and sports and art programs are excluded from licensure.

**Section 5 (245A.03, subdivision 3)** provides that it is a misdemeanor to continue to operate without a child care license after receiving a notice that the license is required.

**Section 6 (245A.04, subdivision 7)** modifies under what circumstances the commissioner may issue or extend a child care license, by prohibiting the commissioner from issuing a license if an individual living in the home where the licensed services are provided has been disqualified and the disqualification has not been set aside.

**Section 7 (245A.04, subdivision 13)** modifies the statute dealing with the handling of funds and property for a person in a licensed program, by changing terminology; “residents” is changed to “persons served by the program.” This section also specifies that this subdivision does not apply to programs serving individuals with developmental disabilities, as that program has a statute addressing the treatment of consumer funds. This section also strikes the requirement to provide a quarterly statement itemizing receipts and disbursements.

**Section 8 (245A.07, subdivision 1)** allows the commissioner to issue a temporary provisional license to programs that continue to operate while appealing the suspension or revocation of the license. This section also allows the commissioner to issue a licensing sanction under certain circumstances.

**Section 9 (245A.07, subdivision 3)** allows the commissioner to suspend or revoke a license, or impose a fine if a license holder or an individual living in the household where the licensed services are provided has a disqualification that has not been set aside.

**Section 10 ( 245A.08, subdivision 2a)** consolidates hearings related to a finding of maltreatment and the imposition of a fine, when they occur at the same time. This section also adds family adult day services with regard to consolidated case hearings regarding sanctions imposed on license holders. This section also clarifies the scope of the administrative judges review under certain circumstances.

**Section 11 (245A.08, subdivision 5)** allows a former license holder to reapply for a license after a license is revoked due to a disqualified person living in the home when:

- (1) the person with the disqualification no longer resides in the home and is prohibited from residing in or returning to the home; or
- (2) the minor child, who was the disqualified person who was the subject of the license revocation, becomes an adult and permanently moves from the former license holder’s home or five years have passed since the disqualificaiton, whichever occurs first.

**Sections 12 and 13 (245A.14, subdivision 12; 245A.14, subdivision 13)** add new subdivisions to the special conditions that apply to nonresidential programs. Section 12 allows first-aid training to be less than eight hours and persons qualified to provide the training must include approved first-aid instructors, and Section 13 specifies required cardiopulmonary resuscitation (CPR) training.

**Section 14 (245A.144)** requires that license holders include training on Shaken Baby Syndrome for child care and child foster care providers.

**Section 15 (245A.16, subdivision 4)** defines “conflict of interest” between the county attorney and the commissioner for purposes of enforcing the commissioner’s orders.

**Section 16 (245A.18)** requires a license holder who arranges for transportation for children served by the license holder to comply with all seat belt and child passenger restraint system requirements under the seat belt statute in the traffic regulation chapter of law. This section also provides child passenger restraint systems training requirements for children under nine years of age.

**Section 17 (245B.02, subdivision 10)** modifies the definitions related to individuals with mental retardation or related conditions, by expanding the definition of “incident” to include events that require the relocation of services for more than 24 hours or circumstances involving a fire department related to health, safety, or supervision of a consumer.

**Section 18 (245B.055, subdivision 7)** clarifies in the day training and habilitation staffing section of law that a staff ratio requirement of one to ten equals 0.100.

**Section 19 (245B.07, subdivision 8)** is technical; makes conforming changes.

**Sections 20 to 36 modify the Human Services Background Study Chapter of Law.**

**Section 20 (245C.03, subdivision 1)** provides that when the commissioner has reasonable cause, a background study must be completed on an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving program services.

**Section 21 (245C.07)** adds a new provision requiring only one background study for a license holder who owns multiple licenses that are licensed by the Department of Human Services, under certain circumstances.

**Section 22 (245C.08, subdivision 1)** requires the commissioner, when conducting a background study, to review county agency findings of maltreatment of minors as indicated through the social service information system. This section also allows the commissioner, notwithstanding an expungement by the court, to consider information from juvenile court records and from the BCA unless the commissioner received notice of the expungement and the court order for the same is directed specifically to the commissioner.

**Section 23 (245C.08, subdivision 2)** allows the county or private agency, notwithstanding an expungement by the court, to consider information from the BCA and other arrest and investigative records when completing a background study, unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

**Section 24 (245C.15, subdivision 1)** adds aiding and abetting to the list of disqualifying crimes, and this section, section 25, section 26, and section 27 clarify when the disqualification period begins, if the disqualification is not based on a conviction.



**Section 25 (245C.15, subdivision 2)** adds felony-level theft and fraud crimes and aiding and abetting to the 15-year disqualification statute, and clarifies the disqualification when an individual voluntarily terminates parental rights.

**Section 26 (245C.15, subdivision 3)** modifies the ten-year disqualification period by adding misdemeanor-level theft and fraud crimes and aiding and abetting.

**Section 27 (245C.15, subdivision 4)** modifies the seven year disqualification period by adding misdemeanor-level theft and fraud crimes and aiding and abetting.

**Section 28 (245C.17, subdivision 2)** requires the commissioner to disclose an explanation of any restrictions on the commissioner's discretion to set aside the disqualification, when applicable to the individual, and the commissioner's determination of the individual's "immediate" risk of harm, if the individual is disqualified from direct contact or access to persons served in the program.

**Section 29 (245C.21, subdivision 2)** specifies the time frame and manner for mailing a request for reconsideration of a disqualification.

**Section 30 (245C.22, subdivision 3)** clarifies that the rights of the individuals being served in the program must be given preeminent weight over the interests of the disqualified individual.

**Section 31 (245C.22, subdivision 4)** provides that if the individual requests reconsideration on the basis the information relied on was incorrect or inaccurate, and the commissioner determines the information was correct, the commissioner must also determine if the individual poses a risk of harm to persons receiving services.

**Section 32 (245C.24, subdivision 2)** strikes the term "provider" and inserts "individual."

**Section 33 (245C.24, subdivision 3)** modifies the ten-year bar to set aside a disqualification by extending the bar to a disqualification based on a preponderance of the evidence or an admission, and adds aiding and abetting to the ten-year bar.

**Section 34 (245C.27, subdivision 1)** provides that if the individual was disqualified based on a judicial determination, that determination is treated the same as a conviction. Provides due process provisions.

**Section 35 (245C.28, subdivision 3)** provides the scope of the contested hearing for employees of a public employer if the individual was disqualified based on a conviction or admission to any crimes listed in the statute listing the licensing disqualifying crimes.

**Section 36 (245C.30, subdivision 2)** clarifies that consent is not required in order to disclose the reason for the disqualification to the license holder of a program that provides family child care, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home.

**Section 37 (246.13)** modifies the statute related to records of patients and residents receiving state-operated services, by requiring the commissioner to devise, install, and operate an adequate and uniform system for records and statistics.

**Subdivision 2** defines the following terms: appropriate and necessary medical and other records; community-based treatment; criminal history data; designated agency; law enforcement agency; predatory offender and offender; treatment facility. This subdivision also allows the commissioner to have access to and review medical and criminal history data to promote public safety and fulfill the commissioner's duties related to offenders.

**Subdivision 3** allows the state-operated services to disclose appropriate and necessary health and other information when a state-operated services patient is released to a community-based treatment facility or a facility that provides health care. This section also specifies information that must be provided to the designated agency, community-based treatment facility, or a facility that provides health care prevention.

**Subdivision 4** adds that a state-operated facility must provide written notice to inform the patient that the patient is required to register as a predatory offender. This section also adds that if a patient is unwilling or unable to register, the state-operated facility will complete the registration form and submit it to the BCA, and other agencies, if appropriate.

**Subdivision 5** requires state-operated facilities to comply with the limitations of use of bloodborne pathogen test results as outlined in chapter 246.

**Section 38 (253B.18, subdivision 4a)** provides that a person who is transferred out of a state-operated services facility under the Civil Commitment Act shall not be released on a pass unless it is part of a plan approved by the medical director. Further, ten days prior to a determination to approve a pass, the local law enforcement agency where the facility is located must be notified.

**Section 39 (260C.163, subdivision 5)** directs the court to require a background study for each guardian ad litem appointed for minor children.

**Section 40 (299C.093)** modifies the database of registered predatory offenders, by allowing state-operated services to have access to data for purposes of fulfilling responsibilities related to offenders.

**Section 41 (518.165, subdivision 4)** requires the court to initiate a background study through the Commissioner of Human Services on every guardian ad litem. Provides details of what information must be included in the background study, states that the Minnesota Supreme Court will pay the commissioner a fee for conducting the study, and provides that the court may initiate a background study using court data on criminal convictions.

**Section 42 (518.165, subdivision 5)** provides the procedures for a court to request background studies, and specifies what the commissioner must provide to the court.

**Section 43 (518.165, subdivision 6)** requires the court to notify the subject of the background study of the subject's rights.

**Section 44 (609A.03, subdivision 7)** allows an expunged record to be opened for purposes of a background study under chapter 245C, the human services background study chapter, unless the court order for expungement is directed specifically to the Commissioner of Human Services.

**Sections 45 and 46 (626.556, subdivision 10i; 626.557, subdivision 9d)** specify mailing and timelines for a request for reconsideration of a final determination, disposition, or disqualification based on maltreatment. These sections also provide due process rights related to fines assessed at the same time as the maltreatment determination.

**Section 47 (626.557, subdivision 14)** amends the statute relating to the maltreatment of vulnerable adults by requiring that abuse prevention plans include the potential risks posed by the vulnerable adult to other patients, to facility staff, and to others.

**Section 48** repeals 246.017, which is the statute related to Medical record; Policy, in the public institutions chapter of law.

JW:rdr

**Senate Counsel, Research,  
and Fiscal Analysis**

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**S.F. No. 1837 - DHS Health Care Policy Amendments**

**Author:** Senator Becky Lourey

**Prepared by:** Katie Cavanor, Senate Counsel (651/296-3801) *KTC*  
David Giel, Senate Research (651/296-7178) *WG*

**Date:** April 6, 2005

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**S.F. No. 1837** makes a variety of amendments affecting Department of Human Services (DHS) health care programs.

**Section 1 (256.045, subdivision 3a)** eliminates the requirement that a prepaid health plan notify the ombudsman within three days of a complaint being filed.

**Section 2 (256b.02, subdivision 12)** clarifies that a third-party payer includes an entity under contract with the recipient to cover all or part of the recipient's medical costs.

**Section 3 (256B.056, subdivision 3d)** enacts into law a former rule that governed allowable methods for Medical Assistance (MA) applicants and recipients to reduce excess assets. The rule was inadvertently repealed in 2002.

**Section 4 (256B.056, subdivision 5)** permits recipients to pay spenddown payments to DHS through the last business day of the month.

**Section 5 (256B.056, subdivision 5a)** clarifies that individuals on fixed or excluded income must report and verify their income every 12 months, which begins with the month of application.

**Section 6 (256b.056, subdivision 5b)** clarifies that individuals with low, fluctuating income must report and verify their income every six months with the six-month eligibility period beginning the month of application.

**Section 7 (256B.065, subdivision 7)** separates the eligibility for the MA retroactive period from the prospective renewal period and clarifies that the 12-month period of eligibility begins with the month of application.

**Section 8 (256B.056, subdivision 9)** restates language from an existing statute that requires various parties (MA applicants and recipients, providers of medical services, parties to certain claims) to provide notice to DHS about monetary claims against third-parties when DHS may be entitled to the claim to reimburse DHS for medical costs paid by the state. The language is being restated because other portions of the existing statute have been struck down by the courts.

**Section 9 (256B.057, subdivision 1)** reinstates the language restoring the MA income standard of 275 percent of the federal poverty guidelines (FPG) and the special work expense deduction for pregnant women and infants. (Restoring this language would make it consistent with implementation.)

**Section 10 (256B.0644)** excludes dentists from Rule 101 requirements, which requires providers to accept a certain percentage of public assistance patients in order to be able to serve state employees.

**Section 11 (256D.045)** permits an exemption to the requirement that an applicant provide a Social Security number if the applicant has a well-established religious objection as described in federal law.

**Section 12 (256L.04, subdivision 4)** aligns the income calculation in the MinnesotaCare program to the six-month eligibility period, which went into effect last year.

**Section 13 (256L.01, subdivision 5)** permits the commissioner some flexibility to establish reasonable methods for calculating gross earned and unearned income for MinnesotaCare. This would supercede the rule, which prescribes only one method of calculation.

**Section 14 (256L.03, subdivision 1b)** aligns MinnesotaCare and MA policy regarding when eligibility for benefits as a pregnant woman begins. MinnesotaCare benefits are to begin at the date of conception instead of the date the pregnancy was diagnosed.

**Section 15 (256L.04, subdivision 1a)** codifies the MinnesotaCare program's Social Security number rule requirements and establishes exceptions for newborns with automatic eligibility, individuals who have applied for and are awaiting issuance of a Social Security number, or for individuals who have a well-established religious objection.

**Section 16 (256L.04, subdivision 2)** requires enrollees to give notice to DHS in order to allow DHS to assert and recover its claim to medical payments from liable third parties as required by state and federal law.

**Section 17 (256L.04, subdivision 2a)** requires enrollees to take all necessary steps to obtain other benefits described in federal regulations and requires that the enrollee apply for these benefits within 30 days of application.

**Section 18 (256L.05, subdivision 3)** states that the effective date of coverage for adding new members to a family is the first day of the month following the month the change is reported, and for newly adopted children the effective date is the month of placement or the month the placement is reported, whichever is later.

**Section 19 (256L.05, subdivision 3a)** clarifies that the six-month renewal period begins the month the renewal application is received by the commissioner.

**Section 20 (256L.07, subdivision 1)** aligns the income calculation and premium comparison for purposes of determining a child's continued coverage under the Minnesota Comprehensive Health Association exception with the six-month income projection and six-month renewals. This section also changes the income limit for parents from \$50,000 annual income to \$25,000 six-month projection of income.

**Section 21 (256L.07, subdivision 3)** clarifies that cost effective insurance paid for by MA is not considered other health coverage for purposes of the four-month "no insurance" barrier, but if the insurance continued after it was no longer considered cost effective or after MA was closed, it would be considered and the four-month barrier would apply.

**Section 22 (256L.07, subdivision 5)** permits active duty military members and their dependents to voluntarily disenroll from MinnesotaCare and reenroll during or following the member's tour of active duty. Upon reenrollment, income and assets increases reported shall be disregarded until the next six-month renewal.

**Section 23 (256L.15, subdivision 2)** clarifies that the sliding fee scale references to income refer to monthly income and not annual or six-month income figures.

**Section 24 (256L.15, subdivision 3)** specifies that children in families with income below 150 percent of FPG pay a monthly premium of \$4.

**Section 25 (549.02, subdivision 3)** excludes DHS, in cases where DHS is seeking third-party recovery, from the statute requiring the plaintiff in district court to pay certain amounts stated in law to a defendant if the defendant prevails.

**Section 26 (549.04)** excludes DHS, in cases where DHS is seeking third-party recovery, from the statute requiring the plaintiff in district court to reimburse certain expenses of a defendant if the defendant prevails.

**Section 27** requires DHS to develop a planning process to implement at least one additional managed care arrangement to provide MA services to persons with disabilities.

KC:DG:ph



1 studies.

2 (b)(1) Except as provided in paragraph (c), the following  
3 data on current and former licensees are public: name, address,  
4 telephone number of licensees, date of receipt of a completed  
5 application, dates of licensure, licensed capacity, type of  
6 client preferred, variances granted, type of dwelling, name and  
7 relationship of other family members, previous license history,  
8 class of license, and the existence and status of complaints.  
9 When a correction order or fine has been issued, a license is  
10 suspended, immediately suspended, revoked, denied, or made  
11 conditional, or a complaint is resolved, the following data on  
12 current and former licensees are public: the substance and  
13 investigative findings of the complaint, licensing violation, or  
14 substantiated maltreatment; the record of informal resolution of  
15 a licensing violation; orders of hearing; findings of fact;  
16 conclusions of law; specifications of the final correction  
17 order, fine, suspension, immediate suspension, revocation,  
18 denial, or conditional license contained in the record of  
19 licensing action; and the status of any appeal of these  
20 actions. When an individual licensee is a substantiated  
21 perpetrator of maltreatment, and the substantiated maltreatment  
22 is a reason for the licensing action, the identity of the  
23 licensee as a perpetrator is public data. For purposes of this  
24 clause, a person is a substantiated perpetrator if the  
25 maltreatment determination has been upheld under section  
26 626.556, subdivision 10i, 626.557, subdivision 9d, or 256.045,  
27 or an individual or facility has not timely exercised appeal  
28 rights under these sections.

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

36 (3) For applicants who are denied a license, the following



1 data are public: the name of the applicant, the city and county  
2 in which the applicant was seeking licensure, the dates of the  
3 commissioner's receipt of the initial application and completed  
4 application, the type of license sought, the date of denial of  
5 the application, the nature of the basis for the denial, and the  
6 status of any appeal of the denial.

7 (4) The following data on persons subject to  
8 disqualification under section 245C.14 in connection with a  
9 license to provide family day care for children, child care  
10 center services, foster care for children in the provider's  
11 home, or foster care or day care services for adults in the  
12 provider's home, are public: the nature of any disqualification  
13 set aside under section 245C.22, subdivisions 2 and 4, and the  
14 reasons for setting aside the disqualification; and the reasons  
15 for granting any variance under section 245A.04, subdivision 9.

16 (5) When maltreatment is substantiated under section  
17 626.556 or 626.557 and the victim and the substantiated  
18 perpetrator are affiliated with a program licensed under chapter  
19 245A, the commissioner of human services, local social services  
20 agency, or county welfare agency may inform the license holder  
21 where the maltreatment occurred of the identity of the  
22 substantiated perpetrator and the victim.

23 (c) The following are private data on individuals under  
24 section 13.02, subdivision 12, or nonpublic data under section  
25 13.02, subdivision 9: personal and personal financial data on  
26 family day care program and family foster care program  
27 applicants and licensees and their family members who provide  
28 services under the license.

29 (d) The following are private data on individuals: the  
30 identity of persons who have made reports concerning licensees  
31 or applicants that appear in inactive investigative data, and  
32 the records of clients or employees of the licensee or applicant  
33 for licensure whose records are received by the licensing agency  
34 for purposes of review or in anticipation of a contested  
35 matter. The names of reporters under sections 626.556 and  
36 626.557 may be disclosed only as provided in section 626.556,

1 subdivision 11, or 626.557, subdivision 12b.

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

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

11 (g) Data that are not public data collected, maintained,  
12 used, or disseminated under this subdivision that relate to or  
13 are derived from a report as defined in section 626.556,  
14 subdivision 2, or 626.5572, subdivision 18, are subject to the  
15 destruction provisions of sections 626.556, subdivision 11c, and  
16 626.557, subdivision 12b.

17 (h) Upon request, not public data collected, maintained,  
18 used, or disseminated under this subdivision that relate to or  
19 are derived from a report of substantiated maltreatment as  
20 defined in section 626.556 or 626.557 may be exchanged with the  
21 Department of Health for purposes of completing background  
22 studies pursuant to section 144.057 and with the Department of  
23 Corrections for purposes of completing background studies  
24 pursuant to section 241.021.

25 (i) Data on individuals collected according to licensing  
26 activities under chapters 245A and 245C, and data on individuals  
27 collected by the commissioner of human services according to  
28 maltreatment investigations under sections 626.556 and 626.557,  
29 may be shared with the Department of Human Rights, the  
30 Department of Health, the Department of Corrections, the  
31 Ombudsman for Mental Health and Retardation, and the  
32 individual's professional regulatory board when there is reason  
33 to believe that laws or standards under the jurisdiction of  
34 those agencies may have been violated.

35 (j) In addition to the notice of determinations required  
36 under section 626.556, subdivision 10f, if the commissioner or

1 the local social services agency has determined that an  
2 individual is a substantiated perpetrator of maltreatment of a  
3 child based on sexual abuse, as defined in section 626.556,  
4 subdivision 2, and the commissioner or local social services  
5 agency knows that the individual is a person responsible for a  
6 child's care in another facility, the commissioner or local  
7 social services agency shall notify the head of that facility of  
8 this determination. The notification must include an  
9 explanation of the individual's available appeal rights and the  
10 status of any appeal. If a notice is given under this  
11 paragraph, the government entity making the notification shall  
12 provide a copy of the notice to the individual who is the  
13 subject of the notice.

14 (k) All not public data collected, maintained, used, or  
15 disseminated under this subdivision and subdivision 3 may be  
16 exchanged between the Department of Human Services, Licensing  
17 Division, and the Department of Corrections for purposes of  
18 regulating services for which the Department of Human Services  
19 and the Department of Corrections have regulatory authority.

20 Sec. 2. Minnesota Statutes 2004, section 245A.02,  
21 subdivision 17, is amended to read:

22 Subd. 17. [SCHOOL AGE CHILD CARE PROGRAM.] "School age  
23 child care program" means a program licensed or required to be  
24 licensed as a child care center, serving more than ten children  
25 with the primary purpose of providing child care for school age  
26 children. ~~School-age-child-care-program-does-not-include~~  
27 ~~programs-such-as-scouting,7-boys-clubs,7-girls-clubs,7-nor-sports~~  
28 ~~or-art-programs.~~

29 Sec. 3. Minnesota Statutes 2004, section 245A.03,  
30 subdivision 2, is amended to read:

31 Subd. 2. [EXCLUSION FROM LICENSURE.] (a) This chapter does  
32 not apply to:

33 (1) residential or nonresidential programs that are  
34 provided to a person by an individual who is related unless the  
35 residential program is a child foster care placement made by a  
36 local social services agency or a licensed child-placing agency,

1 except as provided in subdivision 2a;

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

4 (3) residential or nonresidential programs that are  
5 provided to adults who do not abuse chemicals or who do not have  
6 a chemical dependency, a mental illness, mental retardation or a  
7 related condition, a functional impairment, or a physical  
8 handicap;

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

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

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

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

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

25 (9) homes providing programs for persons placed there by a  
26 licensed agency for legal adoption, unless the adoption is not  
27 completed within two years;

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

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

33 (12) programs operated by a school as defined in section  
34 120A.22, subdivision 4, whose primary purpose is to provide  
35 child care to school-age children;

36 (13) Head Start nonresidential programs which operate for

1 less than 3± 45 days in each calendar year;

2 (14) noncertified boarding care homes unless they provide  
3 services for five or more persons whose primary diagnosis is  
4 mental illness or mental retardation;

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

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

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

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

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

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

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

28 (22) respite care services provided as a home and  
29 community-based service to a person with mental retardation or a  
30 related condition, in the person's primary residence;

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

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

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

4 (26) consumer-directed community support service funded  
5 under the Medicaid waiver for persons with mental retardation  
6 and related conditions when the individual who provided the  
7 service is:

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

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

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

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

23 Sec. 4. Minnesota Statutes 2004, section 245A.03,  
24 subdivision 3, is amended to read:

25 Subd. 3. [UNLICENSED PROGRAMS.] (a) It is a misdemeanor  
26 for an individual, corporation, partnership, voluntary  
27 association, other organization, or a controlling individual to  
28 provide a residential or nonresidential program without a  
29 license and in willful disregard of this chapter unless the  
30 program is excluded from licensure under subdivision 2.

31 (b) The commissioner may ask the appropriate county  
32 attorney or the attorney general to begin proceedings to secure  
33 a court order against the continued operation of the program, if  
34 an individual, corporation, partnership, voluntary association,  
35 other organization, or controlling individual has:

36 (1) failed to apply for a license after receiving notice

1 that a license is required or continues to operate without a  
2 license after receiving notice that a license is required;

3 (2) continued to operate without a license after the  
4 license has been revoked or suspended under section 245A.07, and  
5 the commissioner has issued a final order affirming the  
6 revocation or suspension, or the license holder did not timely  
7 appeal the sanction; or

8 (3) continued to operate without a license after the  
9 license has been temporarily suspended under section 245A.07.  
10 The county attorney and the attorney general have a duty to  
11 cooperate with the commissioner.

