

1.1 moves to amend H.F. No. 1461 as follows:

1.2 Page 11, line 20, strike everything after "(b)"

1.3 Page 11, strike lines 21 to 34

1.4 Page 12, line 1, strike "(c)" and strike "child foster care"

1.5 Page 12, after line 11, insert:

1.6 "(c) In addition to the requirements in paragraph (b), a residential program licensed
1.7 by the commissioner of human services under Minnesota Rules, parts 2960.0010 to
1.8 2960.0710, may serve persons under the age of 21 provided the facility complies with the
1.9 following requirements:

1.10 (1) for each person age 18 and older served at the program, the program must assess
1.11 and document the person's risk of victimizing other residents residing in the facility, and
1.12 based on the assessment, the facility must develop and implement necessary measures
1.13 to minimize any risk of harm to other residents, including making arrangements for
1.14 appropriate sleeping arrangements; and

1.15 (2) the program must assure that the services and living arrangements provided to all
1.16 residents are suitable to the age and functioning of the residents, including separation of
1.17 services, staff supervision, and other program operations as appropriate."

1.18 Page 12, line 12, strike "paragraph" and insert "subdivision"

1.19 Page 21, after line 34, insert:

1.20 "(k) For purposes of family child care, substitute caregivers must receive repeat
1.21 background studies at the time of each license renewal."

1.22 Page 21, after line 34, insert:

1.23 "Sec. Minnesota Statutes 2010, section 245C.05, is amended by adding a
1.24 subdivision to read:

1.25 Subd. 2c. **Privacy notice to background study subject.** (a) For every background
1.26 study, the commissioner's notice to the background study subject, required under
1.27 section 13.04, subdivision 2, that is provided through the commissioner's electronic

2.1 NETStudy system or through the commissioner's background study forms shall include
2.2 the information in paragraph (b).

2.3 (b) The background study subject shall be informed that any previous background
2.4 studies that received a set aside will be reviewed, and without further contact with the
2.5 background study subject, the commissioner may notify the agency that initiated the
2.6 subsequent background study that:

2.7 (1) the individual has a disqualification that has been set aside for the program or
2.8 agency that initiated the study;

2.9 (2) the reason for the disqualification; and

2.10 (3) information about the decision to set aside the disqualification will be available
2.11 to the license holder upon request without the consent of the background study subject."

2.12 Page 33, after line 15, insert:

2.13 "Sec. Minnesota Statutes 2010, section 245C.16, subdivision 1, is amended to read:

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

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

2.21 (1) the recency of the disqualifying characteristic;

2.22 (2) the recency of discharge from probation for the crimes;

2.23 (3) the number of disqualifying characteristics;

2.24 (4) the intrusiveness or violence of the disqualifying characteristic;

2.25 (5) the vulnerability of the victim involved in the disqualifying characteristic;

2.26 (6) the similarity of the victim to the persons served by the program where the
2.27 individual studied will have direct contact;

2.28 (7) whether the individual has a disqualification from a previous background study
2.29 that has not been set aside; and

2.30 (8) if the individual has a disqualification which may not be set aside because it is
2.31 a permanent bar under section 245C.24, subdivision 1, the commissioner may order the
2.32 immediate removal of the individual from any position allowing direct contact with, or
2.33 access to, persons receiving services from the program.

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

3.1 (d) This section does not apply to a background study related to an initial application
3.2 for a child foster care license.

3.3 (e) This section does not apply to background studies that are also subject to the
3.4 requirements under section 256B.0659, subdivisions 11 and 13, for personal care assistants
3.5 and qualified professionals as defined in section 256B.0659, subdivision 1.

3.6 ~~(e)~~ (f) If the commissioner has reason to believe, based on arrest information or an
3.7 active maltreatment investigation, that an individual poses an imminent risk of harm to
3.8 persons receiving services, the commissioner may order that the person be continuously
3.9 supervised or immediately removed pending the conclusion of the maltreatment
3.10 investigation or criminal proceedings.

3.11 Sec. Minnesota Statutes 2010, section 245C.17, subdivision 2, is amended to read:

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

3.15 (1) the information causing disqualification;

3.16 (2) instructions on how to request a reconsideration of the disqualification;

3.17 (3) an explanation of any restrictions on the commissioner's discretion to set aside
3.18 the disqualification under section 245C.24, when applicable to the individual;

3.19 (4) a statement that, if the individual's disqualification is set aside under section
3.20 245C.22, the applicant, license holder, or other entity that initiated the background study
3.21 will be provided with the reason for the individual's disqualification and an explanation
3.22 that the factors under section 245C.22, subdivision 4, which were the basis of the decision
3.23 to set aside the disqualification shall be made available to the license holder upon request
3.24 without the consent of the subject of the background study;

3.25 ~~(4)~~ (5) a statement indicating that if the individual's disqualification is set aside or
3.26 the facility is granted a variance under section 245C.30, the individual's identity and the
3.27 reason for the individual's disqualification will become public data under section 245C.22,
3.28 subdivision 7, when applicable to the individual; ~~and~~

3.29 (6) a statement that when a subsequent background study is initiated on the
3.30 individual following a set aside of the individual's disqualification, and the commissioner
3.31 makes a determination under section 245C.22, subdivision 5, paragraph (b), that the
3.32 previous set aside applies to the subsequent background study, the applicant, license
3.33 holder, or other entity that initiated the background study will be informed in the notice
3.34 under section 245C.22, subdivision 5, paragraph (c):

3.35 (i) of the reason for the individual's disqualification;

4.1 (ii) that the individual's disqualification is set aside for that program or agency; and
4.2 (iii) that information about the factors under section 245C.22, subdivision 4, that
4.3 were the basis of the decision to set aside the disqualification are available to the license
4.4 holder upon request without the consent of the background study subject; and
4.5 ~~(5)~~ (7) the commissioner's determination of the individual's immediate risk of harm
4.6 under section 245C.16.

