

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 3197

(SENATE AUTHORS: KIFFMEYER)

DATE	D-PG	OFFICIAL STATUS
02/17/2020	4777	Introduction and first reading Referred to Family Care and Aging
03/09/2020	5313a	Comm report: To pass as amended
	5333	Second reading
04/20/2020	5814a	Special Order: Amended
	5815	Third reading Passed

- 1.1 A bill for an act
- 1.2 relating to child care licensing; revising the definition of supervision for purposes
- 1.3 of licensed child care centers; requiring county agencies to publish and distribute
- 1.4 information about variances for family child care providers; amending Minnesota
- 1.5 Statutes 2018, section 245A.04, subdivision 9; Minnesota Statutes 2019
- 1.6 Supplement, sections 245A.02, subdivision 18; 245A.16, subdivision 1.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2019 Supplement, section 245A.02, subdivision 18, is
- 1.9 amended to read:
- 1.10 Subd. 18. **Supervision.** (a) For purposes of licensed child care centers, "supervision"
- 1.11 means when a program staff person:
- 1.12 (1) is accountable for the child's care;
- 1.13 (2) can intervene to protect the health and safety of the child; and
- 1.14 (3) is within sight and hearing of the child at all times except as described in paragraphs
- 1.15 (b) to ~~(d)~~ (e).
- 1.16 (b) When an infant is placed in a crib room to sleep, supervision occurs when a program
- 1.17 staff person is within sight or hearing of the infant. When supervision of a crib room is
- 1.18 provided by sight or hearing, the center must have a plan to address the other supervision
- 1.19 components.
- 1.20 (c) When a single school-age child uses the restroom within the licensed space,
- 1.21 supervision occurs when a program staff person has knowledge of the child's activity and
- 1.22 location and checks on the child at least every five minutes. When a school-age child uses

the restroom outside the licensed space, including but not limited to field trips, supervision occurs when staff accompany children to the restroom.

(d) When a school-age child leaves the classroom but remains within the licensed space to deliver or retrieve items from the child's personal storage space, supervision occurs when a program staff person has knowledge of the child's activity and location and checks on the child at least every five minutes.

(e) When a single preschooler uses an individual, private restroom within the classroom with the door closed, supervision occurs when a program staff person has knowledge of the child's activity and location, can hear the child, and checks on the child at least every five minutes.

Sec. 2. Minnesota Statutes 2018, section 245A.04, subdivision 9, is amended to read:

Subd. 9. **Variances.** (a) The commissioner may grant variances to rules that do not affect the health or safety of persons in a licensed program if the following conditions are met:

(1) the variance must be requested by an applicant or license holder on a form and in a manner prescribed by the commissioner;

(2) the request for a variance must include the reasons that the applicant or license holder cannot comply with a requirement as stated in the rule and the alternative equivalent measures that the applicant or license holder will follow to comply with the intent of the rule; and

(3) the request must state the period of time for which the variance is requested.

The commissioner may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any applicant or license holder must inform the commissioner of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the commissioner shall result in revocation of the permanent variance and may be cause for other sanctions under sections 245A.06 and 245A.07.

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

(b) The commissioner shall consider variances for child care center staff qualification requirements under Minnesota Rules, parts 9503.0032 and 9503.0033, that do not affect the health and safety of children served by the center. A variance request must be submitted

to the commissioner in accordance with paragraph (a) and must include a plan for the staff person to gain additional experience, education, or training, as requested by the commissioner. When reviewing a variance request under this section, the commissioner shall consider the staff person's level of professional development, including but not limited to steps completed on the Minnesota career lattice.

(c) Beginning January 1, 2021, counties shall use a uniform application form for variance requests by family child care license holders.

Sec. 3. Minnesota Statutes 2019 Supplement, section 245A.16, subdivision 1, is amended to read:

Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private agencies that have been designated or licensed by the commissioner to perform licensing functions and activities under section 245A.04 and background studies for family child care under chapter 245C; to recommend denial of applicants under section 245A.05; to issue correction orders, to issue variances, and recommend a conditional license under section 245A.06; or to recommend suspending or revoking a license or issuing a fine under section 245A.07, shall comply with rules and directives of the commissioner governing those functions and with this section. The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

(1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care;

(2) adult foster care maximum capacity;

(3) adult foster care minimum age requirement;

(4) child foster care maximum age requirement;

(5) variances regarding disqualified individuals except that, before the implementation of NETStudy 2.0, county agencies may issue variances under section 245C.30 regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections 245C.25 and 245C.27, subdivision 2, clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment;

(6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours;

(7) variances to requirements relating to chemical use problems of a license holder or a household member of a license holder; and

(8) variances to section 245A.53 for a time-limited period. If the commissioner grants a variance under this clause, the license holder must provide notice of the variance to all parents and guardians of the children in care.

Except as provided in section 245A.14, subdivision 4, paragraph (e), a county agency must not grant a license holder a variance to exceed the maximum allowable family child care license capacity of 14 children.

(b) A county agency that has been designated by the commissioner to issue family child care variances must:

(1) publish the county agency's policies and criteria for issuing variances on the county's public website and update the policies as necessary; and

(2) annually distribute the county agency's policies and criteria for issuing variances to all family child care license holders in the county.

~~(b)~~ (c) Before the implementation of NETStudy 2.0, county agencies must report information about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision 2, paragraphs (a) and (b), and variances granted under paragraph (a), clause (5), to the commissioner at least monthly in a format prescribed by the commissioner.

~~(e)~~ (d) For family child care programs, the commissioner shall require a county agency to conduct one unannounced licensing review at least annually.

~~(d)~~ (e) For family adult day services programs, the commissioner may authorize licensing reviews every two years after a licensee has had at least one annual review.

~~(e)~~ (f) A license issued under this section may be issued for up to two years.

~~(f)~~ (g) During implementation of chapter 245D, the commissioner shall consider:

(1) the role of counties in quality assurance;

(2) the duties of county licensing staff; and

(3) the possible use of joint powers agreements, according to section 471.59, with counties through which some licensing duties under chapter 245D may be delegated by the commissioner to the counties.

Any consideration related to this paragraph must meet all of the requirements of the corrective action plan ordered by the federal Centers for Medicare and Medicaid Services.

~~(g)~~ (h) Licensing authority specific to section 245D.06, subdivisions 5, 6, 7, and 8, or successor provisions; and section 245D.061 or successor provisions, for family child foster care programs providing out-of-home respite, as identified in section 245D.03, subdivision 1, paragraph (b), clause (1), is excluded from the delegation of authority to county and private agencies.

~~(h)~~ (i) A county agency shall report to the commissioner, in a manner prescribed by the commissioner, the following information for a licensed family child care program:

(1) the results of each licensing review completed, including the date of the review, and any licensing correction order issued;

(2) any death, serious injury, or determination of substantiated maltreatment; and

(3) any fires that require the service of a fire department within 48 hours of the fire. The information under this clause must also be reported to the state fire marshal within two business days of receiving notice from a licensed family child care provider.

Sec. 4. **DIRECTION TO COMMISSIONER OF HUMAN SERVICES; UNIFORM FAMILY CHILD CARE VARIANCE APPLICATION FORM.**

By October 1, 2020, the commissioner of human services shall issue to counties the uniform application form for family child care variance requests developed by the Family Child Care Task Force. The commissioner shall also issue any necessary training or guidance for counties to use the form. The Family Child Care Task Force shall develop the uniform application form and provide the form to the commissioner no later than September 1, 2020.