

CHAPTER 9502
DEPARTMENT OF HUMAN SERVICES
LICENSING OF DAY CARE FACILITIES

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9502.0300 REPEALER AND EFFECTIVE DATE.

Subpart 1. **Repealer.** Minnesota Rules, parts 9545.0310, 9545.0320, 9545.0330, 9545.0340, 9545.0350, 9545.0360, 9545.0370, 9545.0380, 9545.0390, 9545.0400, 9545.0410, 9545.0420, 9545.0430, 9545.0440, and 9545.0450, are repealed, except for providers who are licensed under those parts. As to those providers, parts 9545.0310, 9545.0320, 9545.0330, 9545.0340, 9545.0350, 9545.0360, 9545.0370, 9545.0380, 9545.0390, 9545.0400, 9545.0410, 9545.0420, 9545.0430, 9545.0440, and 9545.0450 are repealed one year after the notice of adoption of parts 9502.0315 to 9502.0445 is published in the State Register.

Subp. 2. **Effective date.** Parts 9502.0315 to 9502.0445 take effect five days after the notice of adoption is published in the State Register, except for providers who are licensed on that date under parts 9545.0310 to 9545.0440. As to those providers, parts 9502.0315 to 9502.0445 take effect six months after the notice of adoption is published in the State Register or on the first date the provider's license is renewed after the notice of adoption is published in the State Register, whichever is later, except that parts 9502.0365 and 9502.0367 shall be construed not to require the exclusion from the day care facility of any child who is receiving care on the date that the notice of adoption is published in the State Register.

Any provider who is licensed under parts 9545.0310 to 9545.0440 five days after the notice of adoption of parts 9502.0315 to 9502.0445 is published in the State Register and who is not providing care in a residence as defined by part 9502.0315, subpart 27, may be licensed under parts 9502.0315 to 9502.0445 until the provider ceases to give care in that facility or obtains a license to operate a day care center.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

9502.0315 DEFINITIONS.

Subpart 1. **Applicability.** As used in parts 9502.0315 to 9502.0445, the following terms have the meanings given them.

Subp. 2. **Adult.** "Adult" means a person at least 18 years of age.

Subp. 3. **Agency.** "Agency" means the county or multicounty social or human service agency governed by the county board or multicounty human services board.

Subp. 4. **Applicant.** "Applicant" means the person seeking a license to be the primary provider of day care in the residence.

Subp. 5. **Building official.** "Building official" means the person appointed in

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accordance with Minnesota Statutes, section 16B.65, to administer the State Building Code, or the building official's authorized representative.

Subp. 6. Caregiver. "Caregiver" means the provider, substitute, helper, or another adult giving care in the residence.

Subp. 7. Child. "Child" means a person ten years of age or younger.

Subp. 8. Commissioner. "Commissioner" means the Minnesota commissioner of the Department of Human Services or the commissioner's authorized representative.

Subp. 9. Day care. "Day care" means the care of a child in a residence outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24-hour day.

Subp. 10. Department. "Department" means the Minnesota Department of Human Services.

Subp. 11. Family day care. "Family day care" means day care for no more than ten children at one time of which no more than six are under school age. The licensed capacity must include all children of any caregiver when the children are present in the residence.

Subp. 12. Fire marshal. "Fire marshal" means the person designated by Minnesota Statutes, section 299F.011 to administer and enforce the Minnesota Uniform Fire Code, or the fire marshal's authorized representative.

Subp. 13. Group family day care. "Group family day care" means day care for no more than 14 children at any one time. The total number of children includes all children of any caregiver when the children are present in the residence.

Subp. 14. Helper. "Helper" means a person at least 13 years of age and less than 18 years of age who assists the provider with the care of children.

Subp. 15. Health officer. "Health officer" means the designated representative of the state or local public health board authorized by Minnesota Statutes, section 145.01, to enforce state and local health codes.

Subp. 16. Infant. "Infant" means a child who is at least six weeks of age but less than 12 months of age.

