

House Research Bill Summary

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Article 6: Human Services Background Studies

Overview

This article contains information regarding disqualification from employment in a DHS licensed facility or program, circumstances under which a variance can be granted, or a disqualification decision rescinded.

1

Disqualification from direct contact. Provides a cross-reference to section 245C.22 to reflect the classification procedure for data about disqualified individuals.

2

Set-aside data. Provides procedures for disclosure of data relative to individuals who obtain a set-aside of their disqualification.

3

Variance data. Provides procedures for disclosure of data relating to disqualified individuals who received a variance.

4

Licensed programs. Adds that prospective employees shall have a background study completed before having direct contact with clients in DHS licensed facilities or programs.

5

Direct contact pending completion of background study. Provides that prior to receipt of study results, notice of set aside or variance, the subject of a background study may not be issued a license; live in a household where a licensed program will operate; provide or have any contact with persons served by the program.

6

Permanent disqualifications. Adds 24 felonies and two administrative determinations as grounds to permanently bar employment at a DHS licensed facility or program. Adds aiding and abetting in any of the disqualifying offenses as a permanent bar to employment.

7

15-year disqualifications. Deletes 17 offenses and classifies them as a permanent bar to employment. Adds three new offenses to the 15-year disqualification list. Adds aiding and abetting in any of the disqualifying offenses as a 15-year bar to employment.

8

Ten-year disqualifications. Changes offenses for 10-year disqualifications to include some misdemeanor offenses. Adds aiding and abetting in any of the disqualifying offenses as a 10-year bar to employment.

9

Seven-year disqualifications. Provides technical changes.

10

Time frame for notice of study results. Requires immediate removal from positions allowing direct contact with patients when the person's prior background study resulted in an order for immediate renewal and more time is needed to complete a subsequent study.

11

Disqualification notice to subject. Provides the commissioner shall disclose to the disqualified subject of a background study restrictions on discretion to set aside a disqualification. Provides the commissioner shall notify the individual that if the disqualification is set aside or the facility is granted a variance, the individual's identity and the reason for disqualification will become public data. Provides the commissioner must notify the individual of the immediate risk of harm posed by the individual. Provides that the commissioner inform the individual who does not pose an immediate risk of harm, the circumstances under which the individual may provide direct services.

12

Disqualification notice to applicant, license holder or other entity. Provides that the commissioner shall order the license holder to immediately remove a disqualified individual from direct services; or before allowing a disqualified applicant direct contact, the license holder must obtain a copy of the disqualified individual's notice of

disqualification and assure the disqualified individual seeks reconsideration within 30 days of notice of disqualification.

13

Requests for reconsideration. Places responsibility on the disqualified individual who is requesting rescission of the disqualification to provide information to the commissioner that the decision to disqualify was based on incorrect information. Provides that the disqualified individual submit information that the individual is aware that the individual's identity and disqualifying characteristics will become public data if the disqualification is set aside.

14

Notice of request for reconsideration. Provides that upon request the commissioner can inform those individuals and entities informed of the subject's disqualification that the subject has requested reconsideration.

15

Classification of data. Provides that if a disqualification is set aside, or a variance granted to a facility, the identity of the disqualified individual and the individual's disqualifying characteristics are public data. Provides that the information will remain private data if the disqualification is not set aside and the variance is not granted, or rescinded because the information relied upon to disqualify the individual is incorrect.

Requires licensed family day care providers and child care centers to notify parents considering enrollment of their child and parents of children in the day care if the program employs or has living in the home any person who is the subject of either a set-aside or variance.

16

Notice of disqualification that is rescinded or set aside. Directs the commissioner when a disqualification is rescinded to notify the license holder that the information relied upon to disqualify the individual was incorrect.

17

Permanent bar to set aside a disqualification. Provides that the commissioner cannot set aside the disqualification if an individual was disqualified for an offense that permanently disqualified the individual from employment in a DHS licensed facility or program.

18

Ten-year bar to set aside disqualification. Provides the commissioner cannot set aside the disqualification of an individual who was disqualified for an offense under section 245C.15, subdivision 3, unless 10 years have passed since discharge of the sentence imposed, if any.

19

Seven-year bar to set aside disqualification. Adds that a disqualification cannot be set aside for seven years if the individual is found to have committed a disqualifying act under section 245.15, subd. 4.

20

Notification of disqualification. Provides the commissioner shall expand notification of disqualifications to entities and inform the public about disqualifications.

21

License holder variance. Provides that a variance must be requested by the license holder, except for programs to provide family child care, foster care for children in the provider's own home, or foster or day care services for adults in the provider's own home.

22

Disclosure of reason for disqualification. Adds that the commissioner must have documentation showing that the disqualified individual has been informed that if a variance is granted, the individual's identity, reason for disqualification and terms of the variance will become public data.

23

Data management. Changes retention date of substantiated reports of maltreatment of a vulnerable adult from seven to at least ten years.

1 Senator moves to amend S.F. No. 1722 as follows:

2 Page 1, after line 29, insert:

3 "ARTICLE 1
4 LICENSING PROVISIONS"

5 Page 67, after line 6, insert:

6 "ARTICLE 2
7 HUMAN SERVICES BACKGROUND STUDIES

8 Section 1. Minnesota Statutes 2004, section 13.461, is
9 amended by adding a subdivision to read:

10 Subd. 29. [DISQUALIFICATION FROM DIRECT CONTACT.] The
11 classification of data about individuals disqualified from
12 providing direct contact services is governed by section
13 245C.22, subdivision 7.

14 Sec. 2. Minnesota Statutes 2004, section 13.461, is
15 amended by adding a subdivision to read:

16 Subd. 30. [SET-ASIDE DATA.] Disclosure of data relating to
17 individuals who have obtained a set-aside of the
18 disqualification is governed by section 245C.22, subdivision 7.

19 Sec. 3. Minnesota Statutes 2004, section 13.461, is
20 amended by adding a subdivision to read:

21 Subd. 31. [VARIANCE DATA.] Disclosure of data relating to
22 disqualified individuals as to whom a variance has been obtained
23 by the individual's employer is governed by section 245C.30,
24 subdivision 2.

25 Sec. 4. Minnesota Statutes 2004, section 245C.03,
26 subdivision 1, is amended to read:

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

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

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

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

35 (4) volunteers or student volunteers who will have direct
36 contact with persons served by the program to provide program

1 services if the contact is not under the continuous, direct
2 supervision by an individual listed in clause (1) or (3);

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

6 (6) an individual who, without providing direct contact
7 services at a licensed program, may have unsupervised access to
8 children or vulnerable adults receiving services from a program
9 licensed to provide:

10 (i) family child care for children;

11 (ii) foster care for children in the provider's own home;

12 or

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

15 (7) all managerial officials as defined under section
16 245A.02, subdivision 5a.

17 The commissioner must have reasonable cause to study an
18 individual under this subdivision.

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

23 Sec. 5. Minnesota Statutes 2004, section 245C.13,
24 subdivision 2, is amended to read:

25 Subd. 2. [DIRECT CONTACT PENDING COMPLETION OF BACKGROUND
26 STUDY.] ~~Unless otherwise specified, the subject of a background~~
27 ~~study may have direct contact with persons served by a program~~
28 ~~after the background study form is mailed or submitted to the~~
29 ~~commissioner pending notification of the study results under~~
30 ~~section 245C.17. The subject of a background study may not~~
31 ~~perform any activity requiring a background study under~~
32 ~~paragraph (b) until the commissioner has issued one of the~~
33 ~~notices under paragraph (a).~~

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

36 (1) a notice of the study results under section 245C.17

1 stating that:

2 (i) the individual is not disqualified; or

3 (ii) more time is needed to complete the study but the
4 individual is not required to be removed from direct contact or
5 access to people receiving services prior to completion of the
6 study as provided under section 245A.17, paragraph (c);

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

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

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

13 (1) being issued a license;

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

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

19 (4) having access to persons receiving services if the
20 background study was completed under section 144.057,
21 subdivision 1, or 245C.03, subdivision 1, paragraph (a), clause
22 (2), (5), or (6), unless the subject is under continuous direct
23 supervision.

