

Attachment 3.1.1 F

Minnesota Statutes, section 245C.21 REQUESTING RECONSIDERATION OF DISQUALIFICATION.

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

Subd. 1a. **Submission of reconsideration request.** (a) For disqualifications related to studies conducted by county agencies for family child care, and for disqualifications related to studies conducted by the commissioner for child foster care, adult foster care, and family adult day services, the individual shall submit the request for reconsideration to the county agency that initiated the background study.

(b) For disqualifications related to studies conducted by the commissioner for child foster care providers monitored by private licensing agencies under section 245A.16, the individual shall submit the request for reconsideration to the private agency that initiated the background study.

(c) A reconsideration request shall be submitted within 30 days of the individual's receipt of the disqualification notice or the time frames specified in subdivision 2, whichever time frame is shorter.

(d) The county or private agency shall forward the individual's request for reconsideration and provide the commissioner with a recommendation whether to set aside the individual's disqualification.

Subd. 2. **Time frame for requesting reconsideration.** (a) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (1) or (2), the disqualified individual must submit the request for a reconsideration within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification. Upon showing that the information under subdivision 3 cannot be obtained within 30 days, the disqualified individual may request additional time, not to exceed 30 days, to obtain the information.

(b) When the commissioner sends an individual a notice of disqualification based on a finding under section 245C.16, subdivision 2, paragraph (a), clause (3), the disqualified individual must submit the request for reconsideration within 15 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 15 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 15 calendar days after the individual's receipt of the notice of disqualification.

(c) An individual who was determined to have maltreated a child under section 626.556 or a vulnerable adult under section 626.557, and who is disqualified on the basis of serious or recurring maltreatment, may request a reconsideration of both the maltreatment and the disqualification determinations. The request must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification. If mailed, the request for reconsideration must be postmarked and sent to the commissioner within 30 calendar days of the individual's receipt of the notice of disqualification. If a request for reconsideration is made by personal service, it must be received by the commissioner within 30 calendar days after the individual's receipt of the notice of disqualification.

(d) Except for family child care and child foster care, reconsideration of a maltreatment determination under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of a disqualification under section 245C.22, shall not be conducted when:

- (1) a denial of a license under section 245A.05, or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;
- (2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and
- (3) the license holder appeals the maltreatment determination, disqualification, and denial of a license or licensing sanction. In such cases, a fair hearing under section 256.045 must not be conducted under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d. Under section 245A.08, subdivision 2a, the scope of the consolidated contested case hearing must include the maltreatment determination, disqualification, and denial of a license or licensing sanction. Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

Subd. 3. Disqualified individuals; information for reconsideration. (a) The disqualified individual requesting reconsideration must submit information showing that:

- (1) the information the commissioner relied upon in determining the underlying conduct that gave rise to the disqualification is incorrect;
 - (2) for maltreatment, the information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect; or
 - (3) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter, by addressing the information required under section 245C.22, subdivision 4.
- (b) In order to determine the individual's risk of harm, the commissioner may require additional information from the disqualified individual as part of the reconsideration process. If the

individual fails to provide the required information, the commissioner may deny the individual's request.

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

Minnesota Statutes, section 245C.22 REVIEW AND ACTION ON A RECONSIDERATION REQUEST.

Subd. 1. Time frame; response to disqualification reconsideration requests.

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

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

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

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

Subd. 3. Preeminent weight given to safety of persons being served. In reviewing a request for reconsideration of a disqualification, the commissioner shall give preeminent weight to the safety of each person served by the license holder, applicant, or other entities as provided in this chapter over the interests of the disqualified individual, license holder, applicant, or other entity as provided in this chapter, and any single factor under subdivision 4, paragraph (b), may be determinative of the commissioner's decision whether to set aside the individual's disqualification.

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

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

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

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

Subd. 5. Scope of set-aside. If the commissioner sets aside a disqualification under this section, the disqualified individual remains disqualified, but may hold a license and have direct contact with or access to persons receiving services. The commissioner's set-aside of a disqualification is limited solely to the licensed program, applicant, or agency specified in the set aside notice under section 245C.23, unless otherwise specified in the notice. For personal care provider organizations, the commissioner's set-aside may further be limited to a specific individual who is receiving services.

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

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

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

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

(1) is issued to a child care center or a family child care provider licensed under chapter 245A; or

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

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

(1) a disqualification is not set aside and no variance is granted, except as provided under section 13.46, subdivision 4;

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

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

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

(5) the disqualified individual is a household member of a licensed foster care provider and:

(i) the disqualified individual previously received foster care services from this licensed foster care provider;

(ii) the disqualified individual was subsequently adopted by this licensed foster care provider; and

(iii) the disqualifying act occurred before the adoption.

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

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

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

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

(3) the set-aside or variance only relates to a disqualification under section 245C.15, subdivision 4, for

a misdemeanor-level theft crime as defined in section 609.52.

Minnesota Statutes, section 245C.30 VARIANCE FOR A DISQUALIFIED INDIVIDUAL.

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

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

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

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

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

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

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

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