12 Sec. 5. Minnesota Statutes 2004, section 245A.04,  
13 subdivision 7, is amended to read:

14 Subd. 7. [ISSUANCE OF A LICENSE; EXTENSION OF A LICENSE.]

15 (a) If the commissioner determines that the program complies  
16 with all applicable rules and laws, the commissioner shall issue  
17 a license. At minimum, the license shall state:

- 18 (1) the name of the license holder;
- 19 (2) the address of the program;
- 20 (3) the effective date and expiration date of the license;
- 21 (4) the type of license;
- 22 (5) the maximum number and ages of persons that may receive  
23 services from the program; and
- 24 (6) any special conditions of licensure.

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

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

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

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

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

1 transferable to another individual, corporation, partnership,  
2 voluntary association, other organization, or controlling or to  
3 another location.

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

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

10 (1) been disqualified and the disqualification was not set  
11 aside;

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

13 (3) had a license revoked within the past five years.

14 (f) The commissioner shall not issue a license if an  
15 individual living in the household where the licensed services  
16 will be provided as specified under section 245C.03, subdivision  
17 1, has been disqualified and the disqualification has not been  
18 set aside.

19 For purposes of reimbursement for meals only, under the  
20 Child and Adult Care Food Program, Code of Federal Regulations,  
21 title 7, subtitle B, chapter II, subchapter A, part 226,  
22 relocation within the same county by a licensed family day care  
23 provider, shall be considered an extension of the license for a  
24 period of no more than 30 calendar days or until the new license  
25 is issued, whichever occurs first, provided the county agency  
26 has determined the family day care provider meets licensure  
27 requirements at the new location.

28 Unless otherwise specified by statute, all licenses expire  
29 at 12:01 a.m. on the day after the expiration date stated on the  
30 license. A license holder must apply for and be granted a new  
31 license to operate the program or the program must not be  
32 operated after the expiration date.

33 Sec. 6. Minnesota Statutes 2004, section 245A.04,  
34 subdivision 13, is amended to read:

35 Subd. 13. [~~RESIDENTIAL-PROGRAMS HANDLING RESIDENT FUNDS~~  
36 ~~AND PROPERTY; ADDITIONAL REQUIREMENTS.~~] (a) A license holder



1 must ensure that ~~residents~~ persons served by the program retain  
2 the use and availability of personal funds or property unless  
3 restrictions are justified in the ~~resident's~~ person's individual  
4 plan. This subdivision does not apply to programs governed by  
5 the provisions in section 245B.07, subdivision 10.

6 (b) The license holder must ensure separation of ~~resident~~  
7 funds of persons served by the program from funds of the license  
8 holder, the ~~residential~~ program, or program staff.

9 (c) Whenever the license holder assists a ~~resident person~~  
10 served by the program with the safekeeping of funds or other  
11 property, the license holder must:

12 (1) immediately document receipt and disbursement of the  
13 ~~resident's~~ person's funds or other property at the time of  
14 receipt or disbursement, including the person's signature ~~of the~~  
15 resident, or the signature of the conservator, or payee; and

16 ~~(2) provide a statement, at least quarterly, itemizing~~  
17 ~~receipts and disbursements of resident funds or other property;~~  
18 and

19 ~~(3)~~ return to the ~~resident person~~ upon the  
20 ~~resident's~~ person's request, funds and property in the license  
21 holder's possession subject to restrictions in the ~~resident's~~  
22 person's treatment plan, as soon as possible, but no later than  
23 three working days after the date of request.

24 (d) License holders and program staff must not:

25 (1) borrow money from a ~~resident person~~ served by the  
26 program;

27 (2) purchase personal items from a ~~resident person~~ served  
28 by the program;

29 (3) sell merchandise or personal services to a ~~resident~~  
30 person served by the program;

31 (4) require a ~~resident person~~ served by the program to  
32 purchase items for which the license holder is eligible for  
33 reimbursement; or

4 (5) use ~~resident funds~~ of persons served by the program to  
35 purchase items for which the facility is already receiving  
36 public or private payments.

1           Sec. 7. Minnesota Statutes 2004, section 245A.07,  
2 subdivision 1, is amended to read:

3           Subdivision 1. [~~SANCTIONS AVAILABLE; APPEALS; TEMPORARY~~  
4 PROVISIONAL LICENSE.] (a) In addition to making a license  
5 conditional under section 245A.06, the commissioner may propose  
6 to suspend or revoke the license, impose a fine, or secure an  
7 injunction against the continuing operation of the program of a  
8 license holder who does not comply with applicable law or rule.  
9 When applying sanctions authorized under this section, the  
10 commissioner shall consider the nature, chronicity, or severity  
11 of the violation of law or rule and the effect of the violation  
12 on the health, safety, or rights of persons served by the  
13 program.

14           (b) If a license holder appeals the suspension or  
15 revocation of a license and the license holder continues to  
16 operate the program pending a final order on the appeal, and the  
17 license expires during this time period, the commissioner shall  
18 issue the license holder a temporary provisional license. The  
19 temporary provisional license is effective on the date issued  
20 and expires on the date that a final order is issued. Unless  
21 otherwise specified by the commissioner, variances in effect on  
22 the date of the license sanction under appeal continue under the  
23 temporary provisional license. If a license holder fails to  
24 comply with applicable law or rule while operating under a  
25 temporary provisional license, the commissioner may impose  
26 sanctions under this section and section 245A.06, and may  
27 terminate any prior variance. If the license holder prevails on  
28 the appeal and the effective period of the previous license has  
29 expired, a new license shall be issued to the license holder  
30 upon payment of any fee required under section 245A.10. The  
31 effective date of the new license shall be retroactive to the  
32 date the license would have shown had no sanction been  
33 initiated. The expiration date shall be the expiration date of  
34 that license had no license sanction been initiated.

35           (c) If a license holder is under investigation and the  
36 license is due to expire before completion of the investigation,

1 the program shall be issued a new license upon completion of the  
2 reapplication requirements. Upon completion of the  
3 investigation, a licensing sanction may be imposed against the  
4 new license under this section, section 245A.06, or 245A.08.

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

10 Sec. 8. Minnesota Statutes 2004, section 245A.07,  
11 subdivision 3, is amended to read:

12 Subd. 3. [LICENSE SUSPENSION, REVOCATION, OR FINE.] (a)  
13 The commissioner may suspend or revoke a license, or impose a  
14 fine if a license holder fails to comply fully with applicable  
15 laws or rules, if a license holder or an individual living in  
16 the household where the licensed services are provided has a  
17 disqualification which has not been set aside under section  
18 245C.22, or if a license holder knowingly withholds relevant  
19 information from or gives false or misleading information to the  
20 commissioner in connection with an application for a license, in  
21 connection with the background study status of an individual, or  
22 during an investigation. A license holder who has had a license  
23 suspended, revoked, or has been ordered to pay a fine must be  
24 given notice of the action by certified mail or personal  
25 service. If mailed, the notice must be mailed to the address  
26 shown on the application or the last known address of the  
27 license holder. The notice must state the reasons the license  
28 was suspended, revoked, or a fine was ordered.

29 ~~(a)~~ (b) If the license was suspended or revoked, the notice  
30 must inform the license holder of the right to a contested case  
31 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to  
32 1400.8612. The license holder may appeal an order suspending or  
33 revoking a license. The appeal of an order suspending or  
34 revoking a license must be made in writing by certified mail or  
35 personal service. If mailed, the appeal must be postmarked and  
36 sent to the commissioner within ten calendar days after the

1 license holder receives notice that the license has been  
2 suspended or revoked. If a request is made by personal service,  
3 it must be received by the commissioner within ten calendar days  
4 after the license holder received the order. Except as provided  
5 in subdivision 2a, paragraph (c), a timely appeal of an order  
6 suspending or revoking a license shall stay the suspension or  
7 revocation until the commissioner issues a final order.

8       **(b)(c)(1)** If the license holder was ordered to pay a fine,  
9 the notice must inform the license holder of the responsibility  
10 for payment of fines and the right to a contested case hearing  
11 under chapter 14 and Minnesota Rules, parts 1400.8505 to  
12 1400.8612. The appeal of an order to pay a fine must be made in  
13 writing by certified mail or personal service. If mailed, the  
14 appeal must be postmarked and sent to the commissioner within  
15 ten calendar days after the license holder receives notice that  
16 the fine has been ordered. If a request is made by personal  
17 service, it must be received by the commissioner within ten  
18 calendar days after the license holder received the order.

19       **(2)** The license holder shall pay the fines assessed on or  
20 before the payment date specified. If the license holder fails  
21 to fully comply with the order, the commissioner may issue a  
22 second fine or suspend the license until the license holder  
23 complies. If the license holder receives state funds, the  
24 state, county, or municipal agencies or departments responsible  
25 for administering the funds shall withhold payments and recover  
26 any payments made while the license is suspended for failure to  
27 pay a fine. A timely appeal shall stay payment of the fine  
28 until the commissioner issues a final order.

29       **(3)** A license holder shall promptly notify the commissioner  
30 of human services, in writing, when a violation specified in the  
31 order to forfeit a fine is corrected. If upon reinspection the  
32 commissioner determines that a violation has not been corrected  
33 as indicated by the order to forfeit a fine, the commissioner  
34 may issue a second fine. The commissioner shall notify the  
35 license holder by certified mail or personal service that a  
36 second fine has been assessed. The license holder may appeal

1 the second fine as provided under this subdivision.

2 (4) Fines shall be assessed as follows: the license holder  
3 shall forfeit \$1,000 for each determination of maltreatment of a  
4 child under section 626.556 or the maltreatment of a vulnerable  
5 adult under section 626.557; the license holder shall forfeit  
6 \$200 for each occurrence of a violation of law or rule governing  
7 matters of health, safety, or supervision, including but not  
8 limited to the provision of adequate staff-to-child or adult  
9 ratios, and failure to submit a background study; and the  
10 license holder shall forfeit \$100 for each occurrence of a  
11 violation of law or rule other than those subject to a \$1,000 or  
12 \$200 fine above. For purposes of this section, "occurrence"  
13 means each violation identified in the commissioner's fine order.

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

20 Sec. 9. Minnesota Statutes 2004, section 245A.08,  
21 subdivision 2a, is amended to read:

22 Subd. 2a. [CONSOLIDATED CONTESTED CASE HEARINGS FOR  
23 SANCTIONS BASED ON MALTREATMENT DETERMINATIONS AND  
24 DISQUALIFICATIONS.] (a) When a denial of a license under section  
25 245A.05 or a licensing sanction under section 245A.07,  
26 subdivision 3, is based on a disqualification for which  
27 reconsideration was requested and which was not set aside under  
28 section 245C.22, the scope of the contested case hearing shall  
29 include the disqualification and the licensing sanction or  
30 denial of a license. When the licensing sanction or denial of a  
31 license is based on a determination of maltreatment under  
32 section 626.556 or 626.557, or a disqualification for serious or  
33 recurring maltreatment which was not set aside, the scope of the  
34 contested case hearing shall include the maltreatment  
35 determination, disqualification, and the licensing sanction or  
36 denial of a license. In such cases, a fair hearing under

1 section 256.045 shall not be conducted as provided for in  
2 sections 626.556, subdivision 10i, and 626.557, subdivision 9d.  
3 When a fine is based on a determination that the license holder  
4 is responsible for maltreatment and the fine is issued at the  
5 same time as the maltreatment determination, if the license  
6 holder appeals the maltreatment and fine, the scope of the  
7 contested case hearing shall include the maltreatment  
8 determination and fine and reconsideration of the maltreatment  
9 determination shall not be conducted as provided for in sections  
10 626.556, subdivision 10i, and 626.557, subdivision 9d.

11 (b) In consolidated contested case hearings regarding  
12 sanctions issued in family child care, child foster care, family  
13 adult day services, and adult foster care, the county attorney  
14 shall defend the commissioner's orders in accordance with  
15 section 245A.16, subdivision 4.

16 (c) The commissioner's final order under subdivision 5 is  
17 the final agency action on the issue of maltreatment and  
18 disqualification, including for purposes of subsequent  
19 background studies under chapter 245C and is the only  
20 administrative appeal of the final agency determination,  
21 specifically, including a challenge to the accuracy and  
22 completeness of data under section 13.04.

23 (d) When consolidated hearings under this subdivision  
24 involve a licensing sanction based on a previous maltreatment  
25 determination for which the commissioner has issued a final  
26 order in an appeal of that determination under section 256.045,  
27 or the individual failed to exercise the right to appeal the  
28 previous maltreatment determination under section 626.556,  
29 subdivision 10i, or 626.557, subdivision 9d, the commissioner's  
30 order is conclusive on the issue of maltreatment. In such  
31 cases, the scope of the administrative law judge's review shall  
32 be limited to the disqualification and the licensing sanction or  
33 denial of a license. In the case of a denial of a license or a  
34 licensing sanction issued to a facility based on a maltreatment  
35 determination regarding an individual who is not the license  
36 holder or a household member, the scope of the administrative

1 law judge's review includes the maltreatment determination.

2 (e) If a maltreatment determination or disqualification,  
3 which was not set aside under section 245C.22, is the basis for  
4 a denial of a license under section 245A.05 or a licensing  
5 sanction under section 245A.07, and the disqualified subject is  
6 an individual other than the license holder and upon whom a  
7 background study must be conducted under section 245C.03, the  
8 hearings of all parties may be consolidated into a single  
9 contested case hearing upon consent of all parties and the  
10 administrative law judge.

11 Sec. 10. Minnesota Statutes 2004, section 245A.08,  
12 subdivision 5, is amended to read:

13 Subd. 5. [NOTICE OF THE COMMISSIONER'S FINAL ORDER.] After  
14 considering the findings of fact, conclusions, and  
15 recommendations of the administrative law judge, the  
16 commissioner shall issue a final order. The commissioner shall  
17 consider, but shall not be bound by, the recommendations of the  
18 administrative law judge. The appellant must be notified of the  
19 commissioner's final order as required by chapter 14 and  
20 Minnesota Rules, parts 1400.8505 to 1400.8612. The notice must  
21 also contain information about the appellant's rights under  
22 chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.  
23 The institution of proceedings for judicial review of the  
24 commissioner's final order shall not stay the enforcement of the  
25 final order except as provided in section 14.65.

26 Subd. 5a. [EFFECT OF FINAL ORDER ON GRANTING A SUBSEQUENT  
27 LICENSE.] (a) A license holder and each controlling individual  
28 of a license holder whose license has been revoked because of  
29 noncompliance with applicable law or rule must not be granted a  
30 license for five years following the  
31 revocation. Notwithstanding the five-year restriction, when a  
32 license is revoked because a person, other than the license  
33 holder, resides in the home where services are provided and that  
34 person has a disqualification that is not set aside and no  
35 variance has been granted, the former license holder may reapply  
36 for a license when:

1 (1) the person with a disqualification, who is not a minor  
2 child, is no longer residing in the home and is prohibited from  
3 residing in or returning to the home; or

4 (2) the person with the disqualification is a minor child,  
5 the restriction applies until the minor child becomes an adult  
6 and permanently moves away from the home or five years,  
7 whichever is less.

8 (b) An applicant whose application was denied must not be  
9 granted a license for two years following a denial, unless the  
10 applicant's subsequent application contains new information  
11 which constitutes a substantial change in the conditions that  
12 caused the previous denial.

13 Sec. 11. Minnesota Statutes 2004, section 245A.14, is  
14 amended by adding a subdivision to read:

15 Subd. 12. [FIRST AID TRAINING REQUIREMENTS FOR STAFF IN  
16 CHILD CARE CENTERS.] Notwithstanding Minnesota Rules, part  
17 9503.0035, subpart 2, first aid training may be less than eight  
18 hours and persons qualified to provide first aid training shall  
19 include individuals approved as first aid instructors.

20 Sec. 12. Minnesota Statutes 2004, section 245A.14, is  
21 amended by adding a subdivision to read:

22 Subd. 13. [CARDIOPULMONARY RESUSCITATION (CPR) TRAINING  
23 REQUIREMENT.] (a) When children are present in a child care  
24 center governed by Minnesota Rules, parts 9503.0005 to  
25 9503.0170, or in a family child care home governed by Minnesota  
26 Rules, parts 9502.0315 to 9502.0445, at least one staff person  
27 must be present in the center or home who as been trained in  
28 cardiopulmonary resuscitation (CPR) and in the treatment of  
29 obstructed airways. The CPR training must have been provided by  
30 an individual approved to provide CPR instruction, must be  
31 repeated at least once every three years, and must be documented  
32 in the staff person's records.

33 (b) Notwithstanding Minnesota Rules, part 9503.0035,  
34 subpart 3, item A, cardiopulmonary resuscitation training may be  
35 provided for less than four hours.

36 (c) Notwithstanding Minnesota Rules, part 9503.0035,



1 subpart 3, item C, persons qualified to provide cardiopulmonary  
2 resuscitation training shall include individuals approved as  
3 cardiopulmonary resuscitation instructors.

4 [EFFECTIVE DATE.] This section is effective January 1, 2006.

5 Sec. 13. Minnesota Statutes 2004, section 245A.144, is  
6 amended to read:

7 245A.144 [REDUCTION OF RISK OF SUDDEN INFANT DEATH SYNDROME  
8 IN CHILD CARE AND CHILD FOSTER CARE PROGRAMS.]

9 (a) License holders must ensure document that before staff  
10 persons, caregivers, and helpers assist in the care of infants,  
11 they receive training on reducing the risk of sudden infant  
12 death syndrome. The training on reducing the risk of sudden  
13 infant death syndrome may be provided as:

14 (1) orientation training to child care center staff under  
15 Minnesota Rules, part 9503.0035, subpart 1, as and to child  
16 foster care providers, who care for infants, under Minnesota  
17 Rules, part 2960.3070, subpart 1;

18 (2) initial training to family and group family child care  
19 providers under Minnesota Rules, part 9502.0385, subpart 2~~7~~-as;

20 (3) in-service training to child care center staff under  
21 Minnesota Rules, part 9503.0035, subpart 4, and to child foster  
22 care providers, who care for infants, under Minnesota Rules,  
23 part 2960.3070, subpart 2; or as

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

26 (b) Training required under this section must be at least  
27 one hour in length and must be completed at least once every  
28 five years. At a minimum, the training must address the risk  
29 factors related to sudden infant death syndrome, means of  
30 reducing the risk of sudden infant death syndrome in child care,  
31 and license holder communication with parents regarding reducing  
32 the risk of sudden infant death syndrome.

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

36 (d) Training for child foster care providers must be

1 approved by the county licensing agency and fulfills, in part,  
2 training required under Minnesota Rules, part 2960.3070.

3 [EFFECTIVE DATE.] This section is effective January 1, 2006.

4 Sec. 14. Minnesota Statutes 2004, section 245A.16,  
5 subdivision 4, is amended to read:

6 Subd. 4. [ENFORCEMENT OF THE COMMISSIONER'S ORDERS.] The  
7 county or private agency shall enforce the commissioner's orders  
8 under sections 245A.07, 245A.08, subdivision 5, and chapter  
9 245C, according to the instructions of the commissioner. The  
10 county attorney shall assist the county agency in the  
11 enforcement and defense of the commissioner's orders under  
12 sections 245A.07, 245A.08, and chapter 245C, according to the  
13 instructions of the commissioner, unless a conflict of interest  
14 exists between the county attorney and the commissioner. For  
15 purposes of this section, a conflict of interest means that the  
16 county attorney has a direct or shared financial interest with  
17 the license holder or has a personal relationship or family  
18 relationship with a party in the licensing action.

19 Sec. 15. Minnesota Statutes 2004, section 245A.18, is  
20 amended to read:

21 245A.18 [SEAT BELT AND CHILD PASSENGER RESTRAINT SYSTEMS  
22 USE REQUIRED; TRAINING REQUIREMENT.]

23 Subdivision 1. [SEAT BELT USE.] (a) When a ~~nonresidential~~  
24 license holder provides or arranges for transportation for  
25 children served by the license holder, children ~~four~~ nine years  
26 old and older must be restrained by a properly adjusted and  
27 fastened seat belt and children under age ~~four~~ nine must be  
28 properly fastened in a child passenger restraint system meeting  
29 federal motor vehicle safety standards. A child passenger  
30 restraint system is not required for a child who, in the  
31 judgment of a licensed physician, cannot be safely transported  
32 in a child passenger restraint system because of a medical  
33 condition, body size, or physical disability, if the license  
34 holder possesses a written statement from the physician that  
35 satisfies the requirements in section 169.685, subdivision 6,  
36 paragraph (b).

1 (b) Paragraph (a) does not apply to transportation of  
2 children in a school bus inspected under section 169.451 that  
3 has a gross vehicle weight rating of more than 10,000 pounds, is  
4 designed for carrying more than ten persons, and was  
5 manufactured after 1977.

6 Subd. 2. [CHILD PASSENGER RESTRAINT SYSTEMS TRAINING  
7 REQUIREMENTS.] (a) Family and group family child care, child  
8 care centers, child foster care, and other programs licensed by  
9 the Department of Human Services that serve a child or children  
10 under nine years of age must document training that fulfills the  
11 requirements in this subdivision.

12 (b) Before a license holder, staff person, caregiver, or  
13 helper transports a child or children under age nine in a motor  
14 vehicle, the person transporting the child must satisfactorily  
15 complete training on the proper use and installation of child  
16 restraint systems in motor vehicles. Training completed under  
17 this subdivision may be used to meet initial or ongoing training  
18 under the following:

- 19 (1) Minnesota Rules, part 2960.3070, subparts 1 and 2;  
20 (2) Minnesota Rules, part 9502.0385, subparts 2 and 3; and  
21 (3) Minnesota Rules, part 9503.0035, subparts 1 and 4.

22 (c) Training required under this subdivision must be at  
23 least one hour in length, completed at orientation or initial  
24 training, and repeated at least once every five years. At a  
25 minimum, the training must address the proper use of child  
26 restraint systems based on the child's size, weight, and age,  
27 and the proper installation of a car seat or booster seat in the  
28 motor vehicle used by the license holder to transport the child  
29 or children.

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

35 [EFFECTIVE DATE.] This section is effective January 1, 2006.

36 Sec. 16. Minnesota Statutes 2004, section 245B.02,

1 subdivision 10, is amended to read:

2 Subd. 10. [INCIDENT.] "Incident" means any of the  
3 following:

4 (1) serious injury as determined by section 245.91,  
5 subdivision 6;

6 (2) a consumer's death;

7 (3) any medical emergencies, unexpected serious illnesses,  
8 or accidents that require physician treatment or  
9 hospitalization;

10 (4) a consumer's unauthorized absence;

11 (5) any fires or other events that require the relocation  
12 of services for more than 24 hours, or circumstances involving a  
13 law enforcement agency or fire department related to the health,  
14 safety, or supervision of a consumer;

15 (6) physical aggression by a consumer against another  
16 consumer that causes physical pain, injury, or persistent  
17 emotional distress, including, but not limited to, hitting,  
18 slapping, kicking, scratching, pinching, biting, pushing, and  
19 spitting;

20 (7) any sexual activity between consumers involving force  
21 or coercion as defined under section 609.341, subdivisions 3 and  
22 14; or

23 (8) a report of child or vulnerable adult maltreatment  
24 under section 626.556 or 626.557.

25 Sec. 17. Minnesota Statutes 2004, section 245B.055,  
26 subdivision 7, is amended to read:

27 Subd. 7. [DETERMINING NUMBER OF DIRECT SERVICE STAFF  
28 REQUIRED.] The minimum number of direct service staff members  
29 required at any one time to meet the combined staff ratio  
30 requirements of the persons present at that time can be  
31 determined by following the steps in clauses (1) through (4):

32 (1) assign each person in attendance the three-digit  
33 decimal below that corresponds to the staff ratio requirement  
34 assigned to that person. A staff ratio requirement of one to  
35 four equals 0.250. A staff ratio requirement of one to eight  
36 equals 0.125. A staff ratio requirement of one to six equals

1 0.166. A staff ratio requirement of one to ten equals 0.100;

2 (2) add all of the three-digit decimals (one three-digit  
3 decimal for every person in attendance) assigned in clause (1);

4 (3) when the sum in clause (2) falls between two whole  
5 numbers, round off the sum to the larger of the two whole  
6 numbers; and

7 (4) the larger of the two whole numbers in clause (3)  
8 equals the number of direct service staff members needed to meet  
9 the staff ratio requirements of the persons in attendance.