24 Sec. 6. Minnesota Statutes 2004, section 245C.15,
25 subdivision 1, is amended to read:

26 Subdivision 1. [PERMANENT DISQUALIFICATION.] (a) An
27 individual is disqualified under section 245C.14 if: (1)
28 regardless of how much time has passed since the discharge of
29 the sentence imposed, if any, for the offense; and (2) unless
30 otherwise specified, regardless of the level of the ~~conviction~~
31 offense, the individual ~~is-convicted-of~~ has committed any of the
32 following offenses: sections 152.021 (controlled substance
33 crime in the first degree); 152.022 (controlled substance crime
4 in the second degree); 152.023 (controlled substance crime in
35 the third degree); 152.024 (controlled substance crime in the
36 fourth degree); 152.0261 (importing controlled substances across

1 state lines); 609.165 (certain convicted felons ineligible to
2 possess firearms); 609.185 (murder in the first degree); 609.19
3 (murder in the second degree); 609.195 (murder in the third
4 degree); 609.20 (manslaughter in the first degree); 609.205
5 (manslaughter in the second degree); 609.21 (criminal vehicular
6 homicide and injury); 609.221 ~~or~~ (assault in the first degree);
7 609.222 (assault in the ~~first-or~~ second degree); 609.223
8 (assault in the third degree); a felony offense under sections
9 609.2242 and 609.2243 (domestic assault), spousal abuse, child
10 abuse or neglect, or a crime against children; 609.228 (great
11 bodily harm caused by distribution of drugs); an offense
12 punishable as a felony under 609.229 (crime committed for the
13 benefit of a gang); 609.235 (use of drugs to injure or
14 facilitate a crime); 609.24 (simple robbery); 609.245
15 (aggravated robbery); 609.25 (kidnapping); 609.255 (false
16 imprisonment); 609.2661 (murder of an unborn child in the first
17 degree); 609.2662 (murder of an unborn child in the second
18 degree); 609.2663 (murder of an unborn child in the third
19 degree); 609.2664 (manslaughter of an unborn child in the first
20 degree); 609.2665 (manslaughter of an unborn child in the second
21 degree); 609.267 (assault of an unborn child in the first
22 degree); 609.2671 (assault of an unborn child in the second
23 degree); 609.268 (injury or death of an unborn child in
24 commission of a crime); 609.322 (solicitation, inducement, and
25 promotion of prostitution); a felony offense under 609.324,
26 subdivision 1 (other prohibited acts); 609.342 (criminal sexual
27 conduct in the first degree); 609.343 (criminal sexual conduct
28 in the second degree); 609.344 (criminal sexual conduct in the
29 third degree); 609.345 (criminal sexual conduct in the fourth
30 degree); 609.3451 (criminal sexual conduct in the fifth degree);
31 609.352 (solicitation of children to engage in sexual conduct);
32 609.365 (incest); an offense punishable as a felony offense
33 under 609.377 (malicious punishment of a child); an offense
34 punishable as a felony offense under 609.378 (neglect or
35 endangerment of a child); 609.498 (tampering with a witness);
36 609.561 (arson in the first degree); 609.562 (arson in the

1 second degree); 609.582, subdivision 1 (burglary in the first
2 degree); 609.66, subdivision 1e (drive-by shooting); 609.687
3 (adulteration); 609.749, subdivision 3, 4, or 5 (felony-level
4 harassment; stalking); 609.855, subdivision 5 (shooting at or in
5 a public transit vehicle or facility); 617.246 (use of minors in
6 sexual performance prohibited); ~~er~~ 617.247 (possession of
7 pictorial representations of minors); or an offense punishable
8 as a felony under 624.713 (certain persons not to have pistols
9 or semiautomatic military-style assault weapons).

10 (b) An individual also is disqualified under section
11 245C.14 regardless of how much time has passed since:

12 (1) the involuntary termination of the individual's
13 parental rights under section 260C.301;

14 (2) an administrative determination under section 626.556
15 of sexual abuse of a minor or abuse of a minor resulting in
16 death or serious injury as defined under section 245C.02,
17 subdivision 18; or

18 (3) an administrative determination under section 626.557
19 of sexual abuse of a vulnerable adult or abuse of a vulnerable
20 adult resulting in death or serious injury as defined under
21 section 245C.02, subdivision 18.

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

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

30 Sec. 7. Minnesota Statutes 2004, section 245C.15,
31 subdivision 2, is amended to read:

32 Subd. 2. [15-YEAR DISQUALIFICATION.] (a) An individual is
33 disqualified under section 245C.14 if: (1) less than 15 years
34 have passed since the discharge of the sentence imposed, if any,
35 for the offense; and (2) the individual has received committed a
36 ~~felony-conviction-for-a~~ felony-level violation of any of the

1 following offenses: sections 152.025 (controlled substance
2 crime in the fifth degree); 260C.301 (grounds for termination of
3 parental rights); ~~609.165-(felon-ineligible-to-possess-firearm);~~
4 ~~609.21-(criminal-vehicular-homicide-and-injury);~~ 609.215
5 (suicide); ~~609.223-or~~ 609.2231 (assault in the ~~third-or~~ fourth
6 degree); repeat offenses under 609.224 (assault in the fifth
7 degree); 609.2325 (criminal abuse of a vulnerable adult);
8 609.2335 (financial exploitation of a vulnerable adult); ~~609.235~~
9 ~~(use-of-drugs-to-injure-or-facilitate-crime);~~ ~~609.24-(simple~~
10 ~~robbery);~~ ~~609.255-(false-imprisonment);~~ ~~609.2664-(manslaughter~~
11 ~~of-an-unborn-child-in-the-first-degree);~~ ~~609.2665-(manslaughter~~
12 ~~of-an-unborn-child-in-the-second-degree);~~ ~~609.267-(assault-of-an~~
13 ~~unborn-child-in-the-first-degree);~~ ~~609.2671-(assault-of-an~~
14 ~~unborn-child-in-the-second-degree);~~ ~~609.268-(injury-or-death-of~~
15 ~~an-unborn-child-in-the-commission-of-a-crime);~~ 609.27
16 (coercion); 609.275 (attempt to coerce); ~~repeat-offenses-under~~
17 ~~609.3451-(criminal-sexual-conduct-in-the-fifth-degree);~~ ~~609.498,~~
18 ~~subdivision-1-or-1b-(aggravated-first-degree-or-first-degree~~
19 ~~tampering-with-a-witness);~~ 609.52 (theft); 609.521 (possession
20 of shoplifting gear); ~~609.562-(arson-in-the-second-degree);~~
21 609.563 (arson in the third degree); 609.582, subdivision 2, 3,
22 or 4 (burglary in the second, third, or fourth degree); 609.625
23 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery;
24 offering a forged check); 609.635 (obtaining signature by false
25 pretense); 609.66 (dangerous weapons); 609.67 (machine guns and
26 short-barreled shotguns); ~~609.687-(adulteration);~~ 609.71 (riot);
27 609.713 (terroristic threats); repeat offenses under 617.23
28 (indecent exposure; penalties); repeat offenses under 617.241
29 (obscene materials and performances; distribution and exhibition
30 prohibited; penalty); ~~chapter-152-(drugs-controlled-substance);~~
31 or a felony-level conviction involving alcohol or drug use.

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

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

6 (d) If the individual studied is convicted of one of the
7 felonies listed in paragraph (a), but the sentence is a gross
8 misdemeanor or misdemeanor disposition, the individual is
9 disqualified but the disqualification lookback period for the
10 conviction is the period applicable to the gross misdemeanor or
11 misdemeanor disposition.

