

1.1 A bill for an act

1.2 relating to human services; changing the standard of evidence in a disqualification
1.3 to clear and convincing evidence; amending Minnesota Statutes 2006, sections
1.4 245C.29, subdivision 2; 256.045, subdivisions 3, 3b; Minnesota Statutes 2007
1.5 Supplement, sections 245C.14, subdivision 1; 245C.15, subdivisions 2, 3, 4;
1.6 245C.24, subdivision 3; 245C.27, subdivision 1.

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

1.8 Section 1. Minnesota Statutes 2007 Supplement, section 245C.14, subdivision 1, is
1.9 amended to read:

1.10 Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall
1.11 disqualify an individual who is the subject of a background study from any position
1.12 allowing direct contact with persons receiving services from the license holder or entity
1.13 identified in section 245C.03, upon receipt of information showing, or when a background
1.14 study completed under this chapter shows any of the following:

1.15 (1) a conviction of, admission to, or Alford plea to one or more crimes listed in
1.16 section 245C.15, regardless of whether the conviction or admission is a felony, gross
1.17 misdemeanor, or misdemeanor level crime;

1.18 (2) ~~a preponderance of the~~ clear and convincing evidence indicates the individual
1.19 has committed an act or acts that meet the definition of any of the crimes listed in section
1.20 245C.15, regardless of whether the ~~preponderance of the~~ clear and convincing evidence is
1.21 for a felony, gross misdemeanor, or misdemeanor level crime; or

1.22 (3) an investigation results in an administrative determination listed under section
1.23 245C.15, subdivision 4, paragraph (b).

1.24 (b) No individual who is disqualified following a background study under section
1.25 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact

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2.1 with persons served by a program or entity identified in section 245C.03, unless the
2.2 commissioner has provided written notice under section 245C.17 stating that:

2.3 (1) the individual may remain in direct contact during the period in which the
2.4 individual may request reconsideration as provided in section 245C.21, subdivision 2;

2.5 (2) the commissioner has set aside the individual's disqualification for that program
2.6 or entity identified in section 245C.03, as provided in section 245C.22, subdivision 4; or

2.7 (3) the license holder has been granted a variance for the disqualified individual
2.8 under section 245C.30.

2.9 Sec. 2. Minnesota Statutes 2007 Supplement, section 245C.15, subdivision 2, is
2.10 amended to read:

2.11 Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section
2.12 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed,
2.13 if any, for the offense; and (2) the individual has committed a felony-level violation
2.14 of any of the following offenses: sections 256.98 (wrongfully obtaining assistance);
2.15 268.182 (false representation; concealment of facts); 393.07, subdivision 10, paragraph
2.16 (c) (federal Food Stamp Program fraud); 609.165 (felon ineligible to possess firearm);
2.17 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.223 or 609.2231
2.18 (assault in the third or fourth degree); repeat offenses under 609.224 (assault in the fifth
2.19 degree); 609.229 (crimes committed for benefit of a gang); 609.2325 (criminal abuse of a
2.20 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of
2.21 drugs to injure or facilitate crime); 609.24 (simple robbery); 609.255 (false imprisonment);
2.22 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter
2.23 of an unborn child in the second degree); 609.267 (assault of an unborn child in the first
2.24 degree); 609.2671 (assault of an unborn child in the second degree); 609.268 (injury
2.25 or death of an unborn child in the commission of a crime); 609.27 (coercion); 609.275
2.26 (attempt to coerce); 609.466 (medical assistance fraud); 609.498, subdivision 1 or 1b
2.27 (aggravated first degree or first degree tampering with a witness); 609.52 (theft); 609.521
2.28 (possession of shoplifting gear); 609.525 (bringing stolen goods into Minnesota); 609.527
2.29 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance of dishonored
2.30 checks); 609.562 (arson in the second degree); 609.563 (arson in the third degree);
2.31 609.582 (burglary); 609.59 (possession of burglary tools); 609.611 (insurance fraud);
2.32 609.625 (aggravated forgery); 609.63 (forgery); 609.631 (check forgery; offering a forged
2.33 check); 609.635 (obtaining signature by false pretense); 609.66 (dangerous weapons);
2.34 609.67 (machine guns and short-barreled shotguns); 609.687 (adulteration); 609.71
2.35 (riot); 609.713 (terroristic threats); 609.82 (fraud in obtaining credit); 609.821 (financial

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3.1 transaction card fraud); 617.23 (indecent exposure), not involving a minor; repeat
3.2 offenses under 617.241 (obscene materials and performances; distribution and exhibition
3.3 prohibited; penalty); 624.713 (certain persons not to possess firearms); chapter 152 (drugs;
3.4 controlled substance); or a felony-level conviction involving alcohol or drug use.