10 Sec. 18. Minnesota Statutes 2004, section 245B.07,  
11 subdivision 8, is amended to read:

12 Subd. 8. [POLICIES AND PROCEDURES.] The license holder  
13 must develop and implement the policies and procedures in  
14 paragraphs (1) to (3).

15 (1) Policies and procedures that promote consumer health  
16 and safety by ensuring:

17 (i) consumer safety in emergency situations ~~as-identified~~  
18 ~~in-section-245B.057--subdivision-7;~~

19 (ii) consumer health through sanitary practices;

20 (iii) safe transportation, when the license holder is  
21 responsible for transportation of consumers, with provisions for  
22 handling emergency situations;

23 (iv) a system of record keeping for both individuals and  
24 the organization, for review of incidents and emergencies, and  
25 corrective action if needed;

26 (v) a plan for responding to all incidents, as defined in  
27 section 245B.02, subdivision 10, ~~fires7--severe-weather-and~~  
28 ~~natural-disasters7--bomb-threats7--and-other-threats~~ and reporting  
29 all incidents required to be reported under section 245B.05,  
30 subdivision 7;

31 (vi) safe medication administration as identified in  
32 section 245B.05, subdivision 5, incorporating an observed skill  
33 assessment to ensure that staff demonstrate the ability to  
34 administer medications consistent with the license holder's  
35 policy and procedures;

36 (vii) psychotropic medication monitoring when the consumer

1 is prescribed a psychotropic medication, including the use of  
2 the psychotropic medication use checklist. If the  
3 responsibility for implementing the psychotropic medication use  
4 checklist has not been assigned in the individual service plan  
5 and the consumer lives in a licensed site, the residential  
6 license holder shall be designated; and

7 (viii) criteria for admission or service initiation  
8 developed by the license holder;\_

9 (2) Policies and procedures that protect consumer rights  
10 and privacy by ensuring:

11 (i) consumer data privacy, in compliance with the Minnesota  
12 Data Practices Act, chapter 13; and

13 (ii) that complaint procedures provide consumers with a  
14 simple process to bring grievances and consumers receive a  
15 response to the grievance within a reasonable time period. The  
16 license holder must provide a copy of the program's grievance  
17 procedure and time lines for addressing grievances. The  
18 program's grievance procedure must permit consumers served by  
19 the program and the authorized representatives to bring a  
20 grievance to the highest level of authority in the program;\_and\_

21 (3) Policies and procedures that promote continuity and  
22 quality of consumer supports by ensuring:

23 (i) continuity of care and service coordination, including  
24 provisions for service termination, temporary service  
25 suspension, and efforts made by the license holder to coordinate  
26 services with other vendors who also provide support to the  
27 consumer. The policy must include the following requirements:

28 (A) the license holder must notify the consumer or  
29 consumer's legal representative and the consumer's case manager  
30 in writing of the intended termination or temporary service  
31 suspension and the consumer's right to seek a temporary order  
32 staying the termination or suspension of service according to  
33 the procedures in section 256.045, subdivision 4a or subdivision  
34 6, paragraph (c);

35 (B) notice of the proposed termination of services,  
36 including those situations that began with a temporary service

1 suspension, must be given at least 60 days before the proposed  
2 termination is to become effective;

3 (C) the license holder must provide information requested  
4 by the consumer or consumer's legal representative or case  
5 manager when services are temporarily suspended or upon notice  
6 of termination;

7 (D) use of temporary service suspension procedures are  
8 restricted to situations in which the consumer's behavior causes  
9 immediate and serious danger to the health and safety of the  
10 individual or others;

11 (E) prior to giving notice of service termination or  
12 temporary service suspension, the license holder must document  
13 actions taken to minimize or eliminate the need for service  
14 termination or temporary service suspension; and

15 (F) during the period of temporary service suspension, the  
16 license holder will work with the appropriate county agency to  
17 develop reasonable alternatives to protect the individual and  
18 others; and

19 (ii) quality services measured through a program evaluation  
20 process including regular evaluations of consumer satisfaction  
21 and sharing the results of the evaluations with the consumers  
22 and legal representatives.

23 Sec. 19. Minnesota Statutes 2004, section 245C.03,  
24 subdivision 1, is amended to read:

25 Subdivision 1. [LICENSED PROGRAMS.] (a) The commissioner  
26 shall conduct a background study on:

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

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

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

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

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

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

9 ~~(i)-family-child-care-for-children;~~

10 ~~(ii)-foster-care-for-children-in-the-provider's-own-home;~~

11 or

12 ~~(iii)-foster-care-or-day-care-services-for-adults-in-the~~  
 13 ~~provider's-own-home;-and~~

14 (7) all managerial officials as defined under section  
 15 245A.02, subdivision 5a.

16 ~~The-commissioner-must-have-reasonable-cause-to-study-an~~  
 17 ~~individual-under-this-subdivision.~~

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

22 Sec. 20. Minnesota Statutes 2004, section 245C.07, is  
 23 amended to read:

24 245C.07 [STUDY SUBJECT AFFILIATED WITH MULTIPLE LICENSED  
 25 FACILITIES.]

26 (a) When a license holder owns multiple facilities that are  
 27 licensed by the Department of Human Services, only one  
 28 background study is required for an individual who provides  
 29 direct contact services in one or more of the licensed  
 30 facilities if:

31 (1) the license holder designates one individual with one  
 32 address and telephone number as the person to receive sensitive  
 33 background study information for the multiple licensed programs  
 34 that depend on the same background study; and

35 (2) the individual designated to receive the sensitive  
 36 background study information is capable of determining, upon



1 request of the department, whether a background study subject is  
2 providing direct contact services in one or more of the license  
3 holder's programs and, if so, at which location or locations.

4 (b) When a background study is being initiated by a  
5 licensed facility or a foster care provider that is also  
6 registered under chapter 144D, a study subject affiliated with  
7 multiple licensed facilities may attach to the background study  
8 form a cover letter indicating the additional facilities' names,  
9 addresses, and background study identification numbers.

10 When the commissioner receives a notice, the commissioner  
11 shall notify each facility identified by the background study  
12 subject of the study results.

13 The background study notice the commissioner sends to the  
14 subsequent agencies shall satisfy those facilities'  
15 responsibilities for initiating a background study on that  
16 individual.

17 Sec. 21. Minnesota Statutes 2004, section 245C.08,  
18 subdivision 1, is amended to read:

19 Subdivision 1. [BACKGROUND STUDIES CONDUCTED BY  
20 COMMISSIONER OF HUMAN SERVICES.] (a) For a background study  
21 conducted by the commissioner, the commissioner shall review:

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

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

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

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

34 (b) Notwithstanding expungement by a court, the  
35 commissioner may consider information obtained under paragraph  
36 (a), clauses (3) and (4), unless the commissioner received

1 notice of the petition for expungement and the court order for  
2 expungement is directed specifically to the commissioner.

3 Sec. 22. Minnesota Statutes 2004, section 245C.08,  
4 subdivision 2, is amended to read:

5 Subd. 2. [BACKGROUND STUDIES CONDUCTED BY A COUNTY OR  
6 PRIVATE AGENCY; FOSTER CARE AND FAMILY CHILD CARE.] (a) For a  
7 background study conducted by a county or private agency for  
8 child foster care, adult foster care, and family child care  
9 homes, the commissioner shall review:

10 (1) information from the county agency's record of  
11 substantiated maltreatment of adults and the maltreatment of  
12 minors;

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

16 (3) information from the Bureau of Criminal Apprehension;  
17 and

18 (4) arrest and investigative records maintained by the  
19 Bureau of Criminal Apprehension, county attorneys, county  
20 sheriffs, courts, county agencies, local police, the National  
21 Criminal Records Repository, and criminal records from other  
22 states.

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

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

32 Sec. 23. Minnesota Statutes 2004, section 245C.15,  
33 subdivision 1, is amended to read:

34 Subdivision 1. [PERMANENT DISQUALIFICATION.] (a) An  
35 individual is disqualified under section 245C.14 if: (1)  
36 regardless of how much time has passed since the discharge of

1 the sentence imposed, if any, for the offense; and (2) unless  
2 otherwise specified, regardless of the level of the conviction  
3 offense, the individual ~~is convicted of~~ has committed any of the  
4 following offenses: sections 609.185 (murder in the first  
5 degree); 609.19 (murder in the second degree); 609.195 (murder  
6 in the third degree); 609.20 (manslaughter in the first degree);  
7 609.205 (manslaughter in the second degree); 609.221 or 609.222  
8 (assault in the first or second degree); a felony offense under  
9 sections 609.2242 and 609.2243 (domestic assault), spousal  
10 abuse, child abuse or neglect, or a crime against children;  
11 609.228 (great bodily harm caused by distribution of drugs);  
12 609.245 (aggravated robbery); 609.25 (kidnapping); 609.2661  
13 (murder of an unborn child in the first degree); 609.2662  
14 (murder of an unborn child in the second degree); 609.2663  
15 (murder of an unborn child in the third degree); 609.322  
16 (solicitation, inducement, and promotion of prostitution); a  
17 felony offense under 609.324, subdivision 1 (other prohibited  
18 acts); 609.342 (criminal sexual conduct in the first degree);  
19 609.343 (criminal sexual conduct in the second degree); 609.344  
20 (criminal sexual conduct in the third degree); 609.345 (criminal  
21 sexual conduct in the fourth degree); 609.352 (solicitation of  
22 children to engage in sexual conduct); 609.365 (incest); a  
23 felony offense under 609.377 (malicious punishment of a child);  
24 a felony offense under 609.378 (neglect or endangerment of a  
25 child); 609.561 (arson in the first degree); 609.66, subdivision  
26 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5  
27 (felony-level harassment; stalking); 609.855, subdivision 5  
28 (shooting at or in a public transit vehicle or facility);  
29 617.246 (use of minors in sexual performance prohibited); or  
30 617.247 (possession of pictorial representations of minors). An  
31 individual also is disqualified under section 245C.14 regardless  
32 of how much time has passed since the involuntary termination of  
33 the individual's parental rights under section 260C.301.

34 (b) An individual's aiding and abetting, attempt, or  
35 conspiracy to commit any of the offenses listed in paragraph  
36 (a), as each of these offenses is defined in Minnesota Statutes,

1 permanently disqualifies the individual under section 245C.14.

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

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

16 Sec. 24. Minnesota Statutes 2004, section 245C.15,  
17 subdivision 2, is amended to read:

18 Subd. 2. [15-YEAR DISQUALIFICATION.] (a) An individual is  
19 disqualified under section 245C.14 if: (1) less than 15 years  
20 have passed since the discharge of the sentence imposed, if any,  
21 for the offense; and (2) the individual has ~~received-a-felony~~  
22 ~~conviction-for~~ committed a felony-level violation of any of the  
23 following offenses: sections 256.98 (wrongfully obtaining  
24 assistance); 260C.301 (grounds for termination of parental  
25 rights); 268.182 (false representation; concealment of facts);  
26 393.07, subdivision 10(c) (federal Food Stamp Program fraud);  
27 609.165 (felon ineligible to possess firearm); 609.21 (criminal  
28 vehicular homicide and injury); 609.215 (suicide); 609.223 or  
29 609.2231 (assault in the third or fourth degree); repeat  
30 offenses under 609.224 (assault in the fifth degree); 609.2325  
31 (criminal abuse of a vulnerable adult); 609.2335 (financial  
32 exploitation of a vulnerable adult); 609.235 (use of drugs to  
33 injure or facilitate crime); 609.24 (simple robbery); 609.255  
34 (false imprisonment); 609.2664 (manslaughter of an unborn child  
35 in the first degree); 609.2665 (manslaughter of an unborn child  
36 in the second degree); 609.267 (assault of an unborn child in

1 the first degree); 609.2671 (assault of an unborn child in the  
2 second degree); 609.268 (injury or death of an unborn child in  
3 the commission of a crime); 609.27 (coercion); 609.275 (attempt  
4 to coerce); repeat offenses under 609.3451 (criminal sexual  
5 conduct in the fifth degree); 609.466 (medical assistance  
6 fraud); 609.498, subdivision 1 or 1b (aggravated first degree or  
7 first degree tampering with a witness); 609.52 (theft); 609.521  
8 (possession of shoplifting gear); 609.525 (bringing stolen goods  
9 into Minnesota); 609.527 (identity theft); 609.53 (receiving  
10 stolen property); 609.535 (issuance of dishonored checks);  
11 609.562 (arson in the second degree); 609.563 (arson in the  
12 third degree); 609.582 (burglary); 609.611 (insurance fraud);  
13 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check  
14 forgery; offering a forged check); 609.635 (obtaining signature  
15 by false pretense); 609.66 (dangerous weapons); 609.67 (machine  
16 guns and short-barreled shotguns); 609.687 (adulteration);  
17 609.71 (riot); 609.713 (terroristic threats); 609.82 (fraud in  
18 obtaining credit); 609.821 (financial transaction card fraud);  
19 repeat offenses under 617.23 (indecent exposure; penalties);  
20 repeat offenses under 617.241 (obscene materials and  
21 performances; distribution and exhibition prohibited; penalty);  
22 chapter 152 (drugs; controlled substance); or a felony-level  
23 conviction involving alcohol or drug use.

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

29 (c) An individual is disqualified under section 245C.14 if  
30 less than 15 years has passed since the individual's voluntary  
31 termination of the individual's parental rights under section  
32 260C.301.

33 (d) An individual is disqualified under section 245C.14 if  
34 less than 15 years has passed since the discharge of the  
35 sentence imposed for an offense in any other state or country,  
36 the elements of which are substantially similar to the elements

1 of the offenses listed in paragraph (a).

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

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

18        Sec. 25. Minnesota Statutes 2004, section 245C.15,  
19 subdivision 3, is amended to read:

20        Subd. 3. [TEN-YEAR DISQUALIFICATION.] (a) An individual is  
21 disqualified under section 245C.14 if: (1) less than ten years  
22 have passed since the discharge of the sentence imposed, if any,  
23 for the offense; and (2) the individual has ~~received~~ committed a  
24 ~~gross misdemeanor-conviction-for-a~~ misdemeanor-level violation  
25 of any of the following offenses: sections 256.98 (wrongfully  
26 obtaining assistance); 268.182 (false representation;  
27 concealment of facts); 393.07, subdivision 10(c) (federal Food  
28 Stamp Program fraud); 609.224 (assault in the fifth degree);  
29 609.224, subdivision 2, paragraph (c) (assault in the fifth  
30 degree by a caregiver against a vulnerable adult); 609.2242 and  
31 609.2243 (domestic assault); 609.23 (mistreatment of persons  
32 confined); 609.231 (mistreatment of residents or patients);  
33 609.2325 (criminal abuse of a vulnerable adult); 609.233  
34 (criminal neglect of a vulnerable adult); 609.2335 (financial  
35 exploitation of a vulnerable adult); 609.234 (failure to report  
36 maltreatment of a vulnerable adult); 609.265 (abduction);

1 609.275 (attempt to coerce); 609.324, subdivision 1a (other  
2 prohibited acts; minor engaged in prostitution); 609.33  
3 (disorderly house); 609.3451 (criminal sexual conduct in the  
4 fifth degree); 609.377 (malicious punishment of a child);  
5 609.378 (neglect or endangerment of a child); 609.446 (medical  
6 assistance fraud); 609.52 (theft); 609.525 (bringing stolen  
7 goods into Minnesota); 609.527 (identify theft); 609.53  
8 (receiving stolen property); 609.535 (issuance of dishonored  
9 checks); 609.582 (burglary); 609.611 (insurance fraud); 609.631  
10 (check forgery; offering a forged check); 609.66 (dangerous  
11 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly  
12 conduct against a vulnerable adult); repeat offenses under  
13 609.746 (interference with privacy); 609.749, subdivision 2  
14 (harassment; stalking); repeat offenses under 617.23 (indecent  
15 exposure); 617.241 (obscene materials and performances); 617.243  
16 (indecent literature, distribution); 617.293 (harmful materials;  
17 dissemination and display to minors prohibited); or violation of  
18 an order for protection under section 518B.01, subdivision 14.

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

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

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

34 (e) When a disqualification is based on a judicial  
35 determination other than a conviction, the disqualification  
36 period begins from the date of the court order. When a

1 disqualification is based on an admission, the disqualification  
2 period begins from the date of an admission in court. When a  
3 disqualification is based on a preponderance of evidence of a  
4 disqualifying act, the disqualification date begins from the  
5 date of the dismissal, the date of discharge of the sentence  
6 imposed for a conviction for a disqualifying crime of similar  
7 elements, or the date of the incident, whichever occurs last.

8 Sec. 26. Minnesota Statutes 2004, section 245C.15,  
9 subdivision 4, is amended to read:

10 Subd. 4. [SEVEN-YEAR DISQUALIFICATION.] (a) An individual  
11 is disqualified under section 245C.14 if: (1) less than seven  
12 years has passed since the discharge of the sentence imposed, if  
13 any, for the offense; and (2) the individual has received  
14 committed a misdemeanor-conviction-for-a misdemeanor-level  
15 violation of any of the following offenses: sections 256.98  
16 (wrongfully obtaining assistance); 268.182 (false  
17 representation; concealment of facts); 393.07, subdivision 10(c)  
18 (federal Food Stamp Program fraud); 609.224 (assault in the  
19 fifth degree); 609.2242 (domestic assault); 609.2335 (financial  
20 exploitation of a vulnerable adult); 609.234 (failure to report  
21 maltreatment of a vulnerable adult); 609.2672 (assault of an  
22 unborn child in the third degree); 609.27 (coercion); violation  
23 of an order for protection under 609.3232 (protective order  
24 authorized; procedures; penalties); 609.466 (medical assistance  
25 fraud); 609.52 (theft); 609.525 (bringing stolen goods into  
26 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen  
27 property); 609.535 (issuance of dishonored checks); 609.611  
28 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring  
29 guns); 609.746 (interference with privacy); 609.79 (obscene or  
30 harassing phone telephone calls); 609.795 (letter, telegram, or  
31 package; opening; harassment); 609.82 (fraud in obtaining  
32 credit); 609.821 (financial transaction card fraud); 617.23  
33 (indecent exposure; penalties); 617.293 (harmful materials;  
34 dissemination and display to minors prohibited); or violation of  
35 an order for protection under section 518B.01 (Domestic Abuse  
36 Act).



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

4 (1) failure to make required reports under section 626.556,  
5 subdivision 3, or 626.557, subdivision 3, for incidents in  
6 which: (i) the final disposition under section 626.556 or  
7 626.557 was substantiated maltreatment, and (ii) the  
8 maltreatment was recurring or serious; or

9 (2) substantiated serious or recurring maltreatment of a  
10 minor under section 626.556, a vulnerable adult under section  
11 626.557, or serious or recurring maltreatment in any other  
12 state, the elements of which are substantially similar to the  
13 elements of maltreatment under section 626.556 or 626.557 for  
14 which: (i) there is a preponderance of evidence that the  
15 maltreatment occurred, and (ii) the subject was responsible for  
16 the maltreatment.

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

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

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

1 Sec. 27. Minnesota Statutes 2004, section 245C.17,  
2 subdivision 2, is amended to read:

3 Subd. 2. [DISQUALIFICATION NOTICE SENT TO SUBJECT.] (a) If  
4 the information in the study indicates the individual is  
5 disqualified from direct contact with, or from access to,  
6 persons served by the program, the commissioner shall disclose  
7 to the individual studied:

8 (1) the information causing disqualification;

9 (2) instructions on how to request a reconsideration of the  
10 disqualification; and

11 (3) an explanation of any restrictions on the  
12 commissioner's discretion to set aside the disqualification  
13 under section 245C.24, subdivision 2, when applicable to the  
14 individual; and

15 (4) the commissioner's determination of the individual's  
16 immediate risk of harm under section 245C.16.

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

22 (c) If the commissioner determines under section 245C.16  
23 that an individual studied does not pose a risk of harm that  
24 requires continuous, direct supervision, the commissioner shall  
25 only notify the individual of the disqualification.

26 Sec. 28. Minnesota Statutes 2004, section 245C.21,  
27 subdivision 2, is amended to read:

28 Subd. 2. [TIME FRAME FOR REQUESTING RECONSIDERATION OF A  
29 DISQUALIFICATION.] (a) When the commissioner sends an individual  
30 a notice of disqualification based on a finding under section  
31 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the  
32 disqualified individual must submit the request for a  
33 reconsideration within 30 calendar days of the individual's  
34 receipt of the notice of disqualification. If mailed, the  
35 request for reconsideration must be postmarked and sent to the  
36 commissioner within 30 calendar days of the individual's receipt

1 of the notice of disqualification. If a request for  
2 reconsideration is made by personal service, it must be received  
3 by the commissioner within 30 calendar days after the  
4 individual's receipt of the notice of disqualification. Upon  
5 showing that the information under subdivision 3 cannot be  
6 obtained within 30 days, the disqualified individual may request  
7 additional time, not to exceed 30 days, to obtain the  
8 information.

9 (b) When the commissioner sends an individual a notice of  
10 disqualification based on a finding under section 245C.16,  
11 subdivision 2, paragraph (a), clause (3), the disqualified  
12 individual must submit the request for reconsideration within 15  
13 calendar days of the individual's receipt of the notice of  
14 disqualification. If mailed, the request for reconsideration  
15 must be postmarked and sent to the commissioner within 15  
16 calendar days of the individual's receipt of the notice of  
17 disqualification. If a request for reconsideration is made by  
18 personal service, it must be received by the commissioner within  
19 15 calendar days after the individual's receipt of the notice of  
20 disqualification.

21 (c) An individual who was determined to have maltreated a  
22 child under section 626.556 or a vulnerable adult under section  
23 626.557, and who is disqualified on the basis of serious or  
24 recurring maltreatment, may request a reconsideration of both  
25 the maltreatment and the disqualification determinations. The  
26 request must be submitted within 30 calendar days of the  
27 individual's receipt of the notice of disqualification. If  
28 mailed, the request for reconsideration must be postmarked and  
29 sent to the commissioner within 30 calendar days of the  
30 individual's receipt of the notice of disqualification. If a  
31 request for reconsideration is made by personal service, it must  
32 be received by the commissioner within 30 calendar days after  
33 the individual's receipt of the notice of disqualification.

34 Sec. 29. Minnesota Statutes 2004, section 245C.22,  
35 subdivision 3, is amended to read:

36 Subd. 3. [PREEMINENT WEIGHT GIVEN TO SAFETY OF PERSONS

1 BEING SERVED.] In reviewing a request for reconsideration of a  
2 disqualification, the commissioner shall give preeminent weight  
3 to the safety of each person served by the license holder,  
4 applicant, or other entities as provided in this chapter over  
5 the interests of the disqualified individual, license holder,  
6 applicant, or other entity as provided in this chapter, and any  
7 single factor under subdivision 4, paragraph (b), may be  
8 determinative of the commissioner's decision whether to set  
9 aside the individual's disqualification.

10 Sec. 30. Minnesota Statutes 2004, section 245C.22,  
11 subdivision 4, is amended to read:

12 Subd. 4. [RISK OF HARM; SET ASIDE.] (a) The commissioner  
13 may set aside the disqualification if the commissioner finds  
14 that the individual has submitted sufficient information to  
15 demonstrate that the individual does not pose a risk of harm to  
16 any person served by the applicant, license holder, or other  
17 entities as provided in this chapter.