12 Sec. 8. Minnesota Statutes 2004, section 245C.15,
13 subdivision 3, is amended to read:

14 Subd. 3. [TEN-YEAR DISQUALIFICATION.] (a) An individual is
15 disqualified under section 245C.14 if: (1) less than ten years
16 have passed since the discharge of the sentence imposed, if any,
17 for the offense; and (2) the individual has ~~received~~ committed a
18 ~~gross misdemeanor-conviction-for-a~~ misdemeanor-level violation
19 of any of the following offenses: sections 609.224 (assault in
20 the fifth degree); 609.224, subdivision 2, paragraph (c)
21 (assault in the fifth degree by a caregiver against a vulnerable
22 adult); 609.2242 and 609.2243 (domestic assault); 609.23
23 (mistreatment of persons confined); 609.231 (mistreatment of
24 residents or patients); 609.2325 (criminal abuse of a vulnerable
25 adult); 609.233 (criminal neglect of a vulnerable adult);
26 609.2335 (financial exploitation of a vulnerable adult); 609.234
27 (failure to report maltreatment of a vulnerable adult); 609.265
28 (abduction); 609.275 (attempt to coerce); 609.324, subdivision
29 1a (other prohibited acts; minor engaged in prostitution);
30 609.33 (disorderly house); ~~609.3451-(criminal-sexual-conduct-in~~
31 ~~the-fifth-degree);~~ misdemeanor or gross misdemeanor offenses
32 under 609.377 (malicious punishment of a child); misdemeanor or
33 gross misdemeanor offenses under 609.378 (neglect or
4 endangerment of a child); 609.52 (theft); 609.582 (burglary);
35 609.631 (check forgery; offering a forged check); 609.66
36 (dangerous weapons); 609.71 (riot); 609.72, subdivision 3

1 (disorderly conduct against a vulnerable adult); repeat offenses
2 under 609.746 (interference with privacy); 609.749, subdivision
3 2 (harassment; stalking); repeat offenses under 617.23 (indecent
4 exposure); 617.241 (obscene materials and performances); 617.243
5 (indecent literature, distribution); 617.293 (harmful materials;
6 dissemination and display to minors prohibited); or violation of
7 an order for protection under section 518B.01, subdivision 14.

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

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

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

23 Sec. 9. Minnesota Statutes 2004, section 245C.15,
24 subdivision 4, is amended to read:

25 Subd. 4. [SEVEN-YEAR DISQUALIFICATION.] (a) An individual
26 is disqualified under section 245C.14 if: (1) less than seven
27 years has passed since the discharge of the sentence imposed, if
28 any, for the offense; and (2) the individual has received
29 committed a ~~misdemeanor-conviction-for-a~~ misdemeanor-level
30 violation of any of the following offenses: sections 609.224
31 (assault in the fifth degree); 609.2242 (domestic assault);
32 609.2335 (financial exploitation of a vulnerable adult); 609.234
33 (failure to report maltreatment of a vulnerable adult); 609.2672
34 (assault of an unborn child in the third degree); 609.27
35 (coercion); violation of an order for protection under 609.3232
36 (protective order authorized; procedures; penalties); 609.52

1 (theft); 609.66 (dangerous weapons); 609.665 (spring guns);
2 609.746 (interference with privacy); 609.79 (obscene or
3 harassing phone telephone calls); 609.795 (letter, telegram, or
4 package; opening; harassment); 617.23 (indecent exposure;
5 penalties); 617.293 (harmful materials; dissemination and
6 display to minors prohibited); or violation of an order for
7 protection under section 518B.01 (Domestic Abuse Act).

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

11 (1) failure to make required reports under section 626.556,
12 subdivision 3, or 626.557, subdivision 3, for incidents in
13 which: (i) the final disposition under section 626.556 or
14 626.557 was substantiated maltreatment, and (ii) the
15 maltreatment was recurring or serious; or

16 (2) except for disqualifications under subdivision 1,
17 substantiated serious or recurring maltreatment of a minor under
18 section 626.556, a vulnerable adult under section 626.557, or
19 serious or recurring maltreatment in any other state, the
20 elements of which are substantially similar to the elements of
21 maltreatment under section 626.556 or 626.557 for which: (i)
22 there is a preponderance of evidence that the maltreatment
23 occurred, and (ii) the subject was responsible for the
24 maltreatment.

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

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

35 Sec. 10. Minnesota Statutes 2004, section 245C.17,
36 subdivision 1, is amended to read:

1 Subdivision 1. [TIME FRAME FOR NOTICE OF STUDY RESULTS.]

2 (a) Within 15 working days after the commissioner's receipt of
3 the background study form, the commissioner shall notify the
4 individual who is the subject of the study in writing or by
5 electronic transmission of the results of the study or that more
6 time is needed to complete the study.

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

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

20 Sec. 11. 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;

34 (4) a statement indicating that if the individual's
35 disqualification is set aside or the facility is granted a
36 variance under section 245C.30, the individual's identity and

1 the reason for the individual's disqualification will become
2 public data; and

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

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

10 (c) If the commissioner determines under section 245C.16
11 that an individual studied does not pose a risk of harm that
12 ~~requires continuous, direct supervision, the commissioner shall~~
13 ~~only notify the individual of the disqualification~~ immediate
14 removal, the individual shall be informed of the conditions
15 under which the agency that initiated the background study may
16 allow the individual to provide direct contact services as
17 provided under subdivision 3.

18 Sec. 12. Minnesota Statutes 2004, section 245C.17,
19 subdivision 3, is amended to read:

20 Subd. 3. [DISQUALIFICATION NOTICE SENT TO APPLICANT,
21 LICENSE HOLDER, OR OTHER ENTITY.] (a) The commissioner shall
22 notify an applicant, license holder, or other entity as provided
23 in this chapter who is not the subject of the study:

24 (1) that the commissioner has found information that
25 disqualifies the individual studied from direct contact with, or
26 from access to, persons served by the program; and

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

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

35 (c) If the commissioner determines under section 245C.16
36 that an individual studied poses a risk of harm that requires

1 continuous, direct supervision, the commissioner shall order the
2 applicant, license holder, or other entities as provided in this
3 chapter to:

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

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

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

12 (ii) assure ensure that the individual studied is under
13 continuous, direct supervision when providing direct contact
14 services during the period in which the individual may request a
15 reconsideration of the disqualification under section 245C.21;
16 and

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

20 (d) If the commissioner determines under section 245C.16
21 that an individual studied does not pose a risk of harm that
22 requires continuous, direct supervision, the commissioner shall
23 ~~send-the-license-holder-a-notice-that-more-time-is-needed-to~~
24 ~~complete-the-individual's-background-study~~ order the applicant,
25 license holder, or other entities as provided in this chapter to:

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

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

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

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

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

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

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

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

12 Sec. 13. Minnesota Statutes 2004, section 245C.21,
13 subdivision 3, is amended to read:

14 Subd. 3. [INFORMATION DISQUALIFIED INDIVIDUALS MUST
15 PROVIDE WHEN REQUESTING RECONSIDERATION.] The (a) When a
16 disqualified individual requesting-reconsideration requests that
17 the commissioner rescind the disqualification, the individual
18 must submit information showing that:

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

22 (2) for disqualifications under section 245C.15,
23 subdivision 1, based on maltreatment, the information the
24 commissioner relied upon in determining that maltreatment
25 resulted in death or serious injury as defined under section
26 245C.02, subdivision 18, is incorrect; or

27 (3) for disqualifications under section 245C.15,
28 subdivision 4, based on maltreatment, the information the
29 commissioner relied upon in determining that maltreatment was
30 serious or recurring is incorrect~~-er.~~

31 ~~{3}~~ (b) When a disqualified individual requests that the
32 commissioner set aside a disqualification, the individual must
33 submit information showing that:

34 (1) the subject of the study does not pose a risk of harm
35 to any person served by the applicant, license holder, or other
36 entities as provided in this chapter, by addressing the

1 information required under section 245C.22, subdivision 4; and

2 (2) the disqualified individual has received a notice
3 stating that if the disqualification is set aside, the
4 individual's identity and the individual's disqualifying
5 characteristics will become public data.

6 Sec. 14. Minnesota Statutes 2004, section 245C.21,
7 subdivision 4, is amended to read:

8 Subd. 4. [NOTICE OF REQUEST FOR RECONSIDERATION.] Upon
9 request, the commissioner may inform the applicant, license
10 holder, or other entities as provided in this chapter who
11 received a notice of the individual's disqualification under
12 ~~section 245C.17, subdivision 3, or has the consent of the~~
13 ~~disqualified individual,~~ whether the disqualified individual has
14 requested reconsideration.

15 Sec. 15. Minnesota Statutes 2004, section 245C.22, is
16 amended by adding a subdivision to read:

17 Subd. 7. [CLASSIFICATION OF CERTAIN DATA AS PUBLIC OR
18 PRIVATE.] (a) Notwithstanding section 13.46, upon setting aside
19 a disqualification under this section, the identity of the
20 disqualified individual who received the set aside and the
21 individual's disqualifying characteristics are public data.