Subp. 17. License. "License" means a certificate issued by the commissioner authorizing the provider to give specified services for a specified period of time in accordance with the terms in parts 9502.0315 to 9502.0445; Minnesota Statutes, sections 245.781 to 245.812, and 252.28, subdivision 2; and the rules of the department.

Subp. 18. Licensed capacity. "Licensed capacity" means the total number of children ten years of age or younger permitted at any one time in the residence. The licensed capacity includes all children of any caregiver when the children are present in the residence.

Subp. 19. Medicine. "Medicine" means a prescription or nonprescription substance taken internally or applied externally to prevent or cure disease, heal, or relieve pain.

Subp. 19a. Mental illness. "Mental illness" means the inability to interpret reality realistically and the impaired functioning in primary aspects of daily living, such as personal relations, living arrangements, work, and recreation; which is listed in the International Classification of Diseases (ICD-9-CM) Ninth Revision (1980), code range 290.0-299.9, or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) Third Edition (1980), Axes I, II, or III. These publications are incorporated by reference and are not subject to frequent change. They are available in the state law library.

Subp. 19b. Minnesota Uniform Fire Code. "Minnesota Uniform Fire Code" means those codes and regulations adopted by the state fire marshal in accord-

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ance with Minnesota Statutes, section 299F.011 and contained in parts 7510.0200 to 7510.3000.

Subp. 20. **Newborn.** "Newborn" means a child between birth and six weeks of age.

Subp. 21. **Parent.** "Parent" means a person who has the legal responsibility for a child such as the child's mother, father, or legally-appointed guardian.

Subp. 22. **Preschooler.** "Preschooler" means a child at least 30 months of age up to enrollment in the first day of school in the local school district.

Subp. 23. [Repealed, 10 SR 2617]

Subp. 24. **Provider.** "Provider" means the license holder and primary caregiver.

Subp. 25. **Related.** "Related" means any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, child, niece, nephew. Related also includes a legally-appointed guardian.

Subp. 26. **Regularly or regular basis.** "Regularly" or "regular basis" means a cumulative total of more than 30 days within any 12-month period.

Subp. 27. **Residence.** "Residence" means the dwelling unit, as defined by section 405 of the State Building Code, in which day care is provided and which is occupied as a home.

Subp. 28. **School age.** "School age" means a child ten years of age or younger and enrolled in the first day of kindergarten in the local school district.

Subp. 28a. **State Building Code.** "State Building Code" means those codes and regulations adopted by the commissioner of administration in accordance with Minnesota Statutes, section 16B.59 and contained in chapter 1300.

Subp. 29. **Substitute.** "Substitute" means an adult at least 18 years of age who assumes the responsibility of the provider as specified in part 9502.0365, subpart 5.

Subp. 29a. **Supervision.** "Supervision" means a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school-age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.

Subp. 30. **Toddler.** "Toddler" means a child at least 12 months of age but less than 30 months of age.

Subp. 31. **Variance.** "Variance" means written permission by the commissioner for a provider or applicant to depart from the provisions of parts 9502.0315 to 9502.0445.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0325 LICENSING OF FACILITIES FOR CHILDREN FAMILY DAY CARE AND GROUP FAMILY DAY CARE HOMES.

Subpart 1. **Purpose.** The purpose of parts 9502.0315 to 9502.0445 is to establish procedures and standards for licensing family day care and group family day care homes to ensure that minimum levels of care and service are given and the protection, proper care, health, safety, and development of the children are assured.

Subp. 2. **Applicability.** Parts 9502.0315 to 9502.0445 as authorized by Minnesota Statutes, sections 245.781 to 245.812, govern the licensing of family day care homes and group family day care homes.