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

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

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

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

26 (4) the harm suffered by the victim;

27 (5) the similarity between the victim and persons served by  
28 the program;

29 (6) the time elapsed without a repeat of the same or  
30 similar event;

31 (7) documentation of successful completion by the  
32 individual studied of training or rehabilitation pertinent to  
33 the event; and

34 (8) any other information relevant to reconsideration.

35 (c) If the individual requested reconsideration on the  
36 basis that the information relied upon to disqualify the

1 individual was incorrect or inaccurate and the commissioner  
2 determines that the information relied upon to disqualify the  
3 individual is correct, the commissioner must also determine if  
4 the individual poses a risk of harm to persons receiving  
5 services in accordance with paragraph (b).

6 Sec. 31. Minnesota Statutes 2004, section 245C.24,  
7 subdivision 2, is amended to read:

8 Subd. 2. [PERMANENT BAR TO SET ASIDE OF DISQUALIFICATION.]

9 The commissioner may not set aside the disqualification of an  
10 individual in connection with a license to provide family child  
11 care for children, foster care for children in the provider's  
12 home, or foster care or day care services for adults in the  
13 provider's home, regardless of how much time has passed, if  
14 the ~~provider~~ individual was disqualified for a crime or conduct  
15 listed in section 245C.15, subdivision 1.

16 Sec. 32. Minnesota Statutes 2004, section 245C.24,  
17 subdivision 3, is amended to read:

18 Subd. 3. [TEN-YEAR BAR TO SET ASIDE DISQUALIFICATION.] (a)

19 The commissioner may not set aside the disqualification of an  
20 individual in connection with a license to provide family child  
21 care for children, foster care for children in the provider's  
22 home, or foster care or day care services for adults in the  
23 provider's home if: (1) less than ten years has passed since  
24 the discharge of the sentence imposed, if any, for the offense;  
25 and or (2) when disqualified based on a preponderance of  
26 evidence determination under section 245A.14, subdivision 1,  
27 paragraph (a), clause (2), or an admission under section  
28 245A.14, subdivision 1, paragraph (a), clause (1), and less than  
29 ten years has passed since the individual committed the act or  
30 admitted to committing the act, whichever is later; and (3) the  
31 individual has been-convicted-of committed a violation of any of  
32 the following offenses: sections 609.165 (felon ineligible to  
33 possess firearm); criminal vehicular homicide under 609.21  
34 (criminal vehicular homicide and injury); 609.215 (aiding  
35 suicide or aiding attempted suicide); felony violations under  
36 609.223 or 609.2231 (assault in the third or fourth degree);

1 609.713 (terroristic threats); 609.235 (use of drugs to injure  
2 or to facilitate crime); 609.24 (simple robbery); 609.255 (false  
3 imprisonment); 609.562 (arson in the second degree); 609.71  
4 (riot); 609.498, subdivision 1 or 1b (aggravated first degree or  
5 first degree tampering with a witness); burglary in the first or  
6 second degree under 609.582 (burglary); 609.66 (dangerous  
7 weapon); 609.665 (spring guns); 609.67 (machine guns and  
8 short-barreled shotguns); 609.749, subdivision 2 (gross  
9 misdemeanor harassment; stalking); 152.021 or 152.022  
10 (controlled substance crime in the first or second degree);  
11 152.023, subdivision 1, clause (3) or (4) or subdivision 2,  
12 clause (4) (controlled substance crime in the third degree);  
13 152.024, subdivision 1, clause (2), (3), or (4) (controlled  
14 substance crime in the fourth degree); 609.224, subdivision 2,  
15 paragraph (c) (fifth-degree assault by a caregiver against a  
16 vulnerable adult); 609.23 (mistreatment of persons confined);  
17 609.231 (mistreatment of residents or patients); 609.2325  
18 (criminal abuse of a vulnerable adult); 609.233 (criminal  
19 neglect of a vulnerable adult); 609.2335 (financial exploitation  
20 of a vulnerable adult); 609.234 (failure to report); 609.265  
21 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn  
22 child in the first or second degree); 609.267 to 609.2672  
23 (assault of an unborn child in the first, second, or third  
24 degree); 609.268 (injury or death of an unborn child in the  
25 commission of a crime); 617.293 (disseminating or displaying  
26 harmful material to minors); a felony-level conviction involving  
27 alcohol or drug use, a gross misdemeanor offense under 609.324,  
28 subdivision 1 (other prohibited acts); a gross misdemeanor  
29 offense under 609.378 (neglect or endangerment of a child); a  
30 gross misdemeanor offense under 609.377 (malicious punishment of  
31 a child); or 609.72, subdivision 3 (disorderly conduct against a  
32 vulnerable adult).

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

1 these offenses is defined in Minnesota Statutes.

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

8 Sec. 33. Minnesota Statutes 2004, section 245C.27,  
9 subdivision 1, is amended to read:

10 Subdivision 1. [FAIR HEARING WHEN DISQUALIFICATION IS NOT  
11 SET ASIDE.] (a) If the commissioner does not set aside ~~or~~  
12 ~~rescind~~ a disqualification of an individual under section  
13 245C.22 who is disqualified on the basis of a preponderance of  
14 evidence that the individual committed an act or acts that meet  
15 the definition of any of the crimes listed in section 245C.15;  
16 for a determination under section 626.556 or 626.557 of  
17 substantiated maltreatment that was serious or recurring under  
18 section 245C.15; or for failure to make required reports under  
19 section 626.556, subdivision 3; or 626.557, subdivision 3,  
20 pursuant to section 245C.15, subdivision 4, paragraph (b),  
21 clause (1), the individual may request a fair hearing under  
22 section 256.045, unless the disqualification is deemed  
23 conclusive under section 245C.29.

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

29 (c) If the individual was disqualified based on a  
30 conviction or admission to any crimes listed in section 245C.15,  
31 subdivisions 1 to 4, the reconsideration decision under section  
32 245C.22 is the final agency determination for purposes of appeal  
33 by the disqualified individual and is not subject to a hearing  
34 under section 256.045. If the individual was disqualified based  
35 on a judicial determination, that determination is treated the  
36 same as a conviction for purposes of appeal.

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

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

14 Sec. 34. Minnesota Statutes 2004, section 245C.28,  
15 subdivision 3, is amended to read:

16 Subd. 3. [EMPLOYEES OF PUBLIC EMPLOYER.] (a) If the  
17 commissioner does not set aside the disqualification of an  
18 individual who is an employee of an employer, as defined in  
19 section 179A.03, subdivision 15, the individual may request a  
20 contested case hearing under chapter 14. The request for a  
21 contested case hearing must be made in writing and must be  
22 postmarked and ~~mailed~~ sent within 30 calendar days after the  
23 employee receives notice that the disqualification has not been  
24 set aside. If the individual was disqualified based on a  
25 conviction or admission to any crimes listed in section 245C.15,  
26 the scope of the contested case hearing shall be limited solely  
27 to whether the individual poses a risk of harm pursuant to  
28 section 245C.22.

29 (b) If the commissioner does not set aside ~~or rescind~~ a  
30 disqualification that is based on a maltreatment determination,  
31 the scope of the contested case hearing must include the  
32 maltreatment determination and the disqualification. In such  
33 cases, a fair hearing must not be conducted under section  
34 256.045.

35 (c) Rules adopted under this chapter may not preclude an  
36 employee in a contested case hearing for a disqualification from



1 submitting evidence concerning information gathered under this  
2 chapter.

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

10 (e) In determining whether the disqualification should be  
11 set aside, the administrative law judge shall consider all of  
12 the characteristics that cause the individual to be  
13 ~~disqualified,--including-those-characteristics-that-were-not~~  
14 ~~subject-to-review-under-paragraph-(b),~~ in order to determine  
15 whether the individual poses a risk of harm. The administrative  
16 law judge's recommendation and the commissioner's order to set  
17 aside a disqualification that is the subject of the hearing  
18 constitutes a determination that the individual does not pose a  
19 risk of harm and that the individual may provide direct contact  
20 services in the individual program specified in the set aside.

21 Sec. 35. Minnesota Statutes 2004, section 626.556,  
22 subdivision 10i, is amended to read:

23 Subd. 10i. [ADMINISTRATIVE RECONSIDERATION OF FINAL  
24 DETERMINATION OF MALTREATMENT AND DISQUALIFICATION BASED ON  
25 SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.] (a) Except as  
26 provided under paragraph (e), an individual or facility that the  
27 commissioner of human services, a local social service agency,  
28 or the commissioner of education determines has maltreated a  
29 child, an interested person acting on behalf of the child,  
30 regardless of the determination, who contests the investigating  
31 agency's final determination regarding maltreatment, may request  
32 the investigating agency to reconsider its final determination  
33 regarding maltreatment. The request for reconsideration must be  
34 submitted in writing to the investigating agency within 15  
35 calendar days after receipt of notice of the final determination  
36 regarding maltreatment or, if the request is made by an

1 245C.27, the individual may request a fair hearing under section  
2 256.045. If an individual requests a fair hearing on the  
3 maltreatment determination and the disqualification, the scope  
4 of the fair hearing shall include both the maltreatment  
5 determination and the disqualification.

6 (f) Effective January 1, 2002, if a maltreatment  
7 determination or a disqualification based on serious or  
8 recurring maltreatment is the basis for a denial of a license  
9 under section 245A.05 or a licensing sanction under section  
10 245A.07, the license holder has the right to a contested case  
11 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to  
12 1400.8612. As provided for under section 245A.08, subdivision  
13 2a, the scope of the contested case hearing shall include the  
14 maltreatment determination, disqualification, and licensing  
15 sanction or denial of a license. In such cases, a fair hearing  
16 regarding the maltreatment determination shall not be conducted  
17 under paragraph (b). When a fine is based on a determination  
18 that the license holder is responsible for maltreatment and the  
19 fine is issued at the same time as the maltreatment  
20 determination, if the license holder appeals the maltreatment  
21 and fine, reconsideration of the maltreatment determination  
22 shall not be conducted under this section. If the disqualified  
23 subject is an individual other than the license holder and upon  
24 whom a background study must be conducted under chapter 245C,  
25 the hearings of all parties may be consolidated into a single  
26 contested case hearing upon consent of all parties and the  
27 administrative law judge.

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

34 Sec. 36. Minnesota Statutes 2004, section 626.557,  
35 subdivision 9d, is amended to read:

36 Subd. 9d. [ADMINISTRATIVE RECONSIDERATION OF FINAL

1 DISPOSITION OF MALTREATMENT AND DISQUALIFICATION BASED ON  
2 SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.] (a) Except as  
3 provided under paragraph (e), any individual or facility which a  
4 lead agency determines has maltreated a vulnerable adult, or the  
5 vulnerable adult or an interested person acting on behalf of the  
6 vulnerable adult, regardless of the lead agency's determination,  
7 who contests the lead agency's final disposition of an  
8 allegation of maltreatment, may request the lead agency to  
9 reconsider its final disposition. The request for  
10 reconsideration must be submitted in writing to the lead agency  
11 within 15 calendar days after receipt of notice of final  
12 disposition or, if the request is made by an interested person  
13 who is not entitled to notice, within 15 days after receipt of  
14 the notice by the vulnerable adult or the vulnerable adult's  
15 legal guardian. If mailed, the request for reconsideration must  
16 be postmarked and sent to the lead agency within 15 calendar  
17 days of the individual's or facility's receipt of the final  
18 disposition. If the request for reconsideration is made by  
19 personal service, it must be received by the lead agency within  
20 15 calendar days of the individual's or facility's receipt of  
21 the final disposition. An individual who was determined to have  
22 maltreated a vulnerable adult under this section and who was  
23 disqualified on the basis of serious or recurring maltreatment  
24 under sections 245C.14 and 245C.15, may request reconsideration  
25 of the maltreatment determination and the disqualification. The  
26 request for reconsideration of the maltreatment determination  
27 and the disqualification must be submitted in writing within 30  
28 calendar days of the individual's receipt of the notice of  
29 disqualification under sections 245C.16 and 245C.17. If mailed,  
30 the request for reconsideration of the maltreatment  
31 determination and the disqualification must be postmarked and  
32 sent to the lead agency within 30 calendar days of the  
33 individual's receipt of the notice of disqualification. If the  
34 request for reconsideration is made by personal service, it must  
35 be received by the lead agency within 30 calendar days after the  
36 individual's receipt of the notice of disqualification.

1 (b) Except as provided under paragraphs (e) and (f), if the  
2 lead agency denies the request or fails to act upon the request  
3 within 15 ~~calendar~~ working days after receiving the request for  
4 reconsideration, the person or facility entitled to a fair  
5 hearing under section 256.045, may submit to the commissioner of  
6 human services a written request for a hearing under that  
7 statute. The vulnerable adult, or an interested person acting  
8 on behalf of the vulnerable adult, may request a review by the  
9 Vulnerable Adult Maltreatment Review Panel under section 256.021  
10 if the lead agency denies the request or fails to act upon the  
11 request, or if the vulnerable adult or interested person  
12 contests a reconsidered disposition. The lead agency shall  
13 notify persons who request reconsideration of their rights under  
14 this paragraph. The request must be submitted in writing to the  
15 review panel and a copy sent to the lead agency within 30  
16 calendar days of receipt of notice of a denial of a request for  
17 reconsideration or of a reconsidered disposition. The request  
18 must specifically identify the aspects of the agency  
19 determination with which the person is dissatisfied.

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

23 (d) For purposes of this subdivision, "interested person  
24 acting on behalf of the vulnerable adult" means a person  
25 designated in writing by the vulnerable adult to act on behalf  
26 of the vulnerable adult, or a legal guardian or conservator or  
27 other legal representative, a proxy or health care agent  
28 appointed under chapter 145B or 145C, or an individual who is  
29 related to the vulnerable adult, as defined in section 245A.02,  
30 subdivision 13.

31 (e) If an individual was disqualified under sections  
32 245C.14 and 245C.15, on the basis of a determination of  
33 maltreatment, which was serious or recurring, and the individual  
34 has requested reconsideration of the maltreatment determination  
35 under paragraph (a) and reconsideration of the disqualification  
36 under sections 245C.21 to 245C.27, reconsideration of the

1 maltreatment determination and requested reconsideration of the  
2 disqualification shall be consolidated into a single  
3 reconsideration. If reconsideration of the maltreatment  
4 determination is denied or if the disqualification is not set  
5 aside under sections 245C.21 to 245C.27, the individual may  
6 request a fair hearing under section 256.045. If an individual  
7 requests a fair hearing on the maltreatment determination and  
8 the disqualification, the scope of the fair hearing shall  
9 include both the maltreatment determination and the  
10 disqualification.

11 (f) If a maltreatment determination or a disqualification  
12 based on serious or recurring maltreatment is the basis for a  
13 denial of a license under section 245A.05 or a licensing  
14 sanction under section 245A.07, the license holder has the right  
15 to a contested case hearing under chapter 14 and Minnesota  
16 Rules, parts 1400.8505 to 1400.8612. As provided for under  
17 section 245A.08, the scope of the contested case hearing shall  
18 include the maltreatment determination, disqualification, and  
19 licensing sanction or denial of a license. In such cases, a  
20 fair hearing shall not be conducted under paragraph (b). When a  
21 fine is based on a determination that the license holder is  
22 responsible for maltreatment and the fine is issued at the same  
23 time as the maltreatment determination, if the license holder  
24 appeals the maltreatment and fine, reconsideration of the  
25 maltreatment determination shall not be conducted under this  
26 section. If the disqualified subject is an individual other  
27 than the license holder and upon whom a background study must be  
28 conducted under chapter 245C, the hearings of all parties may be  
29 consolidated into a single contested case hearing upon consent  
30 of all parties and the administrative law judge.

31 (g) Until August 1, 2002, an individual or facility that  
32 was determined by the commissioner of human services or the  
33 commissioner of health to be responsible for neglect under  
34 section 626.5572, subdivision 17, after October 1, 1995, and  
35 before August 1, 2001, that believes that the finding of neglect  
36 does not meet an amended definition of neglect may request a

1 reconsideration of the determination of neglect. The  
2 commissioner of human services or the commissioner of health  
3 shall mail a notice to the last known address of individuals who  
4 are eligible to seek this reconsideration. The request for  
5 reconsideration must state how the established findings no  
6 longer meet the elements of the definition of neglect. The  
7 commissioner shall review the request for reconsideration and  
8 make a determination within 15 calendar days. The  
9 commissioner's decision on this reconsideration is the final  
10 agency action.

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

17 (2) For purposes of any background studies under chapter  
18 245C, when a determination of substantiated maltreatment has  
19 been changed as a result of a reconsideration under this  
20 paragraph, any prior disqualification of the individual under  
21 chapter 245C that was based on this determination of  
22 maltreatment shall be rescinded, and for future background  
23 studies under chapter 245C the commissioner must not use the  
24 previous determination of substantiated maltreatment as a basis  
25 for disqualification or as a basis for referring the  
26 individual's maltreatment history to a health-related licensing  
27 board under section 245C.31.

1 Senator ..... moves to amend S.F. No. 1722 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 13.46,  
4 subdivision 4, is amended to read:

5 Subd. 4. [LICENSING DATA.] (a) As used in this subdivision:

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

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

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

18 (b) (1) Except as provided in paragraph (c), the following  
19 data on current and former licensees are public: name, address,  
20 telephone number of licensees, date of receipt of a completed  
21 application, dates of licensure, licensed capacity, type of  
22 client preferred, variances granted, type of dwelling, name and  
23 relationship of other family members, previous license history,  
24 class of license, and the existence and status of complaints.  
25 When a correction order or fine has been issued, a license is  
26 suspended, immediately suspended, revoked, denied, or made  
27 conditional, or a complaint is resolved, the following data on  
28 current and former licensees are public: the substance and  
29 investigative findings of the complaint, licensing violation, or  
30 substantiated maltreatment; the record of informal resolution of  
31 a licensing violation; orders of hearing; findings of fact;  
32 conclusions of law; specifications of the final correction  
33 order, fine, suspension, immediate suspension, revocation,  
34 denial, or conditional license contained in the record of  
35 licensing action; and the status of any appeal of these  
36 actions. When an individual licensee is a substantiated

1 perpetrator of maltreatment, and the substantiated maltreatment  
2 is a reason for the licensing action, the identity of the  
3 licensee as a perpetrator is public data. For purposes of this  
4 clause, a person is a substantiated perpetrator if the  
5 maltreatment determination has been upheld under section  
6 626.556, subdivision 10i, 626.557, subdivision 9d, or 256.045,  
7 or an individual or facility has not timely exercised appeal  
8 rights under these sections.

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

16 (3) For applicants who are denied a license, the following  
17 data are public: the name of the applicant, the city and county  
18 in which the applicant was seeking licensure, the dates of the  
19 commissioner's receipt of the initial application and completed  
20 application, the type of license sought, the date of denial of  
21 the application, the nature of the basis for the denial, and the  
22 status of any appeal of the denial.

23 (4) The following data on persons subject to  
24 disqualification under section 245C.14 in connection with a  
25 license to provide family day care for children, child care  
26 center services, foster care for children in the provider's  
27 home, or foster care or day care services for adults in the  
28 provider's home, are public: the nature of any disqualification  
29 set aside under section 245C.22, subdivisions 2 and 4, and the  
30 reasons for setting aside the disqualification; and the reasons  
31 for granting any variance under section 245A.04, subdivision 9.

32 (5) When maltreatment is substantiated under section  
33 626.556 or 626.557 and the victim and the substantiated  
34 perpetrator are affiliated with a program licensed under chapter  
35 245A, the commissioner of human services, local social services  
36 agency, or county welfare agency may inform the license holder



1 where the maltreatment occurred of the identity of the  
2 substantiated perpetrator and the victim.

3 (c) The following are private data on individuals under  
4 section 13.02, subdivision 12, or nonpublic data under section  
5 13.02, subdivision 9: personal and personal financial data on  
6 family day care program and family foster care program  
7 applicants and licensees and their family members who provide  
8 services under the license.

9 (d) The following are private data on individuals: the  
10 identity of persons who have made reports concerning licensees  
11 or applicants that appear in inactive investigative data, and  
12 the records of clients or employees of the licensee or applicant  
13 for licensure whose records are received by the licensing agency  
14 for purposes of review or in anticipation of a contested  
15 matter. The names of reporters under sections 626.556 and  
16 626.557 may be disclosed only as provided in section 626.556,  
17 subdivision 11, or 626.557, subdivision 12b.

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

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

27 (g) Data that are not public data collected, maintained,  
28 used, or disseminated under this subdivision that relate to or  
29 are derived from a report as defined in section 626.556,  
30 subdivision 2, or 626.5572, subdivision 18, are subject to the  
31 destruction provisions of sections 626.556, subdivision 11c, and  
32 626.557, subdivision 12b.

33 (h) Upon request, not public data collected, maintained,  
34 used, or disseminated under this subdivision that relate to or  
35 are derived from a report of substantiated maltreatment as  
36 defined in section 626.556 or 626.557 may be exchanged with the

1 Department of Health for purposes of completing background  
2 studies pursuant to section 144.057 and with the Department of  
3 Corrections for purposes of completing background studies  
4 pursuant to section 241.021.

5 (i) Data on individuals collected according to licensing  
6 activities under chapters 245A and 245C, and data on individuals  
7 collected by the commissioner of human services according to  
8 maltreatment investigations under sections 626.556 and 626.557,  
9 may be shared with the Department of Human Rights, the  
10 Department of Health, the Department of Corrections, the  
11 Ombudsman for Mental Health and Retardation, and the  
12 individual's professional regulatory board when there is reason  
13 to believe that laws or standards under the jurisdiction of  
14 those agencies may have been violated.

15 (j) In addition to the notice of determinations required  
16 under section 626.556, subdivision 10f, if the commissioner or  
17 the local social services agency has determined that an  
18 individual is a substantiated perpetrator of maltreatment of a  
19 child based on sexual abuse, as defined in section 626.556,  
20 subdivision 2, and the commissioner or local social services  
21 agency knows that the individual is a person responsible for a  
22 child's care in another facility, the commissioner or local  
23 social services agency shall notify the head of that facility of  
24 this determination. The notification must include an  
25 explanation of the individual's available appeal rights and the  
26 status of any appeal. If a notice is given under this  
27 paragraph, the government entity making the notification shall  
28 provide a copy of the notice to the individual who is the  
29 subject of the notice.

30 (k) All not public data collected, maintained, used, or  
31 disseminated under this subdivision and subdivision 3 may be  
32 exchanged between the Department of Human Services, Licensing  
33 Division, and the Department of Corrections for purposes of  
34 regulating services for which the Department of Human Services  
35 and the Department of Corrections have regulatory authority.

36 Sec. 2. Minnesota Statutes 2004, section 243.166,

1 subdivision 7, is amended to read:

2 Subd. 7. [USE OF ~~INFORMATION~~ DATA.] Except as otherwise  
3 provided in subdivision 7a or sections 244.052 and 299C.093, the  
4 ~~information data~~ data provided under this section is private data on  
5 individuals under section 13.02, subdivision 12. The  
6 ~~information data~~ data may be used only for law enforcement and  
7 corrections purposes. State-operated services, as defined in  
8 section 246.014, is also authorized to have access to the data  
9 for the purposes described in section 246.13, subdivision 2,  
10 paragraph (c).