22 (b) Notwithstanding section 13.46, upon granting a variance
23 to a license holder under section 245C.30, the identity of the
24 disqualified individual who is the subject of the variance, the
25 individual's disqualifying characteristics, and the terms of the
26 variance are public data.

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

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

31 (2) rescinded because the information relied upon to
32 disqualify the individual is incorrect.

33 (d) Licensed family day care providers and child care
34 centers must notify parents considering enrollment of a child or
35 parents of a child attending the family day care or child care
36 center if the program employs or has living in the home any

1 person who is the subject of either a set-aside or variance.

2 Sec. 16. Minnesota Statutes 2004, section 245C.23,
3 subdivision 1, is amended to read:

4 Subdivision 1. [COMMISSIONER'S NOTICE OF DISQUALIFICATION
5 THAT IS RESCINDED OR SET ASIDE.] ~~(a)-Except-as-provided-under~~
6 ~~paragraph-(e);~~ If the commissioner rescinds or sets aside a
7 disqualification, the commissioner shall notify the applicant or
8 license holder in writing or by electronic transmission of the
9 decision. In the notice from the commissioner that a
10 disqualification has been rescinded, the commissioner must
11 inform the license holder that the information relied upon to
12 disqualify the individual was incorrect. In the notice from the
13 commissioner that a disqualification has been set aside, the
14 commissioner must inform the license holder ~~that-information~~
15 ~~about-the-nature~~ of the reason for the individual's
16 disqualification and which factors under section 245C.22,
17 subdivision 4, were the basis of the decision to set aside the
18 disqualification ~~are-available-to-the-license-holder-upon~~
19 ~~request-without-the-consent-of-the-background-study-subject.~~

20 ~~(b)-With-the-written-consent-of-the-background-study~~
21 ~~subject,-the-commissioner-may-release-to-the-license-holder~~
22 ~~copies-of-all-information-related-to-the-background-study~~
23 ~~subject's-disqualification-and-the-commissioner's-decision-to~~
24 ~~set-aside-the-disqualification-as-specified-in-the-written~~
25 ~~consent.~~

26 ~~(e)-If-the-individual-studied-submits-a-timely-request-for~~
27 ~~reconsideration-under-section-245C-21-and-the-license-holder-was~~
28 ~~previously-sent-a-notice-under-section-245C-17,-subdivision-3,~~
29 ~~paragraph-(d);-and-if-the-commissioner-sets-aside-the~~
30 ~~disqualification-for-that-license-holder-under-section-245C-22,~~
31 ~~the-commissioner-shall-send-the-license-holder-the-same~~
32 ~~notification-received-by-license-holders-in-cases-where-the~~
33 ~~individual-studied-has-no-disqualifying-characteristic.~~

34 Sec. 17. Minnesota Statutes 2004, section 245C.24,
35 subdivision 2, is amended to read:

36 Subd. 2. [PERMANENT BAR TO SET ASIDE OF A

1 DISQUALIFICATION.] (a) Except as provided in paragraph (b), the
2 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,~~ issued or in application status under chapter
7 245A, regardless of how much time has passed, if the provider
8 was disqualified for a crime or conduct listed in section
9 245C.15, subdivision 1.

10 (b) Unless the disqualification under section 245C.15,
11 subdivision 1, relates to criminal sexual conduct or a license
12 to provide family child care, child foster care, adult day
13 services, or adult foster care in the license holder's
14 residence, the commissioner is not prohibited from setting aside
15 a disqualification according to section 245C.22, for an
16 individual who, in addition to criteria under section 245A.22,
17 demonstrates to the commissioner that:

18 (1) the person was disqualified because of conduct
19 prohibited by section 152.021, 152.022, 152.023, or 152.024;

20 (2) the individual has successfully completed chemical
21 dependency treatment from a program licensed by the Department
22 of Human Services or operated by the Department of Corrections;

23 (3) at least five years have passed since completion of the
24 treatment program; and

25 (4) the individual has not engaged in any criminal or
26 maltreatment behavior since completing treatment.

27 Sec. 18. Minnesota Statutes 2004, section 245C.24,
28 subdivision 3, is amended to read:

29 Subd. 3. [TEN-YEAR BAR TO SET ASIDE DISQUALIFICATION.] (a)
30 Except as provided in paragraph (d), the commissioner may not
31 set aside the disqualification of an individual in connection
32 with a license ~~to provide family child care for children, foster~~
33 ~~care for children in the provider's home, or foster care or day~~
34 ~~care services for adults in the provider's home~~ under chapter
35 245A if: (1) less than ten years has passed since the discharge
36 of the sentence imposed, if any, for the offense; and (2) the

1 individual has been ~~convicted of~~ disqualified for a violation of
 2 any of the following offenses: sections ~~609.165 (felon~~
 3 ~~ineligible to possess firearm)~~; ~~criminal vehicular homicide~~
 4 ~~under 609.21 (criminal vehicular homicide and injury)~~; 609.215
 5 (aiding suicide or aiding attempted suicide); felony violations
 6 under ~~609.223 or~~ 609.2231 (assault in the ~~third or~~ fourth
 7 degree); 609.713 (terroristic threats); ~~609.235 (use of drugs to~~
 8 ~~injure or to facilitate crime)~~; ~~609.24 (simple robbery)~~; ~~609.255~~
 9 ~~(false imprisonment)~~; ~~609.562 (arson in the second degree)~~; ~~609.71~~
 10 609.71 (riot); ~~609.498, subdivision 1 or 1b (aggravated first~~
 11 ~~degree or first degree tampering with a witness)~~; burglary in
 12 ~~the first or second degree under 609.582, subdivision~~
 13 2 (burglary in the second degree); 609.66, subdivision 1, 1a,
 14 1b, 1c, 1d, 1f, 1g, or 1h (dangerous weapon); 609.665 (spring
 15 guns); 609.67 (machine guns and short-barreled shotguns);
 16 609.749, subdivision 2 (gross misdemeanor harassment; stalking);
 17 ~~152.021 or 152.022 (controlled substance crime in the first or~~
 18 ~~second degree)~~; ~~152.023, subdivision 1, clause (3) or (4) or~~
 19 ~~subdivision 2, clause (4) (controlled substance crime in the~~
 20 ~~third degree)~~; ~~152.024, subdivision 1, clause (2), (3), or (4)~~
 21 ~~(controlled substance crime in the fourth degree)~~; 609.224,
 22 subdivision 2, paragraph (c) (fifth degree assault by a
 23 caregiver against a vulnerable adult); 609.23 (mistreatment of
 24 persons confined); 609.231 (mistreatment of residents or
 25 patients); 609.2325 (criminal abuse of a vulnerable adult);
 26 609.233 (criminal neglect of a vulnerable adult); 609.2335
 27 (financial exploitation of a vulnerable adult); 609.234 (failure
 28 to report); 609.265 (abduction); ~~609.2664 to 609.2665~~
 29 ~~(manslaughter of an unborn child in the first or second degree)~~; ~~609.267 to~~
 30 ~~609.2672 (assault of an unborn child in the first,~~
 31 ~~second, or third degree)~~; ~~609.268 (injury or death of an unborn~~
 32 ~~child in the commission of a crime)~~; 617.293 (disseminating or
 33 displaying harmful material to minors); a felony-level
 conviction involving alcohol or drug use, a gross misdemeanor
 35 offense under 609.324, subdivision 1 (other prohibited acts); a
 36 gross misdemeanor offense under 609.378 (neglect or endangerment

1 of a child); a gross misdemeanor offense under 609.377
2 (malicious punishment of a child); or 609.72, subdivision 3
3 (disorderly conduct against a vulnerable adult).

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

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

15 (d) Unless the disqualification under paragraph (a) relates
16 to a license to provide family child care, child foster care,
17 adult day services, or adult foster care in the license holder's
18 residence, the commissioner is not prohibited from setting aside
19 a disqualification for disqualification listed in paragraph (a)
20 according to section 245C.22, for an individual who, in addition
21 to criteria under section 245A.22, demonstrates to the
22 commissioner that:

23 (1) the person was disqualified because of conduct
24 prohibited by section 152.021, 152.022, 152.023, or 152.024;

25 (2) the individual has successfully completed chemical
26 dependency treatment from a program licensed by the Department
27 of Human Services or operated by the Department of Corrections;

28 (3) at least five years have passed since completion of the
29 treatment program; and

30 (4) the individual has not engaged in any criminal or
31 maltreatment behavior since completing treatment.