Subp. 3. **Exclusion from licensure.** Under Minnesota Statutes, section 245.791, the following day care situations are excluded from licensure under parts 9502.0315 to 9502.0445:

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- A. day care provided by a relative to only related children; or
- B. day care provided to children from a single, unrelated family, for any length of time; or
- C. day care provided for a cumulative total of less than 30 days in any 12-month period; or
- D. the exclusions contained in items A and B are mutually exclusive.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

9502.0335 LICENSING PROCESS.

Subpart 1. License application. A license to operate a family or group family day care residence must be obtained from the department.

A. Application for a license must be made on the application form issued by the department. The application must be made in the county where the applicant resides.

B. The applicant shall be the person who will be the provider of care in the residence, present during the hours of operation, and who shall be legally responsible for the operation of the residence.

C. The agency shall supply the applicant with the department application form, a copy of parts 9502.0315 to 9502.0445, and the department forms needed to determine compliance with parts 9502.0315 to 9502.0445. The agency shall stamp and date a signed and completed department application form on the date of receipt.

D. An application for licensure is complete when the applicant completes, signs, and submits all department forms and documentation needed for licensure to the agency and the agency receives all inspection, zoning, evaluation, and investigative reports, documentation, and information required to verify compliance with parts 9545.0315 to 9545.0445 and Minnesota statutes.

Subp. 2. Licensing study. The applicant shall give the agency access to the residence for a licensing study to determine compliance with parts 9502.0315 to 9502.0445.

A. If, in the judgment of the agency representative, a potentially hazardous condition may be present, due to a violation of parts 9502.0315 to 9502.0445, the applicant shall obtain an inspection from a fire marshal, building official, or health officer to verify the absence of hazard and report to the agency.

B. The residence must comply with any applicable local ordinances. If the commissioner or the agency has reasonable cause to believe a hazardous condition may be present and requests an inspection by a fire marshal, building official, or health officer, then any condition cited by a fire marshal, building official, or health officer as hazardous and creating an immediate danger of fire, or threat to human life and safety, must be corrected or a variance approved in accordance with subparts 8, 8a, and 8b prior to issuance of a license.

C. An initial inspection of the residence by a fire marshal to determine compliance with the Minnesota Uniform Fire Code and compliance with orders issued are conditions of licensure for all residences with freestanding solid fuel heating appliances; manufactured (mobile) homes; new applicants for licensure with a licensed capacity of more than ten; day care residences which use the basement for child care; and residences in mixed or multiple occupancy buildings. "Multiple occupancy building" means a structure with two or more residential dwelling units such as a duplex, apartment building, or townhome. "Mixed occupancy building" means a residence in a structure that contains nonresidential occupancies or an attached garage.

D. The commissioner or agency may require, prior to licensure, or anytime during the licensed term of day care, a physical, mental illness, or

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chemical dependency or abuse evaluation of any caregiver or person living in the residence or present during the hours children are in care if the agency has reasonable cause to believe that any of the disqualification factors in subpart 6, item A or B, exist, or that the provider is not physically able to care for the children. These evaluations, conducted by a licensed physician, psychiatrist, psychologist, consulting psychologist, or certified chemical dependency practitioner or counselor may be used to verify physical or mental illness, chemical dependency or chemical abuse, or behavior that would reflect on the ability of the provider to give day care.

Subp. 3. Licensing agency. The agency shall accept and process applications for licensure and recommend license suspensions and revocations under parts 9502.0315 to 9502.0445.

A. The agency shall conduct the initial licensing study of the residence and the investigation of caregiver qualifications and the annual relicensing study.

B. The agency shall evaluate and recommend an application for approval or denial of licensure to the department within 60 days after the agency has in its possession all completed and signed forms, reports, evaluations, information, and documentation required from the applicant and all inspection, zoning, and investigative reports required to verify compliance with parts 9502.0315 to 9502.0445.

C. The agency shall notify the local zoning administrator at least 30 days prior to the initial issuance date of a license. The date the local zoning administrator was notified must be noted on the application form.

D. If a recommendation cannot be made by the agency within 60 days after all information, documentation, and evaluations necessary to verify compliance with the rule parts has been received, the agency must inform the applicant and department in writing why a recommendation cannot be made.