11 Sec. 3. Minnesota Statutes 2004, section 245A.02,  
12 subdivision 17, is amended to read:

13 Subd. 17. [SCHOOL AGE CHILD CARE PROGRAM.] "School age  
14 child care program" means a program licensed or required to be  
15 licensed as a child care center, serving more than ten children  
16 with the primary purpose of providing child care for school age  
17 children. ~~School-age-child-care-program-does-not-include~~  
18 ~~programs-such-as-scouting,-boys-clubs,-girls-clubs,-nor-sports~~  
19 ~~or-art-programs-~~

20 Sec. 4. Minnesota Statutes 2004, section 245A.03,  
21 subdivision 2, is amended to read:

22 Subd. 2. [EXCLUSION FROM LICENSURE.] (a) This chapter does  
23 not apply to:

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

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

31 (3) residential or nonresidential programs that are  
32 provided to adults who do not abuse chemicals or who do not have  
33 a chemical dependency, a mental illness, mental retardation or a  
34 related condition, a functional impairment, or a physical  
35 handicap;

36 (4) sheltered workshops or work activity programs that are

1 certified by the commissioner of economic security;

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

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

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

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

16 (9) homes providing programs for persons placed there by a  
17 licensed agency for legal adoption, unless the adoption is not  
18 completed within two years;

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

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

24 (12) programs operated by a school as defined in section  
25 120A.22, subdivision 4, whose primary purpose is to provide  
26 child care to school-age children;

27 (13) Head Start nonresidential programs which operate for  
28 less than ~~31~~ 45 days in each calendar year;

29 (14) noncertified boarding care homes unless they provide  
30 services for five or more persons whose primary diagnosis is  
31 mental illness or mental retardation;

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

36 (16) residential programs for persons with mental illness,

1 that are located in hospitals;

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

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

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

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

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

19 (22) respite care services provided as a home and  
20 community-based service to a person with mental retardation or a  
21 related condition, in the person's primary residence;

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

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

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

31 (26) consumer-directed community support service funded  
32 under the Medicaid waiver for persons with mental retardation  
33 and related conditions when the individual who provided the  
34 service is:

35 (i) the same individual who is the direct payee of these  
36 specific waiver funds or paid by a fiscal agent, fiscal

1 intermediary, or employer of record; and

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

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

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

14 Sec. 5. Minnesota Statutes 2004, section 245A.03,  
15 subdivision 3, is amended to read:

16 Subd. 3. [UNLICENSED PROGRAMS.] (a) It is a misdemeanor  
17 for an individual, corporation, partnership, voluntary  
18 association, other organization, or a controlling individual to  
19 provide a residential or nonresidential program without a  
20 license and in willful disregard of this chapter unless the  
21 program is excluded from licensure under subdivision 2.

22 (b) The commissioner may ask the appropriate county  
23 attorney or the attorney general to begin proceedings to secure  
24 a court order against the continued operation of the program, if  
25 an individual, corporation, partnership, voluntary association,  
26 other organization, or controlling individual has:

27 (1) failed to apply for a license after receiving notice  
28 that a license is required or continues to operate without a  
29 license after receiving notice that a license is required;

30 (2) continued to operate without a license after the  
31 license has been revoked or suspended under section 245A.07, and  
32 the commissioner has issued a final order affirming the  
33 revocation or suspension, or the license holder did not timely  
34 appeal the sanction; or

35 (3) continued to operate without a license after the  
36 license has been temporarily suspended under section 245A.07.

1 The county attorney and the attorney general have a duty to  
2 cooperate with the commissioner.

3 Sec. 6. Minnesota Statutes 2004, section 245A.04,  
4 subdivision 7, is amended to read:

5 Subd. 7. [ISSUANCE OF A LICENSE; EXTENSION OF A LICENSE.]

6 (a) If the commissioner determines that the program complies  
7 with all applicable rules and laws, the commissioner shall issue  
8 a license. At minimum, the license shall state:

9 (1) the name of the license holder;

10 (2) the address of the program;

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

12 (4) the type of license;

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

15 (6) any special conditions of licensure.

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

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

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

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

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

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

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

1 (1) been disqualified and the disqualification was not set  
2 aside;

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

4 (3) had a license revoked within the past five years.

5 (f) The commissioner shall not issue a license if an  
6 individual living in the household where the licensed services  
7 will be provided as specified under section 245C.03, subdivision  
8 1, has been disqualified and the disqualification has not been  
9 set aside.

10 For purposes of reimbursement for meals only, under the  
11 Child and Adult Care Food Program, Code of Federal Regulations,  
12 title 7, subtitle B, chapter II, subchapter A, part 226,  
13 relocation within the same county by a licensed family day care  
14 provider, shall be considered an extension of the license for a  
15 period of no more than 30 calendar days or until the new license  
16 is issued, whichever occurs first, provided the county agency  
17 has determined the family day care provider meets licensure  
18 requirements at the new location.

19 Unless otherwise specified by statute, all licenses expire  
20 at 12:01 a.m. on the day after the expiration date stated on the  
21 license. A license holder must apply for and be granted a new  
22 license to operate the program or the program must not be  
23 operated after the expiration date.

24 Sec. 7. Minnesota Statutes 2004, section 245A.04,  
25 subdivision 13, is amended to read:

26 Subd. 13. [~~RESIDENTIAL-PROGRAMS HANDLING RESIDENT FUNDS~~  
27 ~~AND PROPERTY; ADDITIONAL REQUIREMENTS.] (a) A license holder~~  
28 ~~must ensure that residents~~ persons served by the program retain  
29 the use and availability of personal funds or property unless  
30 restrictions are justified in the ~~resident's~~ person's individual  
31 plan. This subdivision does not apply to programs governed by  
32 the provisions in section 245B.07, subdivision 10.

33 (b) The license holder must ensure separation of ~~resident~~  
34 funds of persons served by the program from funds of the license  
35 holder, the ~~residential~~ program, or program staff.

36 (c) Whenever the license holder assists a ~~resident~~ person



1 served by the program with the safekeeping of funds or other  
2 property, the license holder must:

3 (1) immediately document receipt and disbursement of the  
4 resident's person's funds or other property at the time of  
5 receipt or disbursement, including the person's signature ~~of the~~  
6 resident, or the signature of the conservator, or payee; and

7 ~~(2) provide a statement, at least quarterly, itemizing~~  
8 ~~receipts and disbursements of resident funds or other property,~~  
9 and

10 ~~(3)~~ return to the resident person upon the  
11 resident's person's request, funds and property in the license  
12 holder's possession subject to restrictions in the resident's  
13 person's treatment plan, as soon as possible, but no later than  
14 three working days after the date of request.

15 (d) License holders and program staff must not:

16 (1) borrow money from a resident person served by the  
17 program;

18 (2) purchase personal items from a resident person served  
19 by the program;

20 (3) sell merchandise or personal services to a resident  
21 person served by the program;

22 (4) require a resident person served by the program to  
23 purchase items for which the license holder is eligible for  
24 reimbursement; or

25 (5) use resident funds of persons served by the program to  
26 purchase items for which the facility is already receiving  
27 public or private payments.

28 Sec. 8. Minnesota Statutes 2004, section 245A.07,  
29 subdivision 1, is amended to read:

30 Subdivision 1. [SANCTIONS AVAILABLE; APPEALS; TEMPORARY  
31 PROVISIONAL LICENSE.] (a) In addition to making a license  
32 conditional under section 245A.06, the commissioner may propose  
33 to suspend or revoke the license, impose a fine, or secure an  
34 injunction against the continuing operation of the program of a  
35 license holder who does not comply with applicable law or rule.  
36 When applying sanctions authorized under this section, the

1 commissioner shall consider the nature, chronicity, or severity  
2 of the violation of law or rule and the effect of the violation  
3 on the health, safety, or rights of persons served by the  
4 program.

5 (b) If a license holder appeals the suspension or  
6 revocation of a license and the license holder continues to  
7 operate the program pending a final order on the appeal, and the  
8 license expires during this time period, the commissioner shall  
9 issue the license holder a temporary provisional license. The  
10 temporary provisional license is effective on the date issued  
11 and expires on the date that a final order is issued. Unless  
12 otherwise specified by the commissioner, variances in effect on  
13 the date of the license sanction under appeal continue under the  
14 temporary provisional license. If a license holder fails to  
15 comply with applicable law or rule while operating under a  
16 temporary provisional license, the commissioner may impose  
17 sanctions under this section and section 245A.06, and may  
18 terminate any prior variance. If the license holder prevails on  
19 the appeal and the effective period of the previous license has  
20 expired, a new license shall be issued to the license holder  
21 upon payment of any fee required under section 245A.10. The  
22 effective date of the new license shall be retroactive to the  
23 date the license would have shown had no sanction been  
24 initiated. The expiration date shall be the expiration date of  
25 that license had no license sanction been initiated.

26 (c) If a license holder is under investigation and the  
27 license is due to expire before completion of the investigation,  
28 the program shall be issued a new license upon completion of the  
29 reapplication requirements. Upon completion of the  
30 investigation, a licensing sanction may be imposed against the  
31 new license under this section, section 245A.06, or 245A.08.

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

1           Sec. 9. Minnesota Statutes 2004, section 245A.07,  
2 subdivision 3, is amended to read:

3           Subd. 3. [LICENSE SUSPENSION, REVOCATION, OR FINE.] (a)  
4 The commissioner may suspend or revoke a license, or impose a  
5 fine if a license holder fails to comply fully with applicable  
6 laws or rules, if a license holder or an individual living in  
7 the household where the licensed services are provided has a  
8 disqualification which has not been set aside under section  
9 245C.22, or if a license holder knowingly withholds relevant  
10 information from or gives false or misleading information to the  
11 commissioner in connection with an application for a license, in  
12 connection with the background study status of an individual, or  
13 during an investigation. A license holder who has had a license  
14 suspended, revoked, or has been ordered to pay a fine must be  
15 given notice of the action by certified mail or personal  
16 service. If mailed, the notice must be mailed to the address  
17 shown on the application or the last known address of the  
18 license holder. The notice must state the reasons the license  
19 was suspended, revoked, or a fine was ordered.

20           ~~(a)~~ (b) If the license was suspended or revoked, the notice  
21 must inform the license holder of the right to a contested case  
22 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to  
23 1400.8612. The license holder may appeal an order suspending or  
24 revoking a license. The appeal of an order suspending or  
25 revoking a license must be made in writing by certified mail or  
26 personal service. If mailed, the appeal must be postmarked and  
27 sent to the commissioner within ten calendar days after the  
28 license holder receives notice that the license has been  
29 suspended or revoked. If a request is made by personal service,  
30 it must be received by the commissioner within ten calendar days  
31 after the license holder received the order. Except as provided  
32 in subdivision 2a, paragraph (c), a timely appeal of an order  
33 suspending or revoking a license shall stay the suspension or  
34 revocation until the commissioner issues a final order.

35           ~~(b)~~ (c) (1) If the license holder was ordered to pay a fine,  
36 the notice must inform the license holder of the responsibility

1 for payment of fines and the right to a contested case hearing  
2 under chapter 14 and Minnesota Rules, parts 1400.8505 to  
3 1400.8612. The appeal of an order to pay a fine must be made in  
4 writing by certified mail or personal service. If mailed, the  
5 appeal must be postmarked and sent to the commissioner within  
6 ten calendar days after the license holder receives notice that  
7 the fine has been ordered. If a request is made by personal  
8 service, it must be received by the commissioner within ten  
9 calendar days after the license holder received the order.

10 (2) The license holder shall pay the fines assessed on or  
11 before the payment date specified. If the license holder fails  
12 to fully comply with the order, the commissioner may issue a  
13 second fine or suspend the license until the license holder  
14 complies. If the license holder receives state funds, the  
15 state, county, or municipal agencies or departments responsible  
16 for administering the funds shall withhold payments and recover  
17 any payments made while the license is suspended for failure to  
18 pay a fine. A timely appeal shall stay payment of the fine  
19 until the commissioner issues a final order.

20 (3) A license holder shall promptly notify the commissioner  
21 of human services, in writing, when a violation specified in the  
22 order to forfeit a fine is corrected. If upon reinspection the  
23 commissioner determines that a violation has not been corrected  
24 as indicated by the order to forfeit a fine, the commissioner  
25 may issue a second fine. The commissioner shall notify the  
26 license holder by certified mail or personal service that a  
27 second fine has been assessed. The license holder may appeal  
28 the second fine as provided under this subdivision.

29 (4) Fines shall be assessed as follows: the license holder  
30 shall forfeit \$1,000 for each determination of maltreatment of a  
31 child under section 626.556 or the maltreatment of a vulnerable  
32 adult under section 626.557; the license holder shall forfeit  
33 \$200 for each occurrence of a violation of law or rule governing  
34 matters of health, safety, or supervision, including but not  
35 limited to the provision of adequate staff-to-child or adult  
36 ratios, and failure to submit a background study; and the

1 license holder shall forfeit \$100 for each occurrence of a  
2 violation of law or rule other than those subject to a \$1,000 or  
3 \$200 fine above. For purposes of this section, "occurrence"  
4 means each violation identified in the commissioner's fine order.

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

11 Sec. 10. Minnesota Statutes 2004, section 245A.08,  
12 subdivision 2a, is amended to read:

13 Subd. 2a. [CONSOLIDATED CONTESTED CASE HEARINGS FOR  
14 SANCTIONS BASED ON MALTREATMENT DETERMINATIONS AND  
15 DISQUALIFICATIONS.] (a) When a denial of a license under section  
16 245A.05 or a licensing sanction under section 245A.07,  
17 subdivision 3, is based on a disqualification for which  
18 reconsideration was requested and which was not set aside under  
19 section 245C.22, the scope of the contested case hearing shall  
20 include the disqualification and the licensing sanction or  
21 denial of a license. When the licensing sanction or denial of a  
22 license is based on a determination of maltreatment under  
23 section 626.556 or 626.557, or a disqualification for serious or  
24 recurring maltreatment which was not set aside, the scope of the  
25 contested case hearing shall include the maltreatment  
26 determination, disqualification, and the licensing sanction or  
27 denial of a license. In such cases, a fair hearing under  
28 section 256.045 shall not be conducted as provided for in  
29 sections 626.556, subdivision 10i, and 626.557, subdivision 9d.  
30 When a fine is based on a determination that the license holder  
31 is responsible for maltreatment and the fine is issued at the  
32 same time as the maltreatment determination, if the license  
33 holder appeals the maltreatment and fine, the scope of the  
34 contested case hearing shall include the maltreatment  
35 determination and fine and reconsideration of the maltreatment  
36 determination shall not be conducted as provided for in sections

1 626.556, subdivision 10i, and 626.557, subdivision 9d.

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

7 (c) The commissioner's final order under subdivision 5 is  
8 the final agency action on the issue of maltreatment and  
9 disqualification, including for purposes of subsequent  
10 background studies under chapter 245C and is the only  
11 administrative appeal of the final agency determination,  
12 specifically, including a challenge to the accuracy and  
13 completeness of data under section 13.04.

14 (d) When consolidated hearings under this subdivision  
15 involve a licensing sanction based on a previous maltreatment  
16 determination for which the commissioner has issued a final  
17 order in an appeal of that determination under section 256.045,  
18 or the individual failed to exercise the right to appeal the  
19 previous maltreatment determination under section 626.556,  
20 subdivision 10i, or 626.557, subdivision 9d, the commissioner's  
21 order is conclusive on the issue of maltreatment. In such  
22 cases, the scope of the administrative law judge's review shall  
23 be limited to the disqualification and the licensing sanction or  
24 denial of a license. In the case of a denial of a license or a  
25 licensing sanction issued to a facility based on a maltreatment  
26 determination regarding an individual who is not the license  
27 holder or a household member, the scope of the administrative  
28 law judge's review includes the maltreatment determination.

29 (e) If a maltreatment determination or disqualification,  
30 which was not set aside under section 245C.22, is the basis for  
31 a denial of a license under section 245A.05 or a licensing  
32 sanction under section 245A.07, and the disqualified subject is  
33 an individual other than the license holder and upon whom a  
34 background study must be conducted under section 245C.03, the  
35 hearings of all parties may be consolidated into a single  
36 contested case hearing upon consent of all parties and the

1 administrative law judge.

2 (f) Notwithstanding section 245C.27, subdivision 1,  
3 paragraph (c), when a denial of a license under section 245A.05  
4 or a licensing sanction under section 245A.07 is based on a  
5 disqualification for which reconsideration was requested and was  
6 not set aside under section 245C.22, and the disqualification  
7 was based on a conviction or an admission to any crimes listed  
8 in section 245C.15, the scope of the administrative law judge's  
9 review shall include the denial or sanction and a determination  
10 whether the disqualification should be set aside. In  
11 determining whether the disqualification should be set aside,  
12 the administrative law judge shall consider the factors under  
13 section 245C.22, subdivision 4, to determine whether the  
14 individual poses a risk of harm to any person receiving services  
15 from the license holder.

16 (g) Notwithstanding section 245C.30, subdivision 5, when a  
17 licensing sanction under section 245A.07 is based on the  
18 termination of a variance under section 245C.30, subdivision 4,  
19 the scope of the administrative law judge's review shall include  
20 the sanction and a determination whether the disqualification  
21 should be set aside. In determining whether the  
22 disqualification should be set aside, the administrative law  
23 judge shall consider the factors under section 245C.22,  
24 subdivision 4, to determine whether the individual poses a risk  
25 of harm to any person receiving services from the license holder.

26 Sec. 11. Minnesota Statutes 2004, section 245A.08,  
27 subdivision 5, is amended to read:

28 Subd. 5. [NOTICE OF THE COMMISSIONER'S FINAL ORDER.] After  
29 considering the findings of fact, conclusions, and  
30 recommendations of the administrative law judge, the  
31 commissioner shall issue a final order. The commissioner shall  
32 consider, but shall not be bound by, the recommendations of the  
33 administrative law judge. The appellant must be notified of the  
34 commissioner's final order as required by chapter 14 and  
35 Minnesota Rules, parts 1400.8505 to 1400.8612. The notice must  
36 also contain information about the appellant's rights under

1 chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.  
 2 The institution of proceedings for judicial review of the  
 3 commissioner's final order shall not stay the enforcement of the  
 4 final order except as provided in section 14.65.

5 Subd. 5a. [EFFECT OF FINAL ORDER ON GRANTING A SUBSEQUENT  
 6 LICENSE.] (a) A license holder and each controlling individual  
 7 of a license holder whose license has been revoked because of  
 8 noncompliance with applicable law or rule must not be granted a  
 9 license for five years following the  
 10 revocation. Notwithstanding the five-year restriction, when a  
 11 license is revoked because a person, other than the license  
 12 holder, resides in the home where services are provided and that  
 13 person has a disqualification that is not set aside and no  
 14 variance has been granted, the former license holder may reapply  
 15 for a license when:

16 (1) the person with a disqualification, who is not a minor  
 17 child, is no longer residing in the home and is prohibited from  
 18 residing in or returning to the home; or

19 (2) a minor child, who was the disqualified person who was  
 20 the subject of the license revocation, becomes an adult and  
 21 permanently moves from the former license holder's home or five  
 22 years have passed since the disqualification, whichever is less.

23 (b) An applicant whose application was denied must not be  
 24 granted a license for two years following a denial, unless the  
 25 applicant's subsequent application contains new information  
 26 which constitutes a substantial change in the conditions that  
 27 caused the previous denial.

28 Sec. 12. Minnesota Statutes 2004, section 245A.14, is  
 29 amended by adding a subdivision to read:

30 Subd. 12. [FIRST AID TRAINING REQUIREMENTS FOR STAFF IN  
 31 CHILD CARE CENTERS.] Notwithstanding Minnesota Rules, part  
 32 9503.0035, subpart 2, first aid training may be less than eight  
 33 hours and persons qualified to provide first aid training shall  
 34 include individuals approved as first aid instructors.

35 Sec. 13. Minnesota Statutes 2004, section 245A.14, is  
 36 amended by adding a subdivision to read:



1        Subd. 13. [CARDIOPULMONARY RESUSCITATION (CPR) TRAINING  
2 REQUIREMENT.] (a) When children are present in a child care  
3 center governed by Minnesota Rules, parts 9503.0005 to  
4 9503.0170, or in a family child care home governed by Minnesota  
5 Rules, parts 9502.0315 to 9502.0445, at least one staff person  
6 must be present in the center or home who as been trained in  
7 cardiopulmonary resuscitation (CPR) and in the treatment of  
8 obstructed airways. The CPR training must have been provided by  
9 an individual approved to provide CPR instruction, must be  
10 repeated at least once every three years, and must be documented  
11 in the staff person's records.

12        (b) Notwithstanding Minnesota Rules, part 9503.0035,  
13 subpart 3, item A, cardiopulmonary resuscitation training may be  
14 provided for less than four hours.

15        (c) Notwithstanding Minnesota Rules, part 9503.0035,  
16 subpart 3, item C, persons qualified to provide cardiopulmonary  
17 resuscitation training shall include individuals approved as  
18 cardiopulmonary resuscitation instructors.

19        [EFFECTIVE DATE.] This section is effective January 1, 2006.  
20        Sec. 14. Minnesota Statutes 2004, section 245A.144, is  
21 amended to read:

22        245A.144 [REDUCTION OF RISK OF SUDDEN INFANT DEATH SYNDROME  
23 AND SHAKEN BABY SYNDROME IN CHILD CARE AND CHILD FOSTER CARE  
24 PROGRAMS.]

25        (a) License holders must ensure document that before staff  
26 persons, caregivers, and helpers assist in the care of infants,  
27 they receive training on reducing the risk of sudden infant  
28 death syndrome and shaken baby syndrome. The training on  
29 reducing the risk of sudden infant death syndrome and shaken  
30 baby syndrome may be provided as:

31        (1) orientation training to child care center staff under  
32 Minnesota Rules, part 9503.0035, subpart 1, as and to child  
33 foster care providers, who care for infants, under Minnesota  
34 Rules, part 2960.3070, subpart 1;

35        (2) initial training to family and group family child care  
36 providers under Minnesota Rules, part 9502.0385, subpart 27-as;

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

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

7       (b) Training required under this section must be at least  
8 one hour in length and must be completed at least once every  
9 five years. At a minimum, the training must address the risk  
10 factors related to sudden infant death syndrome and shaken baby  
11 syndrome, means of reducing the risk of sudden infant death  
12 syndrome and shaken baby syndrome in child care, and license  
13 holder communication with parents regarding reducing the risk of  
14 sudden infant death syndrome and shaken baby syndrome.

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

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

21       **[EFFECTIVE DATE.]** This section is effective January 1, 2006.

22       Sec. 15. Minnesota Statutes 2004, section 245A.16,  
23 subdivision 4, is amended to read:

24       Subd. 4. **[ENFORCEMENT OF THE COMMISSIONER'S ORDERS.]** The  
25 county or private agency shall enforce the commissioner's orders  
26 under sections 245A.07, 245A.08, subdivision 5, and chapter  
27 245C, according to the instructions of the commissioner. The  
28 county attorney shall assist the county agency in the  
29 enforcement and defense of the commissioner's orders under  
30 sections 245A.07, 245A.08, and chapter 245C, according to the  
31 instructions of the commissioner, unless a conflict of interest  
32 exists between the county attorney and the commissioner. For  
33 purposes of this section, a conflict of interest means that the  
34 county attorney has a direct or shared financial interest with  
35 the license holder or has a personal relationship or family  
36 relationship with a party in the licensing action.

1           Sec. 16. Minnesota Statutes 2004, section 245A.18, is  
2 amended to read:

3           245A.18 [~~SEAT-BELT-USE-REQUIRED~~ CHILD PASSENGER RESTRAINT  
4 SYSTEMS; TRAINING REQUIREMENT.]

5           Subdivision 1. [SEAT BELT USE.] (a) When a nonresidential  
6 license holder provides or arranges for transportation for  
7 children served by the license holder, ~~children-four-years-old~~  
8 ~~and-older-must-be-restrained-by-a-properly-adjusted-and-fastened~~  
9 ~~seat-belt-and-children-under-age-four-must-be-properly-fastened~~  
10 ~~in-a-child-passenger-restraint-system-meeting-federal-motor~~  
11 ~~vehicle-safety-standards.--A-child-passenger-restraint-system-is~~  
12 ~~not-required-for-a-child-who,-in-the-judgment-of-a-licensed~~  
13 ~~physician,-cannot-be-safely-transported-in-a-child-passenger~~  
14 ~~restraint-system-because-of-a-medical-condition,-body-size,-or~~  
15 ~~physical-disability,-if-the-license-holder-possesses-a-written~~  
16 ~~statement-from-the-physician-that-satisfies-the-requirements-in~~  
17 ~~section-169.685,-subdivision-6,-paragraph-(b)-~~

18           ~~(b)-Paragraph-(a)-does-not-apply-to-transportation-of~~  
19 ~~children-in-a-school-bus-inspected-under-section-169.451-that~~  
20 ~~has-a-gross-vehicle-weight-rating-of-more-than-10,000-pounds,-is~~  
21 ~~designed-for-carrying-more-than-ten-persons,-and-was~~  
22 ~~manufactured-after-1977~~ the license holder must comply with all  
23 seat belt and child passenger restraint system requirements  
24 under section 169.685.