32 Sec. 19. Minnesota Statutes 2004, section 245C.24,
33 subdivision 4, is amended to read:

34 Subd. 4. [SEVEN-YEAR BAR TO SET ASIDE DISQUALIFICATION.]

35 (a) Except as provided in paragraph (b), the commissioner may
36 not set aside the disqualification of an individual in

1 connection with a license ~~to provide family child care for~~
2 ~~children, foster care for children in the provider's home, or~~
3 ~~foster care or day care services for adults in the provider's~~
4 home under chapter 245A if within seven years preceding the
5 study:

6 (1) the individual ~~committed an act that constitutes~~ was
7 determined to be responsible for maltreatment of a child under
8 section 626.556, ~~subdivision 10e,~~ and:

9 (i) the maltreatment is a disqualification under section
10 245C.15, subdivision 4; and

11 (ii) the maltreatment resulted in substantial bodily harm
12 as defined in section 609.02, subdivision 7a, or substantial
13 mental or emotional harm as supported by competent psychological
14 or psychiatric evidence; or

15 (2) the individual was determined to be responsible for
16 maltreatment under section 626.557 ~~to be the perpetrator of a~~
17 ~~substantiated incident of maltreatment of a vulnerable adult~~
18 ~~that,~~ and:

19 (i) the maltreatment is a disqualification under section
20 245C.15, subdivision 4; and

21 (ii) the maltreatment resulted in substantial bodily harm
22 as defined in section 609.02, subdivision 7a, or substantial
23 mental or emotional harm as supported by competent psychological
24 or psychiatric evidence.

25 (b) Unless the disqualification under paragraph (a) relates
26 to a license to provide family child care, child foster care,
27 adult day services, or adult foster care in the license holder's
28 residence, the commissioner is not prohibited from setting aside
29 a disqualification for disqualification listed in paragraph (a)
30 according to section 245C.22, for an individual who, in addition
31 to criteria under section 245A.22, demonstrates to the
32 commissioner that:

33 (1) the person was disqualified because of conduct
34 prohibited by section 152.021, 152.022, 152.023, or 152.024;

35 (2) the individual has successfully completed chemical
36 dependency treatment from a program licensed by the Department

1 of Human Services or operated by the Department of Corrections;
2 (3) at least five years have passed since completion of the
3 treatment program; and
4 (4) the individual has not engaged in any criminal or
5 maltreatment behavior since completing treatment.

6 Sec. 20. Minnesota Statutes 2004, section 245C.24, is
7 amended by adding a subdivision to read:

8 Subd. 6. [NOTIFICATION OF DISQUALIFICATIONS.] The
9 commissioner shall expand notification of disqualifications to
10 entities and inform the public about disqualifications as
11 provided under this chapter and section 13.46.

12 Sec. 21. Minnesota Statutes 2004, section 245C.30,
13 subdivision 1, is amended to read:

14 Subdivision 1. [LICENSE HOLDER VARIANCE.] (a) Except for
15 any disqualification under section 245C.15, subdivision 1, when
16 the commissioner has not set aside a background study subject's
17 disqualification, and there are conditions under which the
18 disqualified individual may provide direct contact services or
19 have access to people receiving services that minimize the risk
20 of harm to people receiving services, the commissioner may grant
21 a time-limited variance to a license holder.

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

27 (c) Except for programs licensed to provide family child
28 care for children, foster care for children in the provider's
29 own home, or foster care or day care services for adults in the
30 provider's own home, the variance must be requested by the
31 license holder.

32 Sec. 22. Minnesota Statutes 2004, section 245C.30,
33 subdivision 2, is amended to read:

34 Subd. 2. [DISCLOSURE OF REASON FOR DISQUALIFICATION.] ~~(a)~~
35 The commissioner may not grant a variance for a disqualified
36 individual unless the ~~applicant-or-license-holder-requests-the~~

1 ~~variance-and-the~~ disqualified individual provides written
2 consent for the commissioner to disclose to the applicant or
3 license holder the reason for the disqualification; and the
4 commissioner has documentation showing that the disqualified
5 individual has been informed that if the variance is granted,
6 the individual's identity, reason for disqualification, and
7 terms of the variance will become public data.

8 ~~(b)-This-subdivision-does-not-apply-to-programs-licensed-to~~
9 ~~provide-family-child-care-for-children,-foster-care-for-children~~
10 ~~in-the-provider's-own-home,-or-foster-care-or-day-care-services~~
11 ~~for-adults-in-the-provider's-own-home-~~

12 Sec. 23. Minnesota Statutes 2004, section 626.557,
13 subdivision 12b, is amended to read:

14 Subd. 12b. [DATA MANAGEMENT.] (a) [COUNTY DATA.] In
15 performing any of the duties of this section as a lead agency,
16 the county social service agency shall maintain appropriate
17 records. Data collected by the county social service agency
18 under this section are welfare data under section 13.46.
19 Notwithstanding section 13.46, subdivision 1, paragraph (a),
20 data under this paragraph that are inactive investigative data
21 on an individual who is a vendor of services are private data on
22 individuals, as defined in section 13.02. The identity of the
23 reporter may only be disclosed as provided in paragraph (c).

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

29 (b) [LEAD AGENCY DATA.] The commissioners of health and
30 human services shall prepare an investigation memorandum for
31 each report alleging maltreatment investigated under this
32 section. During an investigation by the commissioner of health
33 or the commissioner of human services, data collected under this
34 section are confidential data on individuals or protected
35 nonpublic data as defined in section 13.02. Upon completion of
36 the investigation, the data are classified as provided in

1 clauses (1) to (3) and paragraph (c).

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

4 (i) the name of the facility investigated;

5 (ii) a statement of the nature of the alleged maltreatment;

6 (iii) pertinent information obtained from medical or other
7 records reviewed;

8 (iv) the identity of the investigator;

9 (v) a summary of the investigation's findings;

10 (vi) statement of whether the report was found to be
11 substantiated, inconclusive, false, or that no determination
12 will be made;

13 (vii) a statement of any action taken by the facility;

14 (viii) a statement of any action taken by the lead agency;

15 and

16 (ix) when a lead agency's determination has substantiated
17 maltreatment, a statement of whether an individual, individuals,
18 or a facility were responsible for the substantiated
19 maltreatment, if known.

20 The investigation memorandum must be written in a manner
21 which protects the identity of the reporter and of the
22 vulnerable adult and may not contain the names or, to the extent
23 possible, data on individuals or private data listed in clause
24 (2).

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

27 (i) the name of the vulnerable adult;

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

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

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

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

1 (c) [IDENTITY OF REPORTER.] The subject of the report may
2 compel disclosure of the name of the reporter only with the
3 consent of the reporter or upon a written finding by a court
4 that the report was false and there is evidence that the report
5 was made in bad faith. This subdivision does not alter
6 disclosure responsibilities or obligations under the Rules of
7 Criminal Procedure, except that where the identity of the
8 reporter is relevant to a criminal prosecution, the district
9 court shall do an in-camera review prior to determining whether
10 to order disclosure of the identity of the reporter.

11 (d) [DESTRUCTION OF DATA.] Notwithstanding section
12 138.163, data maintained under this section by the commissioners
13 of health and human services must be destroyed under the
14 following schedule:

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

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

19 (3) data from reports determined to be substantiated, seven
20 at least ten years after the finding was made; and

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

24 (e) [SUMMARY OF REPORTS.] The commissioners of health and
25 human services shall each annually report to the legislature and
26 the governor on the number and type of reports of alleged
27 maltreatment involving licensed facilities reported under this
28 section, the number of those requiring investigation under this
29 section, and the resolution of those investigations. The report
30 shall identify:

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

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

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

1 (f) [RECORD RETENTION POLICY.] Each lead agency must have
2 a record retention policy.