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

3.9 (c) For foster care and family child care an individual is disqualified under section
3.10 245C.14 if less than 15 years has passed since the individual's voluntary termination of
3.11 the individual's parental rights under section 260C.301, subdivision 1, paragraph (b), or
3.12 260C.301, subdivision 3.

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

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

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

3.28 Sec. 3. Minnesota Statutes 2007 Supplement, section 245C.15, subdivision 3, is
3.29 amended to read:

3.30 Subd. 3. **Ten-year disqualification.** (a) An individual is disqualified under section
3.31 245C.14 if: (1) less than ten years have passed since the discharge of the sentence imposed,
3.32 if any, for the offense; and (2) the individual has committed a gross misdemeanor-level
3.33 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
3.34 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
3.35 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide

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4.1 and injury); 609.221 or 609.222 (assault in the first or second degree); 609.223 or
4.2 609.2231 (assault in the third or fourth degree); 609.224 (assault in the fifth degree);
4.3 609.224, subdivision 2, paragraph (c) (assault in the fifth degree by a caregiver against a
4.4 vulnerable adult); 609.2242 and 609.2243 (domestic assault); 609.23 (mistreatment of
4.5 persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal
4.6 abuse of a vulnerable adult); 609.233 (criminal neglect of a vulnerable adult); 609.2335
4.7 (financial exploitation of a vulnerable adult); 609.234 (failure to report maltreatment of a
4.8 vulnerable adult); 609.265 (abduction); 609.275 (attempt to coerce); 609.324, subdivision
4.9 1a (other prohibited acts; minor engaged in prostitution); 609.33 (disorderly house);
4.10 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child);
4.11 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen goods into
4.12 Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property); 609.535 (issuance
4.13 of dishonored checks); 609.582 (burglary); 609.59 (possession of burglary tools); 609.611
4.14 (insurance fraud); 609.631 (check forgery; offering a forged check); 609.66 (dangerous
4.15 weapons); 609.71 (riot); 609.72, subdivision 3 (disorderly conduct against a vulnerable
4.16 adult); repeat offenses under 609.746 (interference with privacy); 609.749, subdivision 2
4.17 (harassment; stalking); 609.82 (fraud in obtaining credit); 609.821 (financial transaction
4.18 card fraud); 617.23 (indecent exposure), not involving a minor; 617.241 (obscene
4.19 materials and performances); 617.243 (indecent literature, distribution); 617.293 (harmful
4.20 materials; dissemination and display to minors prohibited); or violation of an order for
4.21 protection under section 518B.01, subdivision 14.

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

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

4.30 (d) If the individual studied commits one of the offenses listed in paragraph (a), but
4.31 the sentence or level of offense is a misdemeanor disposition, the individual is disqualified
4.32 but the disqualification lookback period for the offense is the period applicable to
4.33 misdemeanors.

4.34 (e) When a disqualification is based on a judicial determination other than a
4.35 conviction, the disqualification period begins from the date of the court order. When a
4.36 disqualification is based on an admission, the disqualification period begins from the date

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5.1 of an admission in court. When a disqualification is based on a ~~preponderance of~~ clear
5.2 and convincing evidence of a disqualifying act, the disqualification date begins from the
5.3 date of the dismissal, the date of discharge of the sentence imposed for a conviction for a
5.4 disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