25           Subd. 2. [CHILD PASSENGER RESTRAINT SYSTEMS TRAINING  
26 REQUIREMENTS.] (a) Family and group family child care, child  
27 care centers, child foster care, and other programs licensed by  
28 the Department of Human Services that serve a child or children  
29 under nine years of age must document training that fulfills the  
30 requirements in this subdivision.

31           (b) Before a license holder, staff person, caregiver, or  
32 helper transports a child or children under nine years of age in  
33 a motor vehicle, the person transporting the child must  
34 satisfactorily complete training on the proper use and  
35 installation of child restraint systems in motor vehicles.  
36 Training completed under this section may be used to meet

1 initial or ongoing training under the following:

2 (1) Minnesota Rules, part 2960.3070, subparts 1 and 2;

3 (2) Minnesota Rules, part 9502.0385, subparts 2 and 3; and

4 (3) Minnesota Rules, part 9503.0035, subparts 1 and 4.

5 (c) Training required under this section must be at least

6 one hour in length, completed at orientation or initial

7 training, and repeated at least once every five years. At a

8 minimum, the training must address the proper use of child

9 restraint systems based on the child's size, weight, and age,

10 and the proper installation of a car seat or booster seat in the

11 motor vehicle used by the license holder to transport the child

12 or children.

13 (d) Training under paragraph (c) must be provided by

14 individuals who are certified and approved by the Department of

15 Public Safety, Office of Traffic Safety. License holders may

16 obtain a list of certified and approved trainers through the

17 Department of Public Safety Web site or by contacting the agency.

18 [EFFECTIVE DATE.] This section is effective January 1, 2006.

19 Sec. 17. Minnesota Statutes 2004, section 245B.02,

20 subdivision 10, is amended to read:

21 Subd. 10. [INCIDENT.] "Incident" means any of the

22 following:

23 (1) serious injury as determined by section 245.91,

24 subdivision 6;

25 (2) a consumer's death;

26 (3) any medical emergencies, unexpected serious illnesses,

27 or accidents that require physician treatment or

28 hospitalization;

29 (4) a consumer's unauthorized absence;

30 (5) any fires or other events that require the relocation

31 of services for more than 24 hours, or circumstances involving a

32 law enforcement agency or fire department related to the health,

33 safety, or supervision of a consumer;

34 (6) physical aggression by a consumer against another

35 consumer that causes physical pain, injury, or persistent

36 emotional distress, including, but not limited to, hitting,

1 slapping, kicking, scratching, pinching, biting, pushing, and  
2 spitting;

3 (7) any sexual activity between consumers involving force  
4 or coercion as defined under section 609.341, subdivisions 3 and  
5 14; or

6 (8) a report of child or vulnerable adult maltreatment  
7 under section 626.556 or 626.557.

8 Sec. 18. Minnesota Statutes 2004, section 245B.055,  
9 subdivision 7, is amended to read:

10 Subd. 7. [DETERMINING NUMBER OF DIRECT SERVICE STAFF  
11 REQUIRED.] The minimum number of direct service staff members  
12 required at any one time to meet the combined staff ratio  
13 requirements of the persons present at that time can be  
14 determined by following the steps in clauses (1) through (4):

15 (1) assign each person in attendance the three-digit  
16 decimal below that corresponds to the staff ratio requirement  
17 assigned to that person. A staff ratio requirement of one to  
18 four equals 0.250. A staff ratio requirement of one to eight  
19 equals 0.125. A staff ratio requirement of one to six equals  
20 0.166. A staff ratio requirement of one to ten equals 0.100;

21 (2) add all of the three-digit decimals (one three-digit  
22 decimal for every person in attendance) assigned in clause (1);

23 (3) when the sum in clause (2) falls between two whole  
24 numbers, round off the sum to the larger of the two whole  
25 numbers; and

26 (4) the larger of the two whole numbers in clause (3)  
27 equals the number of direct service staff members needed to meet  
28 the staff ratio requirements of the persons in attendance.

29 Sec. 19. Minnesota Statutes 2004, section 245B.07,  
30 subdivision 8, is amended to read:

31 Subd. 8. [POLICIES AND PROCEDURES.] The license holder  
32 must develop and implement the policies and procedures in  
33 paragraphs (1) to (3).

34 (1) Policies and procedures that promote consumer health  
35 and safety by ensuring:

36 (i) consumer safety in emergency situations ~~as-identified~~

1 ~~in-section-245B.05, subdivision 7;~~

2 (ii) consumer health through sanitary practices;

3 (iii) safe transportation, when the license holder is  
4 responsible for transportation of consumers, with provisions for  
5 handling emergency situations;

6 (iv) a system of record keeping for both individuals and  
7 the organization, for review of incidents and emergencies, and  
8 corrective action if needed;

9 (v) a plan for responding to all incidents, as defined in  
10 section 245B.02, subdivision 10, ~~fires, severe-weather-and~~  
11 ~~natural-disasters, bomb-threats, and-other-threats~~ and reporting  
12 all incidents required to be reported under section 245B.05,  
13 subdivision 7;

14 (vi) safe medication administration as identified in  
15 section 245B.05, subdivision 5, incorporating an observed skill  
16 assessment to ensure that staff demonstrate the ability to  
17 administer medications consistent with the license holder's  
18 policy and procedures;

19 (vii) psychotropic medication monitoring when the consumer  
20 is prescribed a psychotropic medication, including the use of  
21 the psychotropic medication use checklist. If the  
22 responsibility for implementing the psychotropic medication use  
23 checklist has not been assigned in the individual service plan  
24 and the consumer lives in a licensed site, the residential  
25 license holder shall be designated; and

26 (viii) criteria for admission or service initiation  
27 developed by the license holder;

28 (2) Policies and procedures that protect consumer rights  
29 and privacy by ensuring:

30 (i) consumer data privacy, in compliance with the Minnesota  
31 Data Practices Act, chapter 13; and

32 (ii) that complaint procedures provide consumers with a  
33 simple process to bring grievances and consumers receive a  
34 response to the grievance within a reasonable time period. The  
35 license holder must provide a copy of the program's grievance  
36 procedure and time lines for addressing grievances. The

1 program's grievance procedure must permit consumers served by  
2 the program and the authorized representatives to bring a  
3 grievance to the highest level of authority in the program ~~and~~.

4 (3) Policies and procedures that promote continuity and  
5 quality of consumer supports by ensuring:

6 (i) continuity of care and service coordination, including  
7 provisions for service termination, temporary service  
8 suspension, and efforts made by the license holder to coordinate  
9 services with other vendors who also provide support to the  
10 consumer. The policy must include the following requirements:

11 (A) the license holder must notify the consumer or  
12 consumer's legal representative and the consumer's case manager  
13 in writing of the intended termination or temporary service  
14 suspension and the consumer's right to seek a temporary order  
15 staying the termination or suspension of service according to  
16 the procedures in section 256.045, subdivision 4a or subdivision  
17 6, paragraph (c);

18 (B) notice of the proposed termination of services,  
19 including those situations that began with a temporary service  
20 suspension, must be given at least 60 days before the proposed  
21 termination is to become effective;

22 (C) the license holder must provide information requested  
23 by the consumer or consumer's legal representative or case  
24 manager when services are temporarily suspended or upon notice  
25 of termination;

26 (D) use of temporary service suspension procedures are  
27 restricted to situations in which the consumer's behavior causes  
28 immediate and serious danger to the health and safety of the  
29 individual or others;

30 (E) prior to giving notice of service termination or  
31 temporary service suspension, the license holder must document  
32 actions taken to minimize or eliminate the need for service  
33 termination or temporary service suspension; and

34 (F) during the period of temporary service suspension, the  
35 license holder will work with the appropriate county agency to  
36 develop reasonable alternatives to protect the individual and

1 others; and

2 (ii) quality services measured through a program evaluation  
3 process including regular evaluations of consumer satisfaction  
4 and sharing the results of the evaluations with the consumers  
5 and legal representatives.

6 Sec. 20. Minnesota Statutes 2004, section 245C.03,  
7 subdivision 1, is amended to read:

8 Subdivision 1. [LICENSED PROGRAMS.] (a) The commissioner  
9 shall conduct a background study on:

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

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

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

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

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

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

28 ~~(i)-family-child-care-for-children;~~

29 ~~(ii)-foster-care-for-children-in-the-provider's-own-home;~~

30 or

31 ~~(iii)-foster-care-or-day-care-services-for-adults-in-the~~  
32 ~~provider's-own-home;-and~~

33 (7) all managerial officials as defined under section  
34 245A.02, subdivision 5a.

35 ~~The-commissioner-must-have-reasonable-cause-to-study-an~~  
36 ~~individual-under-this-subdivision.~~



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

5 Sec. 21. Minnesota Statutes 2004, section 245C.07, is  
6 amended to read:

7 245C.07 [STUDY SUBJECT AFFILIATED WITH MULTIPLE LICENSED  
8 FACILITIES.]

9 (a) When a license holder owns multiple facilities that are  
10 licensed by the Department of Human Services, only one  
11 background study is required for an individual who provides  
12 direct contact services in one or more of the licensed  
13 facilities if:

14 (1) the license holder designates one individual with one  
15 address and telephone number as the person to receive sensitive  
16 background study information for the multiple licensed programs  
17 that depend on the same background study; and

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

23 (b) When a background study is being initiated by a  
24 licensed facility or a foster care provider that is also  
25 registered under chapter 144D, a study subject affiliated with  
26 multiple licensed facilities may attach to the background study  
27 form a cover letter indicating the additional facilities' names,  
28 addresses, and background study identification numbers.

29 When the commissioner receives a notice, the commissioner  
30 shall notify each facility identified by the background study  
31 subject of the study results.

32 The background study notice the commissioner sends to the  
33 subsequent agencies shall satisfy those facilities'  
34 responsibilities for initiating a background study on that  
35 individual.

36 Sec. 22. Minnesota Statutes 2004, section 245C.08,

1 subdivision 1, is amended to read:

2 Subdivision 1. [BACKGROUND STUDIES CONDUCTED BY  
3 COMMISSIONER OF HUMAN SERVICES.] (a) For a background study  
4 conducted by the commissioner, the commissioner shall review:

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

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

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

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

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

22 Sec. 23. Minnesota Statutes 2004, section 245C.08,  
23 subdivision 2, is amended to read:

24 Subd. 2. [BACKGROUND STUDIES CONDUCTED BY A COUNTY OR  
25 PRIVATE AGENCY; FOSTER CARE AND FAMILY CHILD CARE.] (a) For a  
26 background study conducted by a county or private agency for  
27 child foster care, adult foster care, and family child care  
28 homes, the commissioner shall review:

29 (1) information from the county agency's record of  
30 substantiated maltreatment of adults and the maltreatment of  
31 minors;

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

35 (3) information from the Bureau of Criminal Apprehension;  
36 and

1 (4) arrest and investigative records maintained by the  
2 Bureau of Criminal Apprehension, county attorneys, county  
3 sheriffs, courts, county agencies, local police, the National  
4 Criminal Records Repository, and criminal records from other  
5 states.

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

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

15 Sec. 24. Minnesota Statutes 2004, section 245C.15,  
16 subdivision 1, is amended to read:

17 Subdivision 1. [PERMANENT DISQUALIFICATION.] (a) An  
18 individual is disqualified under section 245C.14 if: (1)  
19 regardless of how much time has passed since the discharge of  
20 the sentence imposed, if any, for the offense; and (2) unless  
21 otherwise specified, regardless of the level of the ~~conviction~~  
22 offense, the individual ~~is-convicted-of~~ has committed any of the  
23 following offenses: sections 609.185 (murder in the first  
24 degree); 609.19 (murder in the second degree); 609.195 (murder  
25 in the third degree); 609.20 (manslaughter in the first degree);  
26 609.205 (manslaughter in the second degree); 609.221 or 609.222  
27 (assault in the first or second degree); a felony offense under  
28 sections 609.2242 and 609.2243 (domestic assault), spousal  
29 abuse, child abuse or neglect, or a crime against children;  
30 609.228 (great bodily harm caused by distribution of drugs);  
31 609.245 (aggravated robbery); 609.25 (kidnapping); 609.2661  
32 (murder of an unborn child in the first degree); 609.2662  
33 (murder of an unborn child in the second degree); 609.2663  
34 (murder of an unborn child in the third degree); 609.322  
35 (solicitation, inducement, and promotion of prostitution); a  
36 felony offense under 609.324, subdivision 1 (other prohibited

1 acts); 609.342 (criminal sexual conduct in the first degree);  
2 609.343 (criminal sexual conduct in the second degree); 609.344  
3 (criminal sexual conduct in the third degree); 609.345 (criminal  
4 sexual conduct in the fourth degree); 609.352 (solicitation of  
5 children to engage in sexual conduct); 609.365 (incest); a  
6 felony offense under 609.377 (malicious punishment of a child);  
7 a felony offense under 609.378 (neglect or endangerment of a  
8 child); 609.561 (arson in the first degree); 609.66, subdivision  
9 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5  
10 (felony-level harassment; stalking); 609.855, subdivision 5  
11 (shooting at or in a public transit vehicle or facility);  
12 617.246 (use of minors in sexual performance prohibited); or  
13 617.247 (possession of pictorial representations of minors). An  
14 individual also is disqualified under section 245C.14 regardless  
15 of how much time has passed since the involuntary termination of  
16 the individual's parental rights under section 260C.301.

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

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

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

35 Sec. 25. Minnesota Statutes 2004, section 245C.15,  
36 subdivision 2, is amended to read:

1 Subd. 2. [15-YEAR DISQUALIFICATION.] (a) An individual is  
2 disqualified under section 245C.14 if: (1) less than 15 years  
3 have passed since the discharge of the sentence imposed, if any,  
4 for the offense; and (2) the individual has ~~received-a-felony~~  
5 ~~conviction-for~~ committed a felony-level violation of any of the  
6 following offenses: sections 256.98 (wrongfully obtaining  
7 assistance); 260C.301 (grounds for termination of parental  
8 rights); 268.182 (false representation; concealment of facts);  
9 393.07, subdivision 10(c) (federal Food Stamp Program fraud);  
10 609.165 (felon ineligible to possess firearm); 609.21 (criminal  
11 vehicular homicide and injury); 609.215 (suicide); 609.223 or  
12 609.2231 (assault in the third or fourth degree); repeat  
13 offenses under 609.224 (assault in the fifth degree); 609.2325  
14 (criminal abuse of a vulnerable adult); 609.2335 (financial  
15 exploitation of a vulnerable adult); 609.235 (use of drugs to  
16 injure or facilitate crime); 609.24 (simple robbery); 609.255  
17 (false imprisonment); 609.2664 (manslaughter of an unborn child  
18 in the first degree); 609.2665 (manslaughter of an unborn child  
19 in the second degree); 609.267 (assault of an unborn child in  
20 the first degree); 609.2671 (assault of an unborn child in the  
21 second degree); 609.268 (injury or death of an unborn child in  
22 the commission of a crime); 609.27 (coercion); 609.275 (attempt  
23 to coerce); repeat offenses under 609.3451 (criminal sexual  
24 conduct in the fifth degree); 609.466 (medical assistance  
25 fraud); 609.498, subdivision 1 or 1b (aggravated first degree or  
26 first degree tampering with a witness); 609.52 (theft); 609.521  
27 (possession of shoplifting gear); 609.525 (bringing stolen goods  
28 into Minnesota); 609.527 (identity theft); 609.53 (receiving  
29 stolen property); 609.535 (issuance of dishonored checks);  
30 609.562 (arson in the second degree); 609.563 (arson in the  
31 third degree); 609.582 (burglary); 609.611 (insurance fraud);  
32 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check  
33 forgery; offering a forged check); 609.635 (obtaining signature  
34 by false pretense); 609.66 (dangerous weapons); 609.67 (machine  
35 guns and short-barreled shotguns); 609.687 (adulteration);  
36 609.71 (riot); 609.713 (terroristic threats); 609.82 (fraud in

1 obtaining credit); 609.821 (financial transaction card fraud);  
2 repeat offenses under 617.23 (indecent exposure; penalties);  
3 repeat offenses under 617.241 (obscene materials and  
4 performances; distribution and exhibition prohibited; penalty);  
5 chapter 152 (drugs; controlled substance); or a felony\_level  
6 conviction involving alcohol or drug use.

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

12 (c) An individual is disqualified under section 245C.14 if  
13 less than 15 years has passed since the individual's voluntary  
14 termination of the individual's parental rights under section  
15 260C.301.

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

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

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

1           Sec. 26. Minnesota Statutes 2004, section 245C.15,  
2 subdivision 3, is amended to read:

3           Subd. 3. [TEN-YEAR DISQUALIFICATION.] (a) An individual is  
4 disqualified under section 245C.14 if: (1) less than ten years  
5 have passed since the discharge of the sentence imposed, if any,  
6 for the offense; and (2) the individual has ~~received~~ committed a  
7 ~~gross misdemeanor-conviction-for-a~~ misdemeanor-level violation  
8 of any of the following offenses: sections 256.98 (wrongfully  
9 obtaining assistance); 268.182 (false representation;  
10 concealment of facts); 393.07, subdivision 10(c) (federal Food  
11 Stamp Program fraud); 609.224 (assault in the fifth degree);  
12 609.224, subdivision 2, paragraph (c) (assault in the fifth  
13 degree by a caregiver against a vulnerable adult); 609.2242 and  
14 609.2243 (domestic assault); 609.23 (mistreatment of persons  
15 confined); 609.231 (mistreatment of residents or patients);  
16 609.2325 (criminal abuse of a vulnerable adult); 609.233  
17 (criminal neglect of a vulnerable adult); 609.2335 (financial  
18 exploitation of a vulnerable adult); 609.234 (failure to report  
19 maltreatment of a vulnerable adult); 609.265 (abduction);  
20 609.275 (attempt to coerce); 609.324, subdivision 1a (other  
21 prohibited acts; minor engaged in prostitution); 609.33  
22 (disorderly house); 609.3451 (criminal sexual conduct in the  
23 fifth degree); 609.377 (malicious punishment of a child);  
24 609.378 (neglect or endangerment of a child); 609.446 (medical  
25 assistance fraud); 609.52 (theft); 609.525 (bringing stolen  
26 goods into Minnesota); 609.527 (identify theft); 609.53  
27 (receiving stolen property); 609.535 (issuance of dishonored  
28 checks); 609.582 (burglary); 609.611 (insurance fraud); 609.631  
29 (check forgery; offering a forged check); 609.66 (dangerous  
30 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly  
31 conduct against a vulnerable adult); repeat offenses under  
32 609.746 (interference with privacy); 609.749, subdivision 2  
33 (harassment; stalking); repeat offenses under 617.23 (indecent  
34 exposure); 617.241 (obscene materials and performances); 617.243  
35 (indecent literature, distribution); 617.293 (harmful materials;  
36 dissemination and display to minors prohibited); or violation of

1 an order for protection under section 518B.01, subdivision 14.

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

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

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

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

27 Sec. 27. Minnesota Statutes 2004, section 245C.15,  
28 subdivision 4, is amended to read:

29 Subd. 4. [SEVEN-YEAR DISQUALIFICATION.] (a) An individual  
30 is disqualified under section 245C.14 if: (1) less than seven  
31 years has passed since the discharge of the sentence imposed, if  
32 any, for the offense; and (2) the individual has received  
33 committed a misdemeanor-conviction-for-a misdemeanor-level  
34 violation of any of the following offenses: sections 256.98  
35 (wrongfully obtaining assistance); 268.182 (false  
36 representation; concealment of facts); 393.07, subdivision 10(c)



1 (federal Food Stamp Program fraud); 609.224 (assault in the  
2 fifth degree); 609.2242 (domestic assault); 609.2335 (financial  
3 exploitation of a vulnerable adult); 609.234 (failure to report  
4 maltreatment of a vulnerable adult); 609.2672 (assault of an  
5 unborn child in the third degree); 609.27 (coercion); violation  
6 of an order for protection under 609.3232 (protective order  
7 authorized; procedures; penalties); 609.466 (medical assistance  
8 fraud); 609.52 (theft); 609.525 (bringing stolen goods into  
9 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen  
10 property); 609.535 (issuance of dishonored checks); 609.611  
11 (insurance fraud); 609.66 (dangerous weapons); 609.665 (spring  
12 guns); 609.746 (interference with privacy); 609.79 (obscene or  
13 harassing phone telephone calls); 609.795 (letter, telegram, or  
14 package; opening; harassment); 609.82 (fraud in obtaining  
15 credit); 609.821 (financial transaction card fraud); 617.23  
16 (indecent exposure; penalties); 617.293 (harmful materials;  
17 dissemination and display to minors prohibited); or violation of  
18 an order for protection under section 518B.01 (Domestic Abuse  
19 Act).

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

23 (1) failure to make required reports under section 626.556,  
24 subdivision 3, or 626.557, subdivision 3, for incidents in  
25 which: (i) the final disposition under section 626.556 or  
26 626.557 was substantiated maltreatment, and (ii) the  
27 maltreatment was recurring or serious; or

28 (2) substantiated serious or recurring maltreatment of a  
29 minor under section 626.556, a vulnerable adult under section  
30 626.557, or serious or recurring maltreatment in any other  
31 state, the elements of which are substantially similar to the  
32 elements of maltreatment under section 626.556 or 626.557 for  
33 which: (i) there is a preponderance of evidence that the  
34 maltreatment occurred, and (ii) the subject was responsible for  
35 the maltreatment.

36 (c) An individual is disqualified under section 245C.14 if

1 less than seven years has passed since the individual's aiding  
2 and abetting, attempt, or conspiracy to commit any of the  
3 offenses listed in paragraphs (a) and (b), as each of these  
4 offenses is defined in Minnesota Statutes.

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

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

20 Sec. 28. Minnesota Statutes 2004, section 245C.17,  
21 subdivision 2, is amended to read:

22 Subd. 2. [DISQUALIFICATION NOTICE SENT TO SUBJECT.] (a) If  
23 the information in the study indicates the individual is  
24 disqualified from direct contact with, or from access to,  
25 persons served by the program, the commissioner shall disclose  
26 to the individual studied:

27 (1) the information causing disqualification;

28 (2) instructions on how to request a reconsideration of the  
29 disqualification; and

30 (3) an explanation of any restrictions on the  
31 commissioner's discretion to set aside the disqualification  
32 under section 245C.24, subdivision 2, when applicable to the  
33 individual; and

34 (4) the commissioner's determination of the individual's  
35 immediate risk of harm under section 245C.16.

36 (b) If the commissioner determines under section 245C.16

1 that an individual poses an imminent risk of harm to persons  
2 served by the program where the individual will have direct  
3 contact, the commissioner's notice must include an explanation  
4 of the basis of this determination.

5 (c) If the commissioner determines under section 245C.16  
6 that an individual studied does not pose a risk of harm that  
7 requires continuous, direct supervision, the commissioner shall  
8 only notify the individual of the disqualification.

9 Sec. 29. Minnesota Statutes 2004, section 245C.21,  
10 subdivision 2, is amended to read:

11 Subd. 2. [TIME FRAME FOR REQUESTING RECONSIDERATION OF A  
12 DISQUALIFICATION.] (a) When the commissioner sends an individual  
13 a notice of disqualification based on a finding under section  
14 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the  
15 disqualified individual must submit the request for a  
16 reconsideration within 30 calendar days of the individual's  
17 receipt of the notice of disqualification. If mailed, the  
18 request for reconsideration must be postmarked and sent to the  
19 commissioner within 30 calendar days of the individual's receipt  
20 of the notice of disqualification. If a request for  
21 reconsideration is made by personal service, it must be received  
22 by the commissioner within 30 calendar days after the  
23 individual's receipt of the notice of disqualification. Upon  
24 showing that the information under subdivision 3 cannot be  
25 obtained within 30 days, the disqualified individual may request  
26 additional time, not to exceed 30 days, to obtain the  
27 information.