3 (g) [EXCHANGE OF INFORMATION.] Lead agencies, prosecuting
4 authorities, and law enforcement agencies may exchange not
5 public data, as defined in section 13.02, if the agency or
6 authority requesting the data determines that the data are
7 pertinent and necessary to the requesting agency in initiating,
8 furthering, or completing an investigation under this section.
9 Data collected under this section must be made available to
10 prosecuting authorities and law enforcement officials, local
11 county agencies, and licensing agencies investigating the
12 alleged maltreatment under this section. The lead agency shall
13 exchange not public data with the vulnerable adult maltreatment
14 review panel established in section 256.021 if the data are
15 pertinent and necessary for a review requested under that
16 section. Upon completion of the review, not public data
17 received by the review panel must be returned to the lead agency.

18 (h) [COMPLETION TIME.] Each lead agency shall keep records
19 of the length of time it takes to complete its investigations.

20 (i) [NOTIFICATION OF OTHER AFFECTED PARTIES.] A lead
21 agency may notify other affected parties and their authorized
22 representative if the agency has reason to believe maltreatment
23 has occurred and determines the information will safeguard the
24 well-being of the affected parties or dispel widespread rumor or
25 unrest in the affected facility.

26 (j) [FEDERAL REQUIREMENTS.] Under any notification
27 provision of this section, where federal law specifically
28 prohibits the disclosure of patient identifying information, a
29 lead agency may not provide any notice unless the vulnerable
30 adult has consented to disclosure in a manner which conforms to
31 federal requirements."

32 Amend the title accordingly



Mission: To eliminate the disparities African American and American Indian children experience with systems of child welfare.

Paula Goodman Maccabee
Project Director

**House File 1, Article 6
Disqualification from Human Services Licenses
Concerns About Proposal to Add to Senate File 1722**

1) There has been no showing of need for the substantial changes in licensure that Article 6, House File 1 would require. These changes would apply to family members trying to provide kinship care as well as to a wide range of other licenses. Some of the changes proposed by this Article are as follows:

- Permanently disqualify people from a wide range of Department of Human Services (DHS) licenses for a wide range of crimes, including simple robbery, criminal vehicular injury, and some crimes of drug possession and possession of a weapon.
- Prevent a person seeking a license (all of whom are subject to a background check) from providing any direct contact services, living in a house where services are provided or having access to person receiving services for the 15 working days until DHS issues a notice of the study results
- Allow disclosure as public data of a person's identity and reason for initial disqualification of a person whose license is granted after DHS review and reconsideration. DHS is also directed to affirmatively inform the public of license disqualifications.
- Notify any person initially denied a license that, if they are granted a set aside or a variance, their identity and the reason for their initial disqualification will become public data.
- Broadens crimes for which DHS may not set aside disqualification of licenses, regardless of how much time has passed or whether the person poses no risk. The limited allowance of set asides for drug crime disqualifications if a person has successfully completed a licensed drug treatment program five years previously would not apply to kinship foster care.

2) Our Children Our Future, the Minnesota Legislature and the Minnesota Department of Human Services all support kinship foster care as a way to protect children from abuse and neglect and maintain ties to their families and communities. The proposed changes would impede and have a chilling effect on grandparents, aunts and cousins stepping forward to help a family member, especially in communities of color.

- A grandmother or other relative could be permanently disqualified from caring for children in the family based on drug possession or a DWI car accident causing injury thirty years ago, with no chance for a variance or set aside.
- A relative seeking to provide kinship care could be allowed no contact with the child for the three or so weeks before a background check is completed. Even where there is no criminal record and no risk, the child could not be with a relative until paperwork was completed. Seeking a license would effectively become a suspect activity, preventing contact with one's own niece or grandchild.

- Private information about a relative offering to help out a family member would become public, if a county denied a license and DHS determined the denial should be set aside. The price for helping out a family member would be loss of privacy otherwise granted under state law.
- When a prospective kinship care provider is initially disqualified from a license, they would receive a notice saying that their identity and grounds for disqualification will be made public if they ask for reconsideration. This could have a chilling effect on family members in asking for reconsideration, particularly in communities of color.
- Even if a relative were disqualified for a drug possession crime thirty years ago and had undergone treatment and lived as a model citizen for decades, the DHS could not set aside a disqualification.
- These provisions discouraging variances are inconsistent with the intent of amendments to SF 1722 adopted by the Senate Health and Human Services Committee this session after extensive discussion to provide notice of the opportunity for DHS reconsideration and the availability of counsel to assist kinship foster care providers in obtaining licensure.

3) If there is a concern about DHS granting variances for child care licenses of certain sex offenders, as has been raised in a newspaper story, that concern could be addressed in very brief language stating that DHS may not issue variances for certain specified sex offenses. The thirteen pages of text in Article 6 of HF 1 are not needed to accomplish this limited objective and would have far-reaching negative effects on licensing, including the licensing of kinship foster care for children in African American and American Indian communities.

1 (2) violations under this subdivision and chapters 119B and
2 245A shall be posted on the department's Web site; and

3 (3) the department shall institute a violation policy that
4 regulates licensed day care providers based on severity of the
5 violation and implement fines according to the severity of
6 infraction. The following must be included in the violation
7 policy:

8 (i) exceeding staff-to-child ratios;

9 (ii) exceeding license capacity;

10 (iii) failure to comply with background study requirements;

11 (iv) failure to report suspected abuse or neglect of a
12 child;

13 (v) having hazardous materials or products accessible to
14 children;

15 (vi) inadequate supervision of children;

16 (vii) maltreatment of a child;

17 (viii) release of a child to an unauthorized person; and

18 (ix) violations of behavior guidance.

19 Subd. 3. [REPORT REQUIRED.] The commissioner shall prepare
20 an annual report by January 15 for the chairs of the house and
21 senate committees with jurisdiction over child care that
22 includes the number of inspections completed each year, the
23 number of inspections that were not completed but were scheduled
24 to be done, and a list of sanctions, fines, and correction
25 orders issued each year, as well as the number of license
26 revocations and providers placed on probation.

Ann Kauer-Roth

HDA-118

- 1.1 moves to amend H. F. No. 1976, the second
- 1.2 engrossment, as follows:
- 1.3 Page 95, after line 7, insert:
- 1.4 "Sec. 4. Minnesota Statutes 2004, section 245A.023, is
- 1.5 amended to read:
- 1.6 245A.023 [IN-SERVICE TRAINING.]
- 1.7 (a) For purposes of child care centers, in-service training
- 1.8 must be completed within the license period for which it is
- 1.9 required. In-service training completed by staff persons as
- 1.10 required must be transferable upon a staff person's change in
- 1.11 employment to another child care program. License holders shall
- 1.12 record all staff in-service training on forms prescribed by the
- 1.13 commissioner of human services.
- 1.14 (b) Notwithstanding Minnesota Rules, part 9502.0385, for
- 1.15 day care facilities, the license holder and each primary
- 1.16 caregiver must complete 12 hours of inservice safety training
- 1.17 each year.
- 1.18 (c) Not withstanding Minnesota Rules, part 9503.0035, for
- 1.19 child care centers, all teachers, assistant teachers, and staff
- 1.20 members must complete 12 hours of inservice safety training each
- 1.21 year."
- 1.22 Renumber the sections in sequence
- 1.23 Correct internal references
- 1.24 Amend the title accordingly

Jerry Kerber

1 Senator moves to amend S.F. No. 2282 as follows:

2 Page 1, after line 6, insert:

3 "Section 1. Minnesota Statutes 2004, section 245A.023, is
4 amended to read:

5 245A.023 [IN-SERVICE TRAINING.]

6 (a) For purposes of child care centers, in-service training
7 must be completed within the license period for which it is
8 required. In-service training completed by staff persons as
9 required must be transferable upon a staff person's change in
10 employment to another child care program. License holders shall
11 record all staff in-service training on forms prescribed by the
12 commissioner of human services.

13 (b) For purposes of family child care programs,
14 notwithstanding Minnesota Rules, part 9502.0385, the license
15 holder and each adult caregiver must complete 12 hours of
16 training each year in the areas required by chapter 245A and
17 Minnesota Rules, chapter 9502.