5.5 Sec. 4. Minnesota Statutes 2007 Supplement, section 245C.15, subdivision 4, is
5.6 amended to read:

5.7 Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under
5.8 section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence
5.9 imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level
5.10 violation of any of the following offenses: sections 256.98 (wrongfully obtaining
5.11 assistance); 268.182 (false representation; concealment of facts); 393.07, subdivision 10,
5.12 paragraph (c) (federal Food Stamp Program fraud); 609.21 (criminal vehicular homicide
5.13 and injury); 609.221 (assault in the first degree); 609.222 (assault in the second degree);
5.14 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.224
5.15 (assault in the fifth degree); 609.2242 (domestic assault); 609.2335 (financial exploitation
5.16 of a vulnerable adult); 609.234 (failure to report maltreatment of a vulnerable adult);
5.17 609.2672 (assault of an unborn child in the third degree); 609.27 (coercion); violation
5.18 of an order for protection under 609.3232 (protective order authorized; procedures;
5.19 penalties); 609.466 (medical assistance fraud); 609.52 (theft); 609.525 (bringing stolen
5.20 goods into Minnesota); 609.527 (identity theft); 609.53 (receiving stolen property);
5.21 609.535 (issuance of dishonored checks); 609.611 (insurance fraud); 609.66 (dangerous
5.22 weapons); 609.665 (spring guns); 609.746 (interference with privacy); 609.79 (obscene or
5.23 harassing telephone calls); 609.795 (letter, telegram, or package; opening; harassment);
5.24 609.82 (fraud in obtaining credit); 609.821 (financial transaction card fraud); 617.23
5.25 (indecent exposure), not involving a minor; 617.293 (harmful materials; dissemination
5.26 and display to minors prohibited); or violation of an order for protection under section
5.27 518B.01 (Domestic Abuse Act).

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

5.30 (1) failure to make required reports under section 626.556, subdivision 3, or
5.31 626.557, subdivision 3, for incidents in which: (i) the final disposition under section
5.32 626.556 or 626.557 was substantiated maltreatment, and (ii) the maltreatment was
5.33 recurring or serious; or

5.34 (2) substantiated serious or recurring maltreatment of a minor under section 626.556,
5.35 a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other

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6.1 state, the elements of which are substantially similar to the elements of maltreatment under
6.2 section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the
6.3 maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

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

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

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

6.19 (f) An individual is disqualified under section 245C.14 if less than seven years has
6.20 passed since the individual was disqualified under section 256.98, subdivision 8.

6.21 Sec. 5. Minnesota Statutes 2007 Supplement, section 245C.24, subdivision 3, is
6.22 amended to read:

6.23 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may
6.24 not set aside the disqualification of an individual in connection with a license to provide
6.25 family child care for children, foster care for children in the provider's home, or foster
6.26 care or day care services for adults in the provider's home if: (1) less than ten years has
6.27 passed since the discharge of the sentence imposed, if any, for the offense; or (2) when
6.28 disqualified based on a ~~preponderance of~~ clear and convincing evidence determination
6.29 under section 245C.14, subdivision 1, paragraph (a), clause (2), or an admission under
6.30 section 245C.14, subdivision 1, paragraph (a), clause (1), and less than ten years
6.31 has passed since the individual committed the act or admitted to committing the act,
6.32 whichever is later; and (3) the individual has committed a violation of any of the following
6.33 offenses: sections 609.165 (felon ineligible to possess firearm); criminal vehicular
6.34 homicide under 609.21 (criminal vehicular homicide and injury); 609.215 (aiding suicide
6.35 or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault in

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7.1 the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713
7.2 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple
7.3 robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71
7.4 (riot); 609.498, subdivision 1 or 1b (aggravated first degree or first degree tampering
7.5 with a witness); burglary in the first or second degree under 609.582 (burglary); 609.66
7.6 (dangerous weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled
7.7 shotguns); 609.749, subdivision 2 (gross misdemeanor harassment; stalking); 152.021 or
7.8 152.022 (controlled substance crime in the first or second degree); 152.023, subdivision
7.9 1, clause (3) or (4) or subdivision 2, clause (4) (controlled substance crime in the third
7.10 degree); 152.024, subdivision 1, clause (2), (3), or (4) (controlled substance crime in
7.11 the fourth degree); 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a
7.12 caregiver against a vulnerable adult); 609.23 (mistreatment of persons confined); 609.231
7.13 (mistreatment of residents or patients); 609.2325 (criminal abuse of a vulnerable adult);
7.14 609.233 (criminal neglect of a vulnerable adult); 609.2335 (financial exploitation of a
7.15 vulnerable adult); 609.234 (failure to report); 609.265 (abduction); 609.2664 to 609.2665
7.16 (manslaughter of an unborn child in the first or second degree); 609.267 to 609.2672
7.17 (assault of an unborn child in the first, second, or third degree); 609.268 (injury or
7.18 death of an unborn child in the commission of a crime); repeat offenses under 617.23
7.19 (indecent exposure); 617.293 (disseminating or displaying harmful material to minors);
7.20 a felony-level conviction involving alcohol or drug use, a gross misdemeanor offense
7.21 under 609.324, subdivision 1 (other prohibited acts); a gross misdemeanor offense under
7.22 609.378 (neglect or endangerment of a child); a gross misdemeanor offense under 609.377
7.23 (malicious punishment of a child); 609.72, subdivision 3 (disorderly conduct against a
7.24 vulnerable adult); or 624.713 (certain persons not to possess firearms).