28 (b) When the commissioner sends an individual a notice of  
29 disqualification based on a finding under section 245C.16,  
30 subdivision 2, paragraph (a), clause (3), the disqualified  
31 individual must submit the request for reconsideration within 15  
32 calendar days of the individual's receipt of the notice of  
33 disqualification. If mailed, the request for reconsideration  
34 must be postmarked and sent to the commissioner within 15  
35 calendar days of the individual's receipt of the notice of  
36 disqualification. If a request for reconsideration is made by

1 personal service, it must be received by the commissioner within  
2 15 calendar days after the individual's receipt of the notice of  
3 disqualification.

4 (c) An individual who was determined to have maltreated a  
5 child under section 626.556 or a vulnerable adult under section  
6 626.557, and who is disqualified on the basis of serious or  
7 recurring maltreatment, may request a reconsideration of both  
8 the maltreatment and the disqualification determinations. The  
9 request must be submitted within 30 calendar days of the  
10 individual's receipt of the notice of disqualification. If  
11 mailed, the request for reconsideration must be postmarked and  
12 sent to the commissioner within 30 calendar days of the  
13 individual's receipt of the notice of disqualification. If a  
14 request for reconsideration is made by personal service, it must  
15 be received by the commissioner within 30 calendar days after  
16 the individual's receipt of the notice of disqualification.

17 Sec. 30. Minnesota Statutes 2004, section 245C.22,  
18 subdivision 3, is amended to read:

19 Subd. 3. [PREEMINENT WEIGHT GIVEN TO SAFETY OF PERSONS  
20 BEING SERVED.] In reviewing a request for reconsideration of a  
21 disqualification, the commissioner shall give preeminent weight  
22 to the safety of each person served by the license holder,  
23 applicant, or other entities as provided in this chapter over  
24 the interests of the disqualified individual, license holder,  
25 applicant, or other entity as provided in this chapter, and any  
26 single factor under subdivision 4, paragraph (b), may be  
27 determinative of the commissioner's decision whether to set  
28 aside the individual's disqualification.

29 Sec. 31. Minnesota Statutes 2004, section 245C.22,  
30 subdivision 4, is amended to read:

31 Subd. 4. [RISK OF HARM; SET ASIDE.] (a) The commissioner  
32 may set aside the disqualification if the commissioner finds  
33 that the individual has submitted sufficient information to  
34 demonstrate that the individual does not pose a risk of harm to  
35 any person served by the applicant, license holder, or other  
36 entities as provided in this chapter.

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

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

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

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

9 (4) the harm suffered by the victim;

10 (5) the similarity between the victim and persons served by  
11 the program;

12 (6) the time elapsed without a repeat of the same or  
13 similar event;

14 (7) documentation of successful completion by the  
15 individual studied of training or rehabilitation pertinent to  
16 the event; and

17 (8) any other information relevant to reconsideration.

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

25 Sec. 32. Minnesota Statutes 2004, section 245C.24,  
26 subdivision 2, is amended to read:

27 Subd. 2. [PERMANENT BAR TO SET ASIDE OF DISQUALIFICATION.]  
28 The commissioner may not set aside the disqualification of an  
29 individual in connection with a license to provide family child  
30 care for children, foster care for children in the provider's  
31 home, or foster care or day care services for adults in the  
32 provider's home, regardless of how much time has passed, if  
33 the ~~provider~~ individual was disqualified for a crime or conduct  
34 listed in section 245C.15, subdivision 1.

35 Sec. 33. Minnesota Statutes 2004, section 245C.24,  
36 subdivision 3, is amended to read:

1 Subd. 3. [TEN-YEAR BAR TO SET ASIDE DISQUALIFICATION.] (a)  
2 The commissioner may not set aside the disqualification of an  
3 individual in connection with a license to provide family child  
4 care for children, foster care for children in the provider's  
5 home, or foster care or day care services for adults in the  
6 provider's home if: (1) less than ten years has passed since  
7 the discharge of the sentence imposed, if any, for the offense;  
8 and or (2) when disqualified based on a preponderance of  
9 evidence determination under section 245A.14, subdivision 1,  
10 paragraph (a), clause (2), or an admission under section  
11 245A.14, subdivision 1, paragraph (a), clause (1), and less than  
12 ten years has passed since the individual committed the act or  
13 admitted to committing the act, whichever is later; and (3) the  
14 individual has ~~been-convicted-of~~ committed a violation of any of  
15 the following offenses: sections 609.165 (felon ineligible to  
16 possess firearm); criminal vehicular homicide under 609.21  
17 (criminal vehicular homicide and injury); 609.215 (aiding  
18 suicide or aiding attempted suicide); felony violations under  
19 609.223 or 609.2231 (assault in the third or fourth degree);  
20 609.713 (terroristic threats); 609.235 (use of drugs to injure  
21 or to facilitate crime); 609.24 (simple robbery); 609.255 (false  
22 imprisonment); 609.562 (arson in the second degree); 609.71  
23 (riot); 609.498, subdivision 1 or 1b (aggravated first degree or  
24 first degree tampering with a witness); burglary in the first or  
25 second degree under 609.582 (burglary); 609.66 (dangerous  
26 weapon); 609.665 (spring guns); 609.67 (machine guns and  
27 short-barreled shotguns); 609.749, subdivision 2 (gross  
28 misdemeanor harassment; stalking); 152.021 or 152.022  
29 (controlled substance crime in the first or second degree);  
30 152.023, subdivision 1, clause (3) or (4) or subdivision 2,  
31 clause (4) (controlled substance crime in the third degree);  
32 152.024, subdivision 1, clause (2), (3), or (4) (controlled  
33 substance crime in the fourth degree); 609.224, subdivision 2,  
34 paragraph (c) (fifth-degree assault by a caregiver against a  
35 vulnerable adult); 609.23 (mistreatment of persons confined);  
36 609.231 (mistreatment of residents or patients); 609.2325

1 (criminal abuse of a vulnerable adult); 609.233 (criminal  
2 neglect of a vulnerable adult); 609.2335 (financial exploitation  
3 of a vulnerable adult); 609.234 (failure to report); 609.265  
4 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn  
5 child in the first or second degree); 609.267 to 609.2672  
6 (assault of an unborn child in the first, second, or third  
7 degree); 609.268 (injury or death of an unborn child in the  
8 commission of a crime); 617.293 (disseminating or displaying  
9 harmful material to minors); a felony-level conviction involving  
10 alcohol or drug use, a gross misdemeanor offense under 609.324,  
11 subdivision 1 (other prohibited acts); a gross misdemeanor  
12 offense under 609.378 (neglect or endangerment of a child); a  
13 gross misdemeanor offense under 609.377 (malicious punishment of  
14 a child); or 609.72, subdivision 3 (disorderly conduct against a  
15 vulnerable adult).

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

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

27 Sec. 34. Minnesota Statutes 2004, section 245C.27,  
28 subdivision 1, is amended to read:

29 Subdivision 1. [FAIR HEARING WHEN DISQUALIFICATION IS NOT  
30 SET ASIDE.] (a) If the commissioner does not set aside ~~er~~  
31 ~~reseind~~ a disqualification of an individual under section  
32 245C.22 who is disqualified on the basis of a preponderance of  
33 evidence that the individual committed an act or acts that meet  
34 the definition of any of the crimes listed in section 245C.15;  
35 for a determination under section 626.556 or 626.557 of  
36 substantiated maltreatment that was serious or recurring under

1 section 245C.15; or for failure to make required reports under  
2 section 626.556, subdivision 3; or 626.557, subdivision 3,  
3 pursuant to section 245C.15, subdivision 4, paragraph (b),  
4 clause (1), the individual may request a fair hearing under  
5 section 256.045, unless the disqualification is deemed  
6 conclusive under section 245C.29.

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

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

20 (d) This subdivision does not apply to a public employee's  
21 appeal of a disqualification under section 245C.28, subdivision  
22 3.

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

33 Sec. 35. Minnesota Statutes 2004, section 245C.28,  
34 subdivision 3, is amended to read:

35 Subd. 3. [EMPLOYEES OF PUBLIC EMPLOYER.] (a) If the  
36 commissioner does not set aside the disqualification of an



1 individual who is an employee of an employer, as defined in  
2 section 179A.03, subdivision 15, the individual may request a  
3 contested case hearing under chapter 14. The request for a  
4 contested case hearing must be made in writing and must be  
5 postmarked and ~~mailed~~ sent within 30 calendar days after the  
6 employee receives notice that the disqualification has not been  
7 set aside. If the individual was disqualified based on a  
8 conviction or admission to any crimes listed in section 245C.15,  
9 the scope of the contested case hearing shall be limited solely  
10 to whether the individual poses a risk of harm pursuant to  
11 section 245C.22.

12 (b) If the commissioner does not set aside ~~or-revise~~ a  
13 disqualification that is based on a maltreatment determination,  
14 the scope of the contested case hearing must include the  
15 maltreatment determination and the disqualification. In such  
16 cases, a fair hearing must not be conducted under section  
17 256.045.

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

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

29 (e) In determining whether the disqualification should be  
30 set aside, the administrative law judge shall consider all of  
31 the characteristics that cause the individual to be  
32 ~~disqualified, including those characteristics that were not~~  
33 ~~subject to review under paragraph (b),~~ in order to determine  
34 whether the individual poses a risk of harm. The administrative  
35 law judge's recommendation and the commissioner's order to set  
36 aside a disqualification that is the subject of the hearing

1 constitutes a determination that the individual does not pose a  
2 risk of harm and that the individual may provide direct contact  
3 services in the individual program specified in the set aside.

4 Sec. 36. Minnesota Statutes 2004, section 245C.30,  
5 subdivision 2, is amended to read:

6 Subd. 2. [DISCLOSURE OF REASON FOR DISQUALIFICATION.] (a)  
7 The commissioner may not grant a variance for a disqualified  
8 individual unless the applicant or license holder requests the  
9 variance and the disqualified individual provides written  
10 consent for the commissioner to disclose to the applicant or  
11 license holder the reason for the disqualification.

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

21 Sec. 37. Minnesota Statutes 2004, section 246.13, is  
22 amended to read:

23 246.13 [RECORD RECORDS OF PATIENTS AND RESIDENTS  
24 IN RECEIVING STATE-OPERATED SERVICES.]

25 Subdivision 1. [POWERS, DUTIES, AND AUTHORITY OF  
26 COMMISSIONER.] (a) The commissioner of human services' office  
27 shall have, accessible only by consent of the commissioner or on  
28 the order of a judge or court of record, a record showing the  
29 residence, sex, age, nativity, occupation, civil condition, and  
30 date of entrance or commitment of every person, in the  
31 state-operated services facilities as defined under section  
32 246.014 under exclusive control of the commissioner; the date of  
33 discharge and whether such discharge was final; the condition of  
34 the person when the person left the state-operated services  
35 facility; the vulnerable adult abuse prevention associated with  
36 the person; and the date and cause of all deaths. The record

1 shall state every transfer from one state-operated services  
2 facility to another, naming each state-operated services  
3 facility. This information shall be furnished to the  
4 commissioner of human services by each public agency, along with  
5 other obtainable facts as the commissioner may require. When a  
6 patient or resident in a state-operated services facility is  
7 discharged, transferred, or dies, the head of the state-operated  
8 services facility or designee shall inform the commissioner of  
9 human services of these events within ten days on forms  
10 furnished by the commissioner.

11 (b) The commissioner of human services shall cause to be  
12 devised, installed, and operated an adequate system of records  
13 and statistics, which shall consist of all basic record forms,  
14 including patient personal records and medical record forms, and  
15 the manner of their use shall be precisely uniform throughout  
16 all state-operated services facilities.

17 Subd. 2. [DEFINITIONS; RISK ASSESSMENT AND MANAGEMENT.] (a)  
18 As used in this section:

19 (1) "appropriate and necessary medical and other records"  
20 includes patient medical record and other protected health  
21 information as defined by Code of Federal Regulations, title 45,  
22 section 164.501, relating to a patient in a state-operated  
23 services facility, including, but not limited to, the patient's  
24 treatment plan and abuse prevention plan that is pertinent to  
25 the patient's ongoing care, treatment, or placement in a  
26 community-based treatment facility or a health care facility  
27 that is not operated by state-operated services, and includes  
28 information describing the level of risk posed by a patient when  
29 the patient enters such a facility;

30 (2) "community-based treatment" means the community support  
31 services listed in section 253B.02, subdivision 4b;

32 (3) "criminal history data" means those data maintained or  
33 used by the Departments of Corrections and Public Safety and by  
34 the supervisory authorities listed in section 13.84, subdivision  
35 1, that relate to an individual's criminal history or propensity  
36 for violence; including data in the Corrections Offender

1 Management System (COMS) and Statewide Supervision System (S3)  
2 maintained by the Department of Corrections and the Criminal  
3 Justice Information System (CJIS); The Predatory Offender  
4 Registration (POR) system maintained by the Department of Public  
5 Safety and the CrimNet system;

6 (4) "designated agency" means the agency defined in section  
7 253B.02, subdivision 5;

8 (5) "law enforcement agency" means the law enforcement  
9 agency having primary jurisdiction over the location where the  
10 offender expects to reside upon release;

11 (6) "predatory offender" and "offender" mean a person who  
12 is required to register as a predatory offender under section  
13 243.166; and

14 (7) "treatment facility" means a facility as defined in  
15 section 253B.02, subdivision 19.

16 (b) To promote public safety and for the purposes and  
17 subject to the requirements below, the commissioner or the  
18 commissioner's designee shall have access to and review medical  
19 and criminal history data as provided by this section, such as  
20 is necessary to comply with Minnesota Rules, part 1205.0400:

21 (1) to determine whether a patient is required under state  
22 law to register as a predatory offender according to section  
23 244.166;

24 (2) to facilitate and expedite the responsibilities of the  
25 special review board and end-of-confinement review committees by  
26 corrections institutions and state treatment facilities;

27 (3) to prepare, amend, or revise the abuse prevention plans  
28 required under section 626.557, subdivision 14, and individual  
29 patient treatment plans required under section 253B.03,  
30 subdivision 7;

31 (4) to facilitate the custody, supervision, and transport  
32 of individuals transferred between the Department of Corrections  
33 and the Department of Human Services; or

34 (5) to facilitate the exchange of data between the  
35 Department of Corrections, the Department of Human Services, and  
36 the supervisory authorities listed in section 13.84, subdivision

1 1, regarding individuals under the authority of one or more of  
2 these entities.

3 (c) The commissioner may have access to the National Crime  
4 Information Center (NCIC) database, through the Department of  
5 Public Safety, in support of the law enforcement functions  
6 described in paragraph (b).

7 Subd. 3. [COMMUNITY-BASED TREATMENT AND MEDICAL  
8 TREATMENT.] (a) When a patient under the care and supervision of  
9 state-operated services is released to a community-based  
10 treatment facility or facility that provides health care  
11 services, state-operated services may disclose all appropriate  
12 and necessary health and other information relating to the  
13 patient.

14 (b) The information that must be provided to the designated  
15 agency, community-based treatment facility, or facility that  
16 provides health care services includes, but is not limited to,  
17 the patient's abuse prevention plan required under section  
18 626.557, subdivision 14, paragraph (b).

19 Subd. 4. [PREDATORY OFFENDER REGISTRATION  
20 NOTIFICATION.] (a) When a state-operated facility determines  
21 that a patient is required under section 243.166, subdivision 1,  
22 to register as a predatory offender or, under section 243.166,  
23 subdivision 4a, to provide notice of a change in status, the  
24 facility shall provide written notice to the patient of the  
25 requirement.

26 (b) If the patient refuses, is unable, or lacks capacity to  
27 comply with the requirement described in paragraph (a) within  
28 five days after receiving the notification of the duty to  
29 comply, state-operated services staff shall obtain and disclose  
30 the necessary data to complete the registration form or change  
31 of status notification for the patient. The treatment facility  
32 shall also forward the registration or change of status data  
33 that it completes to the Bureau of Criminal Apprehension and, as  
34 applicable, the patient's corrections agent and the law  
35 enforcement agency in the community in which the patient  
36 currently resides. If, after providing notification, the

1 patient refuses to comply with the requirements described in  
2 paragraph (a), the treatment facility shall also notify the  
3 county attorney in the county in which the patient is currently  
4 residing of the refusal.

5 (c) The duties of state-operated services described in this  
6 subdivision do not relieve the patient of the ongoing individual  
7 duty to comply with the requirements of section 243.166.

8 Subd. 5. [LIMITATIONS ON USE OF BLOODBORNE PATHOGEN TEST  
9 RESULTS.] Sections 246.71; 246.711; 246.712; 246.713; 246.714;  
10 246.715; 246.716; 246.717; 246.718; 246.719; 246.72; 246.721,  
11 and 246.722 apply to state-operated services facilities.

12 Sec. 38. Minnesota Statutes 2004, section 253B.18,  
13 subdivision 4a, is amended to read:

14 Subd. 4a. [RELEASE ON PASS; NOTIFICATION.] A patient who  
15 has been committed as a person who is mentally ill and dangerous  
16 and who is confined at a secure treatment facility or has been  
17 transferred out of a state-operated services facility according  
18 to section 253B.18, subdivision 6, shall not be released on a  
19 pass unless the pass is part of a pass plan that has been  
20 approved by the medical director of the secure treatment  
21 facility. The pass plan must have a specific therapeutic  
22 purpose consistent with the treatment plan, must be established  
23 for a specific period of time, and must have specific levels of  
24 liberty delineated. The county case manager must be invited to  
25 participate in the development of the pass plan. At least ten  
26 days prior to a determination on the plan, the medical director  
27 shall notify the designated agency, the committing court, the  
28 county attorney of the county of commitment, an interested  
29 person, the local law enforcement agency where the facility is  
30 located, the local law enforcement agency in the location where  
31 the pass is to occur, the petitioner, and the petitioner's  
32 counsel of the plan, the nature of the passes proposed, and  
33 their right to object to the plan. If any notified person  
34 objects prior to the proposed date of implementation, the person  
35 shall have an opportunity to appear, personally or in writing,  
36 before the medical director, within ten days of the objection,

1 to present grounds for opposing the plan. The pass plan shall  
2 not be implemented until the objecting person has been furnished  
3 that opportunity. Nothing in this subdivision shall be  
4 construed to give a patient an affirmative right to a pass plan.

5 Sec. 39. Minnesota Statutes 2004, section 260C.163,  
6 subdivision 5, is amended to read:

7 Subd. 5. [GUARDIAN AD LITEM.] (a) The court shall appoint  
8 a guardian ad litem to protect the interests of the minor when  
9 it appears, at any stage of the proceedings, that the minor is  
10 without a parent or guardian, or that the minor's parent is a  
11 minor or incompetent, or that the parent or guardian is  
12 indifferent or hostile to the minor's interests, and in every  
13 proceeding alleging a child's need for protection or services  
14 under section 260C.007, subdivision 6, except proceedings where  
15 the sole allegation is that the child is a runaway or habitual  
16 truant. In any other case the court may appoint a guardian ad  
17 litem to protect the interests of the minor when the court feels  
18 that such an appointment is desirable. The court shall appoint  
19 the guardian ad litem on its own motion or in the manner  
20 provided for the appointment of a guardian ad litem in the  
21 district court. The court may appoint separate counsel for the  
22 guardian ad litem if necessary.

23 (b) A guardian ad litem shall carry out the following  
24 responsibilities:

25 (1) conduct an independent investigation to determine the  
26 facts relevant to the situation of the child and the family,  
27 which must include, unless specifically excluded by the court,  
28 reviewing relevant documents; meeting with and observing the  
29 child in the home setting and considering the child's wishes, as  
30 appropriate; and interviewing parents, caregivers, and others  
31 with knowledge relevant to the case;

32 (2) advocate for the child's best interests by  
33 participating in appropriate aspects of the case and advocating  
34 for appropriate community services when necessary;

35 (3) maintain the confidentiality of information related to  
36 a case, with the exception of sharing information as permitted

1 by law to promote cooperative solutions that are in the best  
2 interests of the child;

3 (4) monitor the child's best interests throughout the  
4 judicial proceeding; and

5 (5) present written reports on the child's best interests  
6 that include conclusions and recommendations and the facts upon  
7 which they are based.

8 (c) Except in cases where the child is alleged to have been  
9 abused or neglected, the court may waive the appointment of a  
10 guardian ad litem pursuant to clause (a), whenever counsel has  
11 been appointed pursuant to subdivision 2 or is retained  
12 otherwise, and the court is satisfied that the interests of the  
13 minor are protected.

14 (d) In appointing a guardian ad litem pursuant to clause  
15 (a), the court shall not appoint the party, or any agent or  
16 employee thereof, filing a petition pursuant to section 260C.141.

17 (e) The following factors shall be considered when  
18 appointing a guardian ad litem in a case involving an Indian or  
19 minority child:

20 (1) whether a person is available who is the same racial or  
21 ethnic heritage as the child or, if that is not possible;

22 (2) whether a person is available who knows and appreciates  
23 the child's racial or ethnic heritage.

24 (f) The court shall require a background study for each  
25 guardian ad litem as provided under section 518.165. The court  
26 shall have access to data collected pursuant to section 245C.32  
27 for purposes of the background study.

28 Sec. 40. Minnesota Statutes 2004, section 299C.093, is  
29 amended to read:

30 299C.093 [DATABASE OF REGISTERED PREDATORY OFFENDERS.]

31 The superintendent of the bureau of criminal apprehension  
32 shall maintain a computerized data system relating to  
33 individuals required to register as predatory offenders under  
34 section 243.166. To the degree feasible, the system must  
35 include the ~~information~~ data required to be provided under  
36 section 243.166, subdivisions 4 and 4a, and indicate the time



1 period that the person is required to register. The  
2 superintendent shall maintain this ~~information~~ data in a manner  
3 that ensures that it is readily available to law enforcement  
4 agencies. This ~~information~~ data is private data on individuals  
5 under section 13.02, subdivision 12, but may be used for law  
6 enforcement and corrections purposes. State-operated services,  
7 as defined in section 246.014, is also authorized to have access  
8 to the data for the purposes described in section 246.13,  
9 subdivision 2, paragraph (c).

10 Sec. 41. Minnesota Statutes 2004, section 518.165, is  
11 amended by adding a subdivision to read:

12 Subd. 4. [BACKGROUND STUDY OF GUARDIAN AD LITEM.] (a) The  
13 court shall initiate a background study through the commissioner  
14 of human services under section 245C.32 on every guardian ad  
15 litem appointed under this section if a background study has not  
16 been completed on the guardian ad litem within the past three  
17 years. The background study must be completed before the court  
18 appoints the guardian ad litem, unless the court determines that  
19 it is in the best interest of the child to appoint a guardian ad  
20 litem before a background study can be completed by the  
21 commissioner. The court shall initiate a subsequent background  
22 study under this paragraph once every three years after the  
23 guardian has been appointed as long as the individual continues  
24 to serve as a guardian ad litem.

25 (b) The background study must include criminal history data  
26 from the Bureau of Criminal Apprehension, other criminal history  
27 data held by the commissioner of human services, and data  
28 regarding whether the person has been a perpetrator of  
29 substantiated maltreatment of a minor or a vulnerable adult.  
30 When the information from the Bureau of Criminal Apprehension  
31 indicates that the subject of a study under paragraph (a) is a  
32 multistate offender or that the subject's multistate offender  
33 status is undetermined, the court shall require a search of the  
34 National Criminal Records Repository, and shall provide the  
35 commissioner a set of classifiable fingerprints of the subject  
36 of the study.