18 Sec. 2. Minnesota Statutes 2004, section 245A.03,
19 subdivision 2, is amended to read:

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

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

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

29 (3) residential or nonresidential programs that are
30 provided to adults who do not abuse chemicals or who do not have
31 a chemical dependency, a mental illness, mental retardation or a
32 related condition, a functional impairment, or a physical
33 handicap;

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

36 (5) programs operated by a public school for children 33

1 months or older;

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

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

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

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

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

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

22 (12) programs operated by a school as defined in section
23 120A.22, subdivision 4, whose primary purpose is to provide
24 child care to school-age children;

25 (13) Head Start nonresidential programs which operate for
26 less than 31 days in each calendar year;

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

30 (15) nonresidential programs for children provided for a
31 cumulative total of less than 30 days in any 12-month period;

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

34 (17) the religious instruction of school-age children;
35 Sabbath or Sunday schools; or the congregate care of children by
36 a church, congregation, or religious society during the period

1 used by the church, congregation, or religious society for its
2 regular worship;

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

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

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

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

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

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

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

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

27 (26) consumer-directed community support service funded
28 under the Medicaid waiver for persons with mental retardation
29 and related conditions when the individual who provided the
30 service is:

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

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

1 (27) residential and nonresidential programs that are
2 credentialed by a federally recognized tribe and that are
3 established primarily to serve members of federally recognized
4 tribes, unless licensure is sought by the tribe.

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. 3. Minnesota Statutes 2004, section 245A.06, is
15 amended by adding a subdivision to read:

16 Subd. 8. [FACILITY POSTING OR ORDER.] Upon receipt of any
17 correction order or order of conditional license issued by the
18 commissioner under this section, and notwithstanding a pending
19 request for reconsideration of the correction order or order of
20 conditional license by the license holder, the license holder
21 shall post the correction order or order of conditional license
22 in a place that is conspicuous to the people receiving services
23 and all visitors to the facility for two years. When the
24 correction order or order of conditional license is accompanied
25 by a maltreatment investigation memorandum prepared under
26 section 626.556 or 626.557, the investigation memoranda must be
27 posed with the correction order or order of conditional license.

28 Sec. 4. Minnesota Statutes 2004, section 245A.07,
29 subdivision 3, is amended to read:

30 Subd. 3. [LICENSE SUSPENSION, REVOCATION, OR FINE.] (a)
31 The commissioner may suspend or revoke a license, or impose a
32 fine if a license holder fails to comply fully with applicable
33 laws or rules, if a license holder or an individual living in
34 the household where the licensed services are provided has a
35 disqualification which has not been set aside under section
36 245C.22, or if a license holder knowingly withholds relevant

1 information from or gives false or misleading information to the
2 commissioner in connection with an application for a license, in
3 connection with the background study status of an individual, or
4 during an investigation. A license holder who has had a license
5 suspended, revoked, or has been ordered to pay a fine must be
6 given notice of the action by certified mail or personal
7 service. If mailed, the notice must be mailed to the address
8 shown on the application or the last known address of the
9 license holder. The notice must state the reasons the license
10 was suspended, revoked, or a fine was ordered.

11 ~~(a)~~ (b) If the license was suspended or revoked, the notice
12 must inform the license holder of the right to a contested case
13 hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to
14 1400.8612. The license holder may appeal an order suspending or
15 revoking a license. The appeal of an order suspending or
16 revoking a license must be made in writing by certified mail or
17 personal service. If mailed, the appeal must be postmarked and
18 sent to the commissioner within ten calendar days after the
19 license holder receives notice that the license has been
20 suspended or revoked. If a request is made by personal service,
21 it must be received by the commissioner within ten calendar days
22 after the license holder received the order. Except as provided
23 in subdivision 2a, paragraph (c), a timely appeal of an order
24 suspending or revoking a license shall stay the suspension or
25 revocation until the commissioner issues a final order.

26 ~~(b)~~ (c) (1) If the license holder was ordered to pay a
27 fine, the notice must inform the license holder of the
28 responsibility for payment of fines and the right to a contested
29 case hearing under chapter 14 and Minnesota Rules, parts
30 1400.8505 to 1400.8612. The appeal of an order to pay a fine
31 must be made in writing by certified mail or personal service.
32 If mailed, the appeal must be postmarked and sent to the
33 commissioner within ten calendar days after the license holder
34 receives notice that the fine has been ordered. If a request is
35 made by personal service, it must be received by the
36 commissioner within ten calendar days after the license holder

1 received the order.

2 (2) The license holder shall pay the fines assessed on or
3 before the payment date specified. If the license holder fails
4 to fully comply with the order, the commissioner may issue a
5 second fine or suspend the license until the license holder
6 complies. If the license holder receives state funds, the
7 state, county, or municipal agencies or departments responsible
8 for administering the funds shall withhold payments and recover
9 any payments made while the license is suspended for failure to
10 pay a fine. A timely appeal shall stay payment of the fine
11 until the commissioner issues a final order.

12 (3) A license holder shall promptly notify the commissioner
13 of human services, in writing, when a violation specified in the
14 order to forfeit a fine is corrected. If upon reinspection the
15 commissioner determines that a violation has not been corrected
16 as indicated by the order to forfeit a fine, the commissioner
17 may issue a second fine. The commissioner shall notify the
18 license holder by certified mail or personal service that a
19 second fine has been assessed. The license holder may appeal
20 the second fine as provided under this subdivision.

21 (4) Fines shall be assessed as follows: the license holder
22 shall forfeit \$1,000 for each determination of maltreatment of a
23 child under section 626.556 or the maltreatment of a vulnerable
24 adult under section 626.557; the license holder shall forfeit
25 \$200 for each occurrence of a violation of law or rule governing
26 matters of health, safety, or supervision, including but not
27 limited to the provision of adequate staff-to-child or adult
28 ratios, and failure to submit a background study; and the
29 license holder shall forfeit \$100 for each occurrence of a
30 violation of law or rule other than those subject to a \$1,000 or
31 \$200 fine above. For purposes of this section, "occurrence"
32 means each violation identified in the commissioner's fine order.

33 (5) Notwithstanding subdivision 1, and in addition to the
34 fines otherwise specified in this subdivision, for child care
35 center and family child care license holders, the commissioner
36 shall issue a fine ordering the license holder to forfeit \$200

1 for each of the following violations: exceeding staff-to-child
2 ratios, exceeding license capacity, failure to comply with
3 background study requirements, having hazardous materials or
4 products accessible to children, inadequate supervision of
5 children, release of a child to an unauthorized person, and
6 behavior guidance violations; and \$1,000 for maltreatment of a
7 child and failure to report suspected maltreatment of a child.
8 For purposes of this section, "occurrence" means each violation
9 identified in the commissioner's fine order.

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

16 Sec. 5. Minnesota Statutes 2004, section 245A.07, is
17 amended by adding a subdivision to read:

18 Subd. 5. [FACILITY POSTING OF ORDER.] Upon receipt of any
19 order of license suspension, temporary immediate suspension,
20 fine, or revocation issued by the commissioner under this
21 section, and notwithstanding a pending appeal of the order of
22 license suspension, temporary immediate suspension, fine, or
23 revocation by the license holder, the license holder shall post
24 the order of license suspension, temporary immediate suspension,
25 fine, or revocation in a place that is conspicuous to the people
26 receiving services and all visitors to the facility for two
27 years. When the order of license suspension, temporary
28 immediate suspension, fine, or revocation is accompanied by a
29 maltreatment investigation memorandum prepared under section
30 626.556 or section 626.557, the investigation memoranda must be
31 posted with the order of license suspension, temporary immediate
32 suspension, fine, or revocation."

33 Page 2, after line 26, insert:

34 "Sec. 7. Minnesota Statutes 2004, section 626.556,
35 subdivision 12, is amended to read:

36 Subd. 12. [DUTIES OF FACILITY OPERATORS.] (a) Any

1 operator, employee, or volunteer worker at any facility who
2 intentionally neglects, physically abuses, or sexually abuses
3 any child in the care of that facility may be charged with a
4 violation of section 609.255, 609.377, or 609.378. Any operator
5 of a facility who knowingly permits conditions to exist which
6 result in neglect, physical abuse, sexual abuse, or maltreatment
7 of a child in a facility while in the care of that facility may
8 be charged with a violation of section 609.378. The facility
9 operator shall inform all mandated reporters employed by or
10 otherwise associated with the facility of the duties required of
11 mandated reporters and shall inform all mandatory reporters of
12 the prohibition against retaliation for reports made in good
13 faith under this section.