4.7 (b) If the commissioner determines under section 245C.16 that an individual poses
4.8 an imminent risk of harm to persons served by the program where the individual will have
4.9 direct contact with, or access to, people receiving services, the commissioner's notice must
4.10 include an explanation of the basis of this determination.

4.11 (c) If the commissioner determines under section 245C.16 that an individual studied
4.12 does not pose a risk of harm that requires immediate removal, the individual shall be
4.13 informed of the conditions under which the agency that initiated the background study
4.14 may allow the individual to have direct contact with, or access to, people receiving
4.15 services, as provided under subdivision 3."

4.16 Page 33, delete section 25, and insert:

4.17 "Sec. Minnesota Statutes 2010, section 245C.22, subdivision 5, is amended to read:

4.18 Subd. 5. **Scope of set-aside.** (a) If the commissioner sets aside a disqualification
4.19 under this section, the disqualified individual remains disqualified, but may hold a license
4.20 and have direct contact with or access to persons receiving services. Except as provided
4.21 in paragraph (b), the commissioner's set-aside of a disqualification is limited solely
4.22 to the licensed program, applicant, or agency specified in the set aside notice under
4.23 section 245C.23, unless otherwise specified in the notice. For personal care provider
4.24 organizations, the commissioner's set-aside may further be limited to a specific individual
4.25 who is receiving services. For new background studies required under section 245C.04,
4.26 subdivision 1, paragraph (i), if an individual's disqualification was previously set aside for
4.27 the license holder's program and the new background study results in no new information
4.28 that indicates the individual may pose a risk of harm to persons receiving services from
4.29 the license holder, the previous set aside shall remain in effect.

4.30 (b) If the commissioner has previously set aside an individual's disqualification
4.31 for one or more programs or agencies, and the individual is the subject of a subsequent
4.32 background study for a different program or agency, the commissioner shall determine
4.33 whether the disqualification is set aside for the program or agency that initiated the
4.34 subsequent background study. A notice of set aside under paragraph (c) shall be issued
4.35 within 15 working days if all of the following criteria are met:

5.1 (1) the subsequent background study was initiated in connection with a program
5.2 licensed or regulated under the same provisions of law and rule for at least one program
5.3 for which the individual's disqualification was previously set aside by the commissioner;

5.4 (2) the individual is not disqualified for an offense specified in section 245C.15,
5.5 subdivision 1 or 2;

5.6 (3) the commissioner has received no new information to indicate that the individual
5.7 may pose a risk of harm to any person served by the program; and

5.8 (4) the previous set aside was not limited to a specific person receiving services.

5.9 (c) When a disqualification is set aside under paragraph (b), the notice of background
5.10 study results issued under section 245C.17, in addition to the requirements under section
5.11 245C.17, shall state that the disqualification is set aside for the program or agency that
5.12 initiated the subsequent background study. The notice must inform the individual that the
5.13 individual may request reconsideration of the disqualification under section 245C.21 on
5.14 the basis that the information used to disqualify the individual is incorrect.

5.15 Sec. Minnesota Statutes 2010, section 245C.24, subdivision 2, is amended to read:

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

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

5.29 (c) When a licensed foster care provider adopts an individual who had received
5.30 foster care services from the provider for over six months, and the adopted individual is
5.31 required to receive a background study under section 245C.03, subdivision 1, paragraph
5.32 (a), clause (2) or (6), the commissioner may grant a variance to the license holder under
5.33 section 245C.30 to permit the adopted individual with a permanent disqualification
5.34 to remain affiliated with the license holder under the conditions of the variance when

6.1 the variance is recommended by the county of responsibility for each of the remaining
6.2 individuals in placement in the home and the licensing agency for the home.

6.3 (d) When an individual who was disqualified for a crime or conduct under section
6.4 245C.15, subdivision 1, that was committed while the individual was under age 18, unless
6.5 the individual was convicted of the crime following certification to district court under
6.6 section 260B.125, the commissioner shall consider granting a set aside under section
6.7 245C.22 or a variance under section 245C.30 after the individual reaches 21 years of age.

6.8 (e) For background studies related to an application or license to provide child
6.9 foster care for a specific child or children related to the applicant or license holder, the
6.10 commissioner shall consider granting a variance under section 245C.30 to an individual
6.11 with a disqualification under section 245C.15, subdivision 1. The variance shall be limited
6.12 to the specific child or children related to the applicant or license holder.

6.13 (f) When a background study is required on a child foster care provider's former
6.14 recipient of foster care services because the former recipient of foster care services
6.15 returns for occasional overnight visits or temporarily resides with the foster parents, the
6.16 commissioner shall consider granting a variance under section 245C.30 related to the
6.17 former foster care recipient with a disqualification under section 245C.15, subdivision 1."

6.18 Page 38, delete section 30

6.19 Page 40, delete section 31

6.20 Page 43, delete sections 32, 33, and 34

6.21 Renumber the sections in sequence and correct the internal references

6.22 Amend the title accordingly