Subp. 4. Period of licensure; nontransfer. A license must be issued by the department for up to one year when the provider fully complies with parts 9502.0315 to 9502.0445. The license must not be transferred to another provider.

Subp. 5. Provisional license. An applicant for initial licensure may be granted a provisional license by the department for up to one year if all laws and rules cannot be met immediately, the deviations from parts 9502.0315 to 9502.0445 do not threaten the health, rights, or safety of the children, and which will be corrected within the time specified by the commissioner but not to exceed one year. Failure to correct deviations within the stated time shall be cause for revocation, suspension, or nonrenewal.

Subp. 6. Disqualification factors. An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

A. Abuses prescription drugs or uses controlled substances as specified in Minnesota Statutes, chapter 152, or alcohol, to the extent that the use or abuse has or may have a negative effect on the ability of the provider to give care or is apparent during the hours children are in care. Caregivers who have abused prescription drugs or have been dependent on controlled substances as specified in Minnesota Statutes, chapter 152, or alcohol, such that the use, abuse, or dependency has had a negative effect on the ability to give care, was apparent during the hours children are in care, or required treatment or therapy, must have 12 months of verified abstinence before licensure.

B. Has mental illness and the behavior has or may have a negative effect on the ability of the provider to give care or is apparent during the hours children are in care.

C. Has had parental rights terminated under Minnesota Statutes, section 260.221, paragraph (b).

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D. Refuses to give written consent for the disclosure of criminal history records as specified in Minnesota Statutes, section 245.783, subdivision 3.

E. Has had a conviction of, has admitted to, or there is substantial evidence indicating incest (as prohibited in Minnesota Statutes, section 609.365), or physical abuse, sexual abuse, or neglect (as those terms are defined in Minnesota Statutes, section 626.556).

F. Has had a conviction of, has admitted to, or there is a preponderance of the evidence indicating the commission of any crime listed in Minnesota Statutes, chapter 152 and sections 609.18 to 609.21 or 609.221 to 609.378, 609.556 to 609.563, 609.66 to 609.675, 617.23 or 617.246, other than those listed in item D. Conviction, admission, or a preponderance of evidence indicating the commission of a same or similar crime in another state or national jurisdiction shall also be grounds for license denial, revocation, nonrenewal, or suspension.

G. Has had a child placed in foster care within the past 12 months and the agency determines the reasons for placement reflect on the ability of the provider to give care. A license may not be denied if the primary reason for the placement was due to a physical illness of the parent, mental retardation of the child, a handicap of the child, or for the temporary care of an infant being relinquished for adoption.

H. Has had a child placed in residential treatment within the past 12 months for emotional disturbance or antisocial behavior and the agency determines that the reasons for the placement reflect on the ability of the provider to give care.

Subp. 7. License suspension or probation. A license shall be suspended or made probationary if the provider, or any other person living in the day care residence or present during the hours children are in care or working with children, is awaiting trial for a crime listed in subpart 6, item E or F.

Subp. 8. Variance standard. An applicant or provider may request a variance from compliance with parts 9502.0315 to 9502.0445. When reviewing a variance request of parts 9502.0315 and 9502.0445, the department shall assess whether alternative methods are identified by the applicant or provider to ensure the health, safety, and protection of children in care. A variance may be granted only if:

A. the applicant complies with all applicable laws, ordinances, and regulations;

B. specific equivalent measures are identified by the applicant or provider to ensure the health, safety, and protection of the children in care;

C. any variance to the safety provisions in part 9502.0425, subparts 4, 5, 6, 7, 12, 15, 16, 17, and 18 which relate to the Minnesota Uniform Fire Code is approved by a fire marshal and alternative measures are identified to ensure the safety of children in care;

D. any variance of the provisions in part 9502.0435 relating to sanitation and health and part 9502.0445 on water, food, and nutrition are approved by a health officer and alternative measures are identified to ensure the health of children in care;

E. any variance of the provisions in part 9502.0425 relating to subparts 10, stairways; 11, decks; and 13, sewage disposal which relate to the State Building Code, are approved by a building official and alternative measures are identified to ensure the health and safety of children in care; and

F. any variance to subpart 6, item F must have clear and convincing evidence presented by the applicant or provider that no threat or harm whatsoever will result to the children in care due to the granting of the variance. The department shall consider the nature of the crime committed and the amount of time which has elapsed without a repeat of the crime.