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

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

7.33 Sec. 6. Minnesota Statutes 2007 Supplement, section 245C.27, subdivision 1, is
7.34 amended to read:

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

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

8.15 (c) Except as provided under paragraph (e), if the individual was disqualified based
8.16 on a conviction or admission to any crimes listed in section 245C.15, subdivisions 1
8.17 to 4, or for a disqualification under section 256.98, subdivision 8, the reconsideration
8.18 decision under section 245C.22 is the final agency determination for purposes of appeal
8.19 by the disqualified individual and is not subject to a hearing under section 256.045. If
8.20 the individual was disqualified based on a judicial determination, that determination is
8.21 treated the same as a conviction for purposes of appeal.

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

8.24 (e) Notwithstanding paragraph (c), if the commissioner does not set aside a
8.25 disqualification of an individual who was disqualified based on both ~~a preponderance of~~
8.26 clear and convincing evidence and a conviction or admission, the individual may request a
8.27 fair hearing under section 256.045, unless the disqualifications are deemed conclusive
8.28 under section 245C.29. The scope of the hearing conducted under section 256.045 with
8.29 regard to the disqualification based on a conviction or admission shall be limited solely to
8.30 whether the individual poses a risk of harm, according to section 256.045, subdivision 3b.
8.31 In this case, the reconsideration decision under section 245C.22 is not the final agency
8.32 decision for purposes of appeal by the disqualified individual.

8.33 Sec. 7. Minnesota Statutes 2006, section 245C.29, subdivision 2, is amended to read:

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

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

9.3 (2) ~~a preponderance of the~~ clear and convincing evidence shows that the individual
9.4 committed an act or acts that meet the definition of any of the crimes listed in section
9.5 245C.15; or

9.6 (3) the individual failed to make required reports under section 626.556, subdivision
9.7 3, or 626.557, subdivision 3, is conclusive if:

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

9.10 (ii) the individual did not request reconsideration of the disqualification under
9.11 section 245C.21; or

9.12 (iii) the individual did not request a hearing on the disqualification under section
9.13 256.045 or chapter 14.

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

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

9.26 Sec. 8. Minnesota Statutes 2006, section 256.045, subdivision 3, is amended to read:

9.27 Subd. 3. **State agency hearings.** (a) State agency hearings are available for the
9.28 following: (1) any person applying for, receiving or having received public assistance,
9.29 medical care, or a program of social services granted by the state agency or a county
9.30 agency or the federal Food Stamp Act whose application for assistance is denied, not acted
9.31 upon with reasonable promptness, or whose assistance is suspended, reduced, terminated,
9.32 or claimed to have been incorrectly paid; (2) any patient or relative aggrieved by an
9.33 order of the commissioner under section 252.27; (3) a party aggrieved by a ruling of a
9.34 prepaid health plan; (4) except as provided under chapter 245C, any individual or facility
9.35 determined by a lead agency to have maltreated a vulnerable adult under section 626.557