1 (c) The Minnesota Supreme Court shall pay the commissioner  
2 a fee for conducting a background study under section 245C.32.

3 (d) Nothing precludes the court from initiating background  
4 studies using court data on criminal convictions.

5 Sec. 42. Minnesota Statutes 2004, section 518.165, is  
6 amended by adding a subdivision to read:

7 Subd. 5. [PROCEDURE, CRIMINAL HISTORY, AND MALTREATMENT  
8 RECORDS BACKGROUND STUDY.] (a) When the court requests a  
9 background study under subdivision 4, paragraph (a), the request  
10 shall be submitted to the Department of Human Services through  
11 the department's electronic online background study system.

12 (b) When the court requests a search of the National  
13 Criminal Records Repository, the court must provide a set of  
14 classifiable fingerprints of the subject of the study on a  
15 fingerprint card provided by the commissioner of human services.

16 (c) The commissioner of human services shall provide the  
17 court with information from the Bureau of Criminal  
18 Apprehension's Criminal Justice Information System, other  
19 criminal history data held by the commissioner of human  
20 services, and data regarding substantiated maltreatment of a  
21 minor under section 626.556, and substantiated maltreatment of a  
22 vulnerable adult under section 626.557, within 15 working days  
23 of receipt of a request. If the subject of the study has been  
24 determined by the Department of Human Services or the Department  
25 of Health to be the perpetrator of substantiated maltreatment of  
26 a minor or vulnerable adult in a licensed facility, the response  
27 must include a copy of the public portion of the investigation  
28 memorandum under section 626.556, subdivision 10f, or the public  
29 portion of the investigation memorandum under section 626.557,  
30 subdivision 12b. When the background study shows that the  
31 subject has been determined by a county adult protection or  
32 child protection agency to have been responsible for  
33 maltreatment, the court shall be informed of the county, the  
34 date of the finding, and the nature of the maltreatment that was  
35 substantiated. The commissioner shall provide the court with  
36 information from the National Criminal Records Repository within

1 three working days of the commissioner's receipt of the data.  
2 When the commissioner finds no criminal history or substantiated  
3 maltreatment on a background study subject, the commissioner  
4 shall make these results available to the court electronically  
5 through the secure online background study system.

6 (d) Notwithstanding section 626.556, subdivision 10f, or  
7 626.557, subdivision 12b, if the commissioner or county lead  
8 agency has information that a person on whom a background study  
9 was previously done under this section has been determined to be  
10 a perpetrator of maltreatment of a minor or vulnerable adult,  
11 the commissioner or the county may provide this information to  
12 the court that requested the background study.

13 Sec. 43. Minnesota Statutes 2004, section 518.165, is  
14 amended by adding a subdivision to read:

15 Subd. 6. [RIGHTS.] The court shall notify the subject of a  
16 background study that the subject has the following rights:

17 (1) the right to be informed that the court will request a  
18 background study on the subject for the purpose of determining  
19 whether the person's appointment or continued appointment is in  
20 the best interests of the child;

21 (2) the right to be informed of the results of the study  
22 and to obtain from the court a copy of the results; and

23 (3) the right to challenge the accuracy and completeness of  
24 the information contained in the results to the agency  
25 responsible for creation of the data except to the extent  
26 precluded by section 256.045, subdivision 3.

27 Sec. 44. Minnesota Statutes 2004, section 609A.03,  
28 subdivision 7, is amended to read:

29 Subd. 7. [LIMITATIONS OF ORDER.] (a) Upon issuance of an  
30 expungement order related to a charge supported by probable  
31 cause, the DNA samples and DNA records held by the Bureau of  
32 Criminal Apprehension shall not be sealed, returned to the  
33 subject of the record, or destroyed.

34 (b) Notwithstanding the issuance of an expungement order:

35 (1) an expunged record may be opened for purposes of a  
36 criminal investigation, prosecution, or sentencing, upon an ex

1 parte court order; and

2 (2) an expunged record of a conviction may be opened for  
3 purposes of evaluating a prospective employee in a criminal  
4 justice agency without a court order; and

5 (3) an expunged record of a conviction may be opened for  
6 purposes of a background study under section 245C.08 unless the  
7 court order for expungement is directed specifically to the  
8 commissioner of human services.

9 Upon request by law enforcement, prosecution, or  
10 corrections authorities, an agency or jurisdiction subject to an  
11 expungement order shall inform the requester of the existence of  
12 a sealed record and of the right to obtain access to it as  
13 provided by this paragraph. For purposes of this section, a  
14 "criminal justice agency" means courts or a government agency  
15 that performs the administration of criminal justice under  
16 statutory authority.

17 Sec. 45. Minnesota Statutes 2004, section 626.556,  
18 subdivision 10i, is amended to read:

19 Subd. 10i. [ADMINISTRATIVE RECONSIDERATION OF FINAL  
20 DETERMINATION OF MALTREATMENT AND DISQUALIFICATION BASED ON  
21 SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.] (a) Except as  
22 provided under paragraph (e), an individual or facility that the  
23 commissioner of human services, a local social service agency,  
24 or the commissioner of education determines has maltreated a  
25 child, an interested person acting on behalf of the child,  
26 regardless of the determination, who contests the investigating  
27 agency's final determination regarding maltreatment, may request  
28 the investigating agency to reconsider its final determination  
29 regarding maltreatment. The request for reconsideration must be  
30 submitted in writing to the investigating agency within 15  
31 calendar days after receipt of notice of the final determination  
32 regarding maltreatment or, if the request is made by an  
33 interested person who is not entitled to notice, within 15 days  
34 after receipt of the notice by the parent or guardian of the  
35 child. If mailed, the request for reconsideration must be  
36 postmarked and sent to the investigating agency within 15

1 calendar days of the individual's or facility's receipt of the  
2 final determination. If the request for reconsideration is made  
3 by personal service, it must be received by the investigating  
4 agency within 15 calendar days after the individual's or  
5 facility's receipt of the final determination. Effective  
6 January 1, 2002, an individual who was determined to have  
7 maltreated a child under this section and who was disqualified  
8 on the basis of serious or recurring maltreatment under sections  
9 245C.14 and 245C.15, may request reconsideration of the  
10 maltreatment determination and the disqualification. The  
11 request for reconsideration of the maltreatment determination  
12 and the disqualification must be submitted within 30 calendar  
13 days of the individual's receipt of the notice of  
14 disqualification under sections 245C.16 and 245C.17. If mailed,  
15 the request for reconsideration of the maltreatment  
16 determination and the disqualification must be postmarked and  
17 sent to the investigating agency within 30 calendar days of the  
18 individual's receipt of the maltreatment determination and  
19 notice of disqualification. If the request for reconsideration  
20 is made by personal service, it must be received by the  
21 investigating agency within 30 calendar days after the  
22 individual's receipt of the notice of disqualification.

23 (b) Except as provided under paragraphs (e) and (f), if the  
24 investigating agency denies the request or fails to act upon the  
25 request within 15 ~~calendar~~ working days after receiving the  
26 request for reconsideration, the person or facility entitled to  
27 a fair hearing under section 256.045 may submit to the  
28 commissioner of human services or the commissioner of education  
29 a written request for a hearing under that section. Section  
30 256.045 also governs hearings requested to contest a final  
31 determination of the commissioner of education. For reports  
32 involving maltreatment of a child in a facility, an interested  
33 person acting on behalf of the child may request a review by the  
34 Child Maltreatment Review Panel under section 256.022 if the  
35 investigating agency denies the request or fails to act upon the  
36 request or if the interested person contests a reconsidered

1 determination. The investigating agency shall notify persons  
2 who request reconsideration of their rights under this  
3 paragraph. The request must be submitted in writing to the  
4 review panel and a copy sent to the investigating agency within  
5 30 calendar days of receipt of notice of a denial of a request  
6 for reconsideration or of a reconsidered determination. The  
7 request must specifically identify the aspects of the agency  
8 determination with which the person is dissatisfied.

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

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

22 (e) Effective January 1, 2002, if an individual was  
23 disqualified under sections 245C.14 and 245C.15, on the basis of  
24 a determination of maltreatment, which was serious or recurring,  
25 and the individual has requested reconsideration of the  
26 maltreatment determination under paragraph (a) and requested  
27 reconsideration of the disqualification under sections 245C.21  
28 to 245C.27, reconsideration of the maltreatment determination  
29 and reconsideration of the disqualification shall be  
30 consolidated into a single reconsideration. If reconsideration  
31 of the maltreatment determination is denied or the  
32 disqualification is not set aside under sections 245C.21 to  
33 245C.27, the individual may request a fair hearing under section  
34 256.045. If an individual requests a fair hearing on the  
35 maltreatment determination and the disqualification, the scope  
36 of the fair hearing shall include both the maltreatment

1 determination and the disqualification.

2 (f) Effective January 1, 2002, if a maltreatment  
3 determination or a disqualification based on serious or  
4 recurring maltreatment is the basis for a denial of a license  
5 under section 245A.05 or a licensing sanction under section  
6 245A.07, the license holder has the right to a contested case  
7 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to  
8 1400.8612. As provided for under section 245A.08, subdivision  
9 2a, the scope of the contested case hearing shall include the  
10 maltreatment determination, disqualification, and licensing  
11 sanction or denial of a license. In such cases, a fair hearing  
12 regarding the maltreatment determination shall not be conducted  
13 under paragraph (b). When a fine is based on a determination  
14 that the license holder is responsible for maltreatment and the  
15 fine is issued at the same time as the maltreatment  
16 determination, if the license holder appeals the maltreatment  
17 and fine, reconsideration of the maltreatment determination  
18 shall not be conducted under this section. If the disqualified  
19 subject is an individual other than the license holder and upon  
20 whom a background study must be conducted under chapter 245C,  
21 the hearings of all parties may be consolidated into a single  
22 contested case hearing upon consent of all parties and the  
23 administrative law judge.

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

30 Sec. 46. Minnesota Statutes 2004, section 626.557,  
31 subdivision 9d, is amended to read:

32 Subd. 9d. [ADMINISTRATIVE RECONSIDERATION OF FINAL  
33 DISPOSITION OF MALTREATMENT AND DISQUALIFICATION BASED ON  
34 SERIOUS OR RECURRING MALTREATMENT; REVIEW PANEL.] (a) Except as  
35 provided under paragraph (e), any individual or facility which a  
36 lead agency determines has maltreated a vulnerable adult, or the

1 vulnerable adult or an interested person acting on behalf of the  
2 vulnerable adult, regardless of the lead agency's determination,  
3 who contests the lead agency's final disposition of an  
4 allegation of maltreatment, may request the lead agency to  
5 reconsider its final disposition. The request for  
6 reconsideration must be submitted in writing to the lead agency  
7 within 15 calendar days after receipt of notice of final  
8 disposition or, if the request is made by an interested person  
9 who is not entitled to notice, within 15 days after receipt of  
10 the notice by the vulnerable adult or the vulnerable adult's  
11 legal guardian. If mailed, the request for reconsideration must  
12 be postmarked and sent to the lead agency within 15 calendar  
13 days of the individual's or facility's receipt of the final  
14 disposition. If the request for reconsideration is made by  
15 personal service, it must be received by the lead agency within  
16 15 calendar days of the individual's or facility's receipt of  
17 the final disposition. An individual who was determined to have  
18 maltreated a vulnerable adult under this section and who was  
19 disqualified on the basis of serious or recurring maltreatment  
20 under sections 245C.14 and 245C.15, may request reconsideration  
21 of the maltreatment determination and the disqualification. The  
22 request for reconsideration of the maltreatment determination  
23 and the disqualification must be submitted in writing within 30  
24 calendar days of the individual's receipt of the notice of  
25 disqualification under sections 245C.16 and 245C.17. If mailed,  
26 the request for reconsideration of the maltreatment  
27 determination and the disqualification must be postmarked and  
28 sent to the lead agency within 30 calendar days of the  
29 individual's receipt of the notice of disqualification. If the  
30 request for reconsideration is made by personal service, it must  
31 be received by the lead agency within 30 calendar days after the  
32 individual's receipt of the notice of disqualification.

33 (b) Except as provided under paragraphs (e) and (f), if the  
34 lead agency denies the request or fails to act upon the request  
35 within 15 calendar working days after receiving the request for  
36 reconsideration, the person or facility entitled to a fair



1 hearing under section 256.045, may submit to the commissioner of  
2 human services a written request for a hearing under that  
3 statute. The vulnerable adult, or an interested person acting  
4 on behalf of the vulnerable adult, may request a review by the  
5 Vulnerable Adult Maltreatment Review Panel under section 256.021  
6 if the lead agency denies the request or fails to act upon the  
7 request, or if the vulnerable adult or interested person  
8 contests a reconsidered disposition. The lead agency shall  
9 notify persons who request reconsideration of their rights under  
10 this paragraph. The request must be submitted in writing to the  
11 review panel and a copy sent to the lead agency within 30  
12 calendar days of receipt of notice of a denial of a request for  
13 reconsideration or of a reconsidered disposition. The request  
14 must specifically identify the aspects of the agency  
15 determination with which the person is dissatisfied.

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

19 (d) For purposes of this subdivision, "interested person  
20 acting on behalf of the vulnerable adult" means a person  
21 designated in writing by the vulnerable adult to act on behalf  
22 of the vulnerable adult, or a legal guardian or conservator or  
23 other legal representative, a proxy or health care agent  
24 appointed under chapter 145B or 145C, or an individual who is  
25 related to the vulnerable adult, as defined in section 245A.02,  
26 subdivision 13.

27 (e) If an individual was disqualified under sections  
28 245C.14 and 245C.15, on the basis of a determination of  
29 maltreatment, which was serious or recurring, and the individual  
30 has requested reconsideration of the maltreatment determination  
31 under paragraph (a) and reconsideration of the disqualification  
32 under sections 245C.21 to 245C.27, reconsideration of the  
33 maltreatment determination and requested reconsideration of the  
34 disqualification shall be consolidated into a single  
35 reconsideration. If reconsideration of the maltreatment  
36 determination is denied or if the disqualification is not set

1 aside under sections 245C.21 to 245C.27, the individual may  
2 request a fair hearing under section 256.045. If an individual  
3 requests a fair hearing on the maltreatment determination and  
4 the disqualification, the scope of the fair hearing shall  
5 include both the maltreatment determination and the  
6 disqualification.

7 (f) If a maltreatment determination or a disqualification  
8 based on serious or recurring maltreatment is the basis for a  
9 denial of a license under section 245A.05 or a licensing  
10 sanction under section 245A.07, the license holder has the right  
11 to a contested case hearing under chapter 14 and Minnesota  
12 Rules, parts 1400.8505 to 1400.8612. As provided for under  
13 section 245A.08, the scope of the contested case hearing shall  
14 include the maltreatment determination, disqualification, and  
15 licensing sanction or denial of a license. In such cases, a  
16 fair hearing shall not be conducted under paragraph (b). When a  
17 fine is based on a determination that the license holder is  
18 responsible for maltreatment and the fine is issued at the same  
19 time as the maltreatment determination, if the license holder  
20 appeals the maltreatment and fine, reconsideration of the  
21 maltreatment determination shall not be conducted under this  
22 section. If the disqualified subject is an individual other  
23 than the license holder and upon whom a background study must be  
24 conducted under chapter 245C, the hearings of all parties may be  
25 consolidated into a single contested case hearing upon consent  
26 of all parties and the administrative law judge.

27 (g) Until August 1, 2002, an individual or facility that  
28 was determined by the commissioner of human services or the  
29 commissioner of health to be responsible for neglect under  
30 section 626.5572, subdivision 17, after October 1, 1995, and  
31 before August 1, 2001, that believes that the finding of neglect  
32 does not meet an amended definition of neglect may request a  
33 reconsideration of the determination of neglect. The  
34 commissioner of human services or the commissioner of health  
35 shall mail a notice to the last known address of individuals who  
36 are eligible to seek this reconsideration. The request for

1 reconsideration must state how the established findings no  
2 longer meet the elements of the definition of neglect. The  
3 commissioner shall review the request for reconsideration and  
4 make a determination within 15 calendar days. The  
5 commissioner's decision on this reconsideration is the final  
6 agency action.

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

13 (2) For purposes of any background studies under chapter  
14 245C, when a determination of substantiated maltreatment has  
15 been changed as a result of a reconsideration under this  
16 paragraph, any prior disqualification of the individual under  
17 chapter 245C that was based on this determination of  
18 maltreatment shall be rescinded, and for future background  
19 studies under chapter 245C the commissioner must not use the  
20 previous determination of substantiated maltreatment as a basis  
21 for disqualification or as a basis for referring the  
22 individual's maltreatment history to a health-related licensing  
23 board under section 245C.31.

24 Sec. 47. Minnesota Statutes 2004, section 626.557,  
25 subdivision 14, is amended to read:

26 Subd. 14. [ABUSE PREVENTION PLANS.] (a) Each facility,  
27 except home health agencies and personal care attendant services  
28 providers, shall establish and enforce an ongoing written abuse  
29 prevention plan. The plan shall contain an assessment of the  
30 physical plant, its environment, and its population identifying  
31 factors which may encourage or permit abuse, and a statement of  
32 specific measures to be taken to minimize the risk of abuse.  
33 The plan shall comply with any rules governing the plan  
34 promulgated by the licensing agency.

35 (b) Each facility, including a home health care agency and  
36 personal care attendant services providers, shall develop an

1 individual abuse prevention plan for each vulnerable adult  
2 residing there or receiving services from them. The plan shall  
3 contain an individualized assessment of both the person's  
4 susceptibility to abuse by other individuals, including other  
5 vulnerable adults, and the potential risks posed by the person  
6 to the other patients, to facility staff, and to others; and a  
7 statement of the specific measures to be taken to minimize the  
8 risk of abuse to that person and others. For the purposes of  
9 this clause, the term "abuse" includes self-abuse.

10 Sec. 48. [REPEALER.]

11 Minnesota Statutes 2004, section 246.017, subdivision 1, is  
12 repealed."

13 Delete the title and insert:

14 "A bill for an act relating to human services; making  
15 changes to licensing provisions; amending Minnesota Statutes  
16 2004, sections 13.46, subdivision 4; 243.166, subdivision 7;  
17 245A.02, subdivision 17; 245A.03, subdivisions 2, 3; 245A.04,  
18 subdivisions 7, 13; 245A.07, subdivisions 1, 3; 245A.08,  
19 subdivisions 2a, 5; 245A.14, by adding subdivisions; 245A.144;  
20 245A.16, subdivision 4; 245A.18; 245B.02, subdivision 10;  
21 245B.055, subdivision 7; 245B.07, subdivision 8; 245C.03,  
22 subdivision 1; 245C.07; 245C.08, subdivisions 1, 2; 245C.15,  
23 subdivisions 1, 2, 3, 4; 245C.17, subdivision 2; 245C.21,  
24 subdivision 2; 245C.22, subdivisions 3, 4; 245C.24, subdivisions  
25 2, 3; 245C.27, subdivision 1; 245C.28, subdivision 3; 245C.30,  
26 subdivision 2; 246.13; 253B.18, subdivision 4a; 260C.163,  
27 subdivision 5; 299C.093; 518.165, by adding subdivisions;  
28 609A.03, subdivision 7; 626.556, subdivision 10i; 626.557,  
29 subdivisions 9d, 14; repealing Minnesota Statutes 2004, section  
30 246.017, subdivision 1."

1 Senator ..... moves to amend the delete-everything  
2 amendment (SCS1722A-1) to S.F. No. 1722 as follows:

3 Page 49, after line 4, insert:

4 "Sec. 39. Minnesota Statutes 2004, section 260B.163,  
5 subdivision 6, is amended to read:

6 Subd. 6. [GUARDIAN AD LITEM.] (a) The court shall appoint  
7 a guardian ad litem to protect the interests of the minor when  
8 it appears, at any stage of the proceedings, that the minor is  
9 without a parent or guardian, or that the minor's parent is a  
10 minor or incompetent, or that the parent or guardian is  
11 indifferent or hostile to the minor's interests. In any other  
12 case the court may appoint a guardian ad litem to protect the  
13 interests of the minor when the court feels that such an  
14 appointment is desirable. The court shall appoint the guardian  
15 ad litem on its own motion or in the manner provided for the  
16 appointment of a guardian ad litem in the district court. The  
17 court may appoint separate counsel for the guardian ad litem if  
18 necessary.

19 (b) A guardian ad litem shall carry out the following  
20 responsibilities:

21 (1) conduct an independent investigation to determine the  
22 facts relevant to the situation of the child and the family,  
23 which must include, unless specifically excluded by the court,  
24 reviewing relevant documents; meeting with and observing the  
25 child in the home setting and considering the child's wishes, as  
26 appropriate; and interviewing parents, caregivers, and others  
27 with knowledge relevant to the case;

28 (2) advocate for the child's best interests by  
29 participating in appropriate aspects of the case and advocating  
30 for appropriate community services when necessary;

31 (3) maintain the confidentiality of information related to  
32 a case, with the exception of sharing information as permitted  
33 by law to promote cooperative solutions that are in the best  
34 interests of the child;

35 (4) monitor the child's best interests throughout the  
36 judicial proceeding; and

1 (5) present written reports on the child's best interests  
2 that include conclusions and recommendations and the facts upon  
3 which they are based.

4 (c) The court may waive the appointment of a guardian ad  
5 litem pursuant to paragraph (a), whenever counsel has been  
6 appointed pursuant to subdivision 2 or is retained otherwise,  
7 and the court is satisfied that the interests of the minor are  
8 protected.

9 (d) In appointing a guardian ad litem pursuant to paragraph  
10 (a), the court shall not appoint the party, or any agent or  
11 employee thereof, filing a petition pursuant to section 260B.141  
12 and 260C.141.

13 (e) The following factors shall be considered when  
14 appointing a guardian ad litem in a case involving an Indian or  
15 minority child:

16 (1) whether a person is available who is the same racial or  
17 ethnic heritage as the child or, if that is not possible;

18 (2) whether a person is available who knows and appreciates  
19 the child's racial or ethnic heritage.

20 (f) The court shall require a background study for each  
21 guardian ad litem as provided under section 518.165. The court  
22 shall have access to data collected pursuant to section 245C.32  
23 for purposes of the background study."

24 Renumber the sections in sequence and correct the internal  
25 references

26 Amend the title accordingly

1 Senator ..... moves to amend the delete-everything  
2 amendment (SCS1722A-1) to S.F. No. 1722 as follows:

3 Page 9, after line 2, insert:

4 "Sec. 6. Minnesota Statutes 2004, section 245A.035,  
5 subdivision 5, is amended to read:

6 Subd. 5. [CHILD FOSTER CARE LICENSE APPLICATION.] (a) The  
7 emergency license holder shall complete the child foster care  
8 license application and necessary paperwork within ten days of  
9 the placement. The county agency shall assist the emergency  
10 license holder to complete the application. The granting of a  
11 child foster care license to a relative shall be under the  
12 procedures in this chapter and according to the standards set  
13 forth by foster care rule. In licensing a relative, the  
14 commissioner shall consider the importance of maintaining the  
15 child's relationship with relatives as an additional significant  
16 factor in determining whether to set aside a licensing  
17 disqualifier under section 245C.22, or to grant a variance of  
18 licensing requirements under sections 245C.21 to 245C.27.

19 (b) When the county or private child placing agency is  
20 processing an application for child foster care licensure of a  
21 relative as defined in sections 260B.007, subdivision 12, or  
22 260C.007, subdivision 27, the county agency or child placing  
23 agency must explain the licensing process, including the  
24 background study process and the procedure for reconsideration  
25 of an initial disqualification for licensure. The county or  
26 private child placing agency must also ask the prospective  
27 relative licensee if the prospective licensee would like legal  
28 assistance and assistance with a referral for legal services,  
29 and if so, consult with the county attorney about the most  
30 appropriate lawyer referral service for the area."

31 Renumber the sections in sequence and correct the internal  
32 references

33 Amend the title accordingly