14 (b) Upon receipt of the investigation memorandum provided
15 to the facility under section 626.556, subdivision 10d,
16 paragraph (c), and notwithstanding a pending challenge to the
17 findings of the investigation memorandum, the license holder
18 shall post the memorandum in a place that is conspicuous to the
19 people receiving services and all visitors to the facility for
20 two years.

21 Sec. 8. Minnesota Statutes 2004, section 626.556,
22 subdivision 10e, is amended to read:

23 Subd. 10e. [DETERMINATIONS.] Upon the conclusion of every
24 assessment or investigation it conducts, the local welfare
25 agency shall make two determinations: first, whether
26 maltreatment has occurred; and second, whether child protective
27 services are needed. Upon the conclusion of an assessment or
28 investigation by the commissioner of education, the commissioner
29 shall determine whether maltreatment occurred and what
30 corrective or protective action was taken by the school
31 facility. If a determination is made that maltreatment has
32 occurred, the commissioner shall report to the employer, the
33 school board, and any appropriate licensing entity the
34 determination that maltreatment occurred and what corrective or
35 protective action was taken by the school facility. In all
36 other cases, the commissioner shall inform the school board or

1 employer that a report was received, the subject of the report,
2 the date of the initial report, the category of maltreatment
3 alleged as defined in paragraph (a), the fact that maltreatment
4 was not determined, and a summary of the specific reasons for
5 the determination. When maltreatment is determined in an
6 investigation involving a facility, the investigating agency
7 shall also determine whether the facility or individual was
8 responsible, or whether both the facility and the individual
9 were responsible for the maltreatment using the mitigating
10 factors in paragraph (d). Determinations under this subdivision
11 must be made based on a preponderance of the evidence and are
12 private data on individuals or nonpublic data as maintained by
13 the commissioner of education.

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

16 (1) physical abuse as defined in subdivision 2, paragraph
17 (d);

18 (2) neglect as defined in subdivision 2, paragraph (c);

19 (3) sexual abuse as defined in subdivision 2, paragraph
20 (a);

21 (4) mental injury as defined in subdivision 2, paragraph
22 (k); or

23 (5) maltreatment of a child in a facility as defined in
24 subdivision 2, paragraph (f).

25 (b) For the purposes of this subdivision, a determination
26 that child protective services are needed means that the local
27 welfare agency has documented conditions during the assessment
28 or investigation sufficient to cause a child protection worker,
29 as defined in section 626.559, subdivision 1, to conclude that a
30 child is at significant risk of maltreatment if protective
31 intervention is not provided and that the individuals
32 responsible for the child's care have not taken or are not
33 likely to take actions to protect the child from maltreatment or
34 risk of maltreatment.

35 (c) This subdivision does not mean that maltreatment has
36 occurred solely because the child's parent, guardian, or other

1 person responsible for the child's care in good faith selects
2 and depends upon spiritual means or prayer for treatment or care
3 of disease or remedial care of the child, in lieu of medical
4 care. However, if lack of medical care may result in serious
5 danger to the child's health, the local welfare agency may
6 ensure that necessary medical services are provided to the child.

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

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

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

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

29 (e) When an individual determined to be responsible for
30 maltreatment is a controlling individual as defined in section
31 245A.02, subdivision 5a, for the facility, both the individual
32 and the facility shall be responsible for the maltreatment, and
33 the identity of the individual as a facility controlling
34 individual shall be public information at the time of the
35 determination.

36 (f) Individual counties may implement more detailed

1 definitions or criteria that indicate which allegations to
2 investigate, as long as a county's policies are consistent with
3 the definitions in the statutes and rules and are approved by
4 the county board. Each local welfare agency shall periodically
5 inform mandated reporters under subdivision 3 who work in the
6 county of the definitions of maltreatment in the statutes and
7 rules and any additional definitions or criteria that have been
8 approved by the county board.

9 Sec. 9. Minnesota Statutes 2004, section 626.557,
10 subdivision 9c, is amended to read:

11 Subd. 9c. [LEAD AGENCY; NOTIFICATIONS, DISPOSITIONS, AND
12 DETERMINATIONS.] (a) Upon request of the reporter, the lead
13 agency shall notify the reporter that it has received the
14 report, and provide information on the initial disposition of
15 the report within five business days of receipt of the report,
16 provided that the notification will not endanger the vulnerable
17 adult or hamper the investigation.

18 (b) Upon conclusion of every investigation it conducts, the
19 lead agency shall make a final disposition as defined in section
20 626.5572, subdivision 8.

21 (c) When determining whether the facility or individual is
22 the responsible party for substantiated maltreatment, the lead
23 agency shall consider at least the following mitigating factors:

24 (1) whether the actions of the facility or the individual
25 caregivers were in accordance with, and followed the terms of,
26 an erroneous physician order, prescription, resident care plan,
27 or directive. This is not a mitigating factor when the facility
28 or caregiver is responsible for the issuance of the erroneous
29 order, prescription, plan, or directive or knows or should have
30 known of the errors and took no reasonable measures to correct
31 the defect before administering care;

32 (2) the comparative responsibility between the facility,
33 other caregivers, and requirements placed upon the employee,
34 including but not limited to, the facility's compliance with
35 related regulatory standards and factors such as the adequacy of
36 facility policies and procedures, the adequacy of facility

1 training, the adequacy of an individual's participation in the
2 training, the adequacy of caregiver supervision, the adequacy of
3 facility staffing levels, and a consideration of the scope of
4 the individual employee's authority; and

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

7 (d) When an individual determined to be responsible for
8 maltreatment is a controlling individual as defined in section
9 245A.02, subdivision 5a, for the facility, both the individual
10 and the facility shall be responsible for the maltreatment, and
11 the identity of the individual as a facility controlling
12 individual shall be public information at the time of the
13 determination.

14 (e) The lead agency shall complete its final disposition
15 within 60 calendar days. If the lead agency is unable to
16 complete its final disposition within 60 calendar days, the lead
17 agency shall notify the following persons provided that the
18 notification will not endanger the vulnerable adult or hamper
19 the investigation: (1) the vulnerable adult or the vulnerable
20 adult's legal guardian, when known, if the lead agency knows
21 them to be aware of the investigation and (2) the facility,
22 where applicable. The notice shall contain the reason for the
23 delay and the projected completion date. If the lead agency is
24 unable to complete its final disposition by a subsequent
25 projected completion date, the lead agency shall again notify
26 the vulnerable adult or the vulnerable adult's legal guardian,
27 when known if the lead agency knows them to be aware of the
28 investigation, and the facility, where applicable, of the reason
29 for the delay and the revised projected completion date provided
30 that the notification will not endanger the vulnerable adult or
31 hamper the investigation. A lead agency's inability to complete
32 the final disposition within 60 calendar days or by any
33 projected completion date does not invalidate the final
34 disposition.

35 ~~(e)~~ (f) Within ten calendar days of completing the final
36 disposition, the lead agency shall provide a copy of the public

1 investigation memorandum under subdivision 12b, paragraph (b),
2 clause (1), when required to be completed under this section, to
3 the following persons: (1) the vulnerable adult, or the
4 vulnerable adult's legal guardian, if known unless the lead
5 agency knows that the notification would endanger the well-being
6 of the vulnerable adult; (2) the reporter, if the reporter
7 requested notification when making the report, provided this
8 notification would not endanger the well-being of the vulnerable
9 adult; (3) the alleged perpetrator, if known; (4) the facility;
10 and (5) the ombudsman for older Minnesotans, or the ombudsman
11 for mental health and mental retardation, as appropriate.

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

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

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

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

1 substantiated perpetrators.

2 Sec. 10. Minnesota Statutes 2004, section 626.557, is
3 amended by adding a subdivision to read:

4 Subd. 17a. [FACILITY POSTING OF INVESTIGATION MEMORANDUM.]

5 Upon receipt of the investigation memorandum prepared by the
6 leave agency under section 626.557, subdivision 12b, paragraph
7 (b), and provided to the facility under section 626.557,
8 subdivision 9c, paragraph (e), and notwithstanding a pending
9 challenge to the findings of the investigation memorandum, the
10 license holder shall post the memorandum in a place that is
11 conspicuous to the people receiving services and all visitors to
12 the facility for two years."

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

15 Amend the title accordingly