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10.1 after they have exercised their right to administrative reconsideration under section
10.2 626.557; (5) any person whose claim for foster care payment according to a placement of
10.3 the child resulting from a child protection assessment under section 626.556 is denied or
10.4 not acted upon with reasonable promptness, regardless of funding source; (6) any person
10.5 to whom a right of appeal according to this section is given by other provision of law;
10.6 (7) an applicant aggrieved by an adverse decision to an application for a hardship waiver
10.7 under section 256B.15; (8) an applicant aggrieved by an adverse decision to an application
10.8 or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04,
10.9 subdivision 4a; (9) except as provided under chapter 245A, an individual or facility
10.10 determined to have maltreated a minor under section 626.556, after the individual or
10.11 facility has exercised the right to administrative reconsideration under section 626.556;
10.12 or (10) except as provided under chapter 245C, an individual disqualified under sections
10.13 245C.14 and 245C.15, on the basis of serious or recurring maltreatment; ~~a preponderance~~
10.14 ~~of the~~ clear and convincing evidence that the individual has committed an act or acts that
10.15 meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or
10.16 for failing to make reports required under section 626.556, subdivision 3, or 626.557,
10.17 subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9)
10.18 and a disqualification under this clause in which the basis for a disqualification is serious
10.19 or recurring maltreatment, which has not been set aside under sections 245C.22 and
10.20 245C.23, shall be consolidated into a single fair hearing. In such cases, the scope of review
10.21 by the human services referee shall include both the maltreatment determination and the
10.22 disqualification. The failure to exercise the right to an administrative reconsideration shall
10.23 not be a bar to a hearing under this section if federal law provides an individual the right to
10.24 a hearing to dispute a finding of maltreatment. Individuals and organizations specified in
10.25 this section may contest the specified action, decision, or final disposition before the state
10.26 agency by submitting a written request for a hearing to the state agency within 30 days
10.27 after receiving written notice of the action, decision, or final disposition, or within 90 days
10.28 of such written notice if the applicant, recipient, patient, or relative shows good cause why
10.29 the request was not submitted within the 30-day time limit.

10.30 The hearing for an individual or facility under clause (4), (9), or (10) is the only
10.31 administrative appeal to the final agency determination specifically, including a challenge
10.32 to the accuracy and completeness of data under section 13.04. Hearings requested under
10.33 clause (4) apply only to incidents of maltreatment that occur on or after October 1, 1995.
10.34 Hearings requested by nursing assistants in nursing homes alleged to have maltreated a
10.35 resident prior to October 1, 1995, shall be held as a contested case proceeding under the
10.36 provisions of chapter 14. Hearings requested under clause (9) apply only to incidents of

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11.1 maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility
11.2 under clause (9) is only available when there is no juvenile court or adult criminal action
11.3 pending. If such action is filed in either court while an administrative review is pending,
11.4 the administrative review must be suspended until the judicial actions are completed. If
11.5 the juvenile court action or criminal charge is dismissed or the criminal action overturned,
11.6 the matter may be considered in an administrative hearing.

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

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

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

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

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

11.24 Sec. 9. Minnesota Statutes 2006, section 256.045, subdivision 3b, is amended to read:

11.25 Subd. 3b. **Standard of evidence for maltreatment and disqualification hearings.**

11.26 (a) The state human services referee shall determine that maltreatment has occurred if a
11.27 preponderance of evidence exists to support the final disposition under sections 626.556
11.28 and 626.557. For purposes of hearings regarding disqualification, the state human services
11.29 referee shall affirm the proposed disqualification in an appeal under subdivision 3,
11.30 paragraph (a), clause (9), if ~~a preponderance of the evidence shows the individual has:~~

11.31 (1) a preponderance of the evidence shows the individual has committed
11.32 maltreatment under section 626.556 or 626.557, which is serious or recurring;

11.33 (2) clear and convincing evidence shows the individual has committed an act or acts
11.34 meeting the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or

12.1 (3) a preponderance of the evidence shows the individual has failed to make required
12.2 reports under section 626.556 or 626.557, for incidents in which the final disposition under
12.3 section 626.556 or 626.557 was substantiated maltreatment that was serious or recurring.

12.4 (b) If the disqualification is affirmed, the state human services referee shall
12.5 determine whether the individual poses a risk of harm in accordance with the requirements
12.6 of section 245C.16, and whether the disqualification should be set aside or not set aside.
12.7 In determining whether the disqualification should be set aside, the human services
12.8 referee shall consider all of the characteristics that cause the individual to be disqualified,
12.9 including those characteristics that were not subject to review under paragraph (a), in
12.10 order to determine whether the individual poses a risk of harm. A decision to set aside
12.11 a disqualification that is the subject of the hearing constitutes a determination that the
12.12 individual does not pose a risk of harm and that the individual may provide direct contact
12.13 services in the individual program specified in the set aside. If a determination that the
12.14 information relied upon to disqualify an individual was correct and is conclusive under
12.15 section 245C.29, and the individual is subsequently disqualified under section 245C.14,
12.16 the individual has a right to again request reconsideration on the risk of harm under section
12.17 245C.21. Subsequent determinations regarding risk of harm are not subject to another
12.18 hearing under this section.

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