Subp. 8a. Variance procedure. Request for a variance must comply with and be handled according to the following procedures.

A. An applicant or provider must submit to the agency a written request for a variance. The request must include the following information:

(1) the sections of parts 9502.0315 to 9502.0445 with which the applicant or provider cannot comply;

(2) the reasons why the applicant or provider needs to depart from the specified sections;

(3) the period of time for which the applicant or provider requests a variance; and

(4) the specific equivalent alternative measures which the applicant or provider will provide so the health, safety, and protection of children in care are ensured if the variance is granted.

B. An applicant or provider must submit to the agency written approval from a fire marshal of a variance request and the alternative measures identified to ensure the safety of children in care when a variance of the fire safety provisions in part 9502.0425 on physical environment is requested. These are part 9502.0425, subpart 4, means of escape; subpart 5, occupancy separations; subpart 6, vertical separations; subpart 7, heating and venting systems; subpart 12, locks and latches; subpart 15, interior walls and ceilings; subpart 16, extinguishers; subpart 17, smoke detection systems; and subpart 18, electrical services.

C. An applicant or provider must submit to the agency written approval from a health officer of a variance request and the alternative measures identified to ensure the safety of children in care when a variance of the health provisions in parts 9502.0435 on sanitation and health, and 9502.0445 on water, food, and nutrition is requested.

D. An applicant or provider must submit to the agency written approval from a building official of a variance request and alternative measures identified to ensure the health and safety of children in care when a variance is requested of the standards contained in part 9502.0425 relating to subparts 10, stairways; 11, decks; and 13, sewage disposal.

Subp. 8b. Agency variance role. The agency may request that the commissioner delegate to the agency the authority to grant variances to the standards governing licensed capacity, child/adult ratios and age distribution restrictions in parts 9502.0365 and 9502.0367 if the need for the variance is to cover short overlaps of time when children are entering or leaving the residence, or emergencies for a short period of time if the total of all variances to the standards does not exceed 30 days in any 12-month period of licensure. The applicant or provider must verify in writing that the totals have not been and will not be exceeded for this period of time. A variance for any part of the day shall constitute a variance for the entire day.

A. An agency's request must be made in writing and include a procedure for processing variances and the name of the person designated by the agency to review requests for variances. If the proposed procedure is fair and efficient and conforms to the procedures and standards specified in this part, the commissioner shall issue a written delegation of authority to grant and deny variances. At least once a year, the department shall evaluate whether the agency is complying with its procedures and the standards in this subpart. If the agency is not complying with the procedures and standards, the commissioner shall terminate the agency's authority to grant and deny variances and notify the agency in writing of this action.

B. If an agency, which has been delegated the authority to rule on requests for variances, receives a written request for a variance that the agency has the power to grant, the agency shall grant or deny the request and mail the written decision to the applicant or provider within 30 days after the request is received. If the agency denies the request for variance, the applicant or provider may request a variance directly from the commissioner within ten days.

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C. If the agency has not been delegated the authority to rule on requests for variances, or if the request seeks variance of a rule part provision the agency does not have the authority to vary, the agency shall, within 15 days after the request is received, mail to the department a copy of the request and the agency's recommendation to approve, further investigate, or deny the request. The agency shall also mail a copy of its recommendation to the applicant or provider. The commissioner shall grant or deny a request for a variance within 30 days after the department receives the request from the agency. If the commissioner denies the applicant's or provider's request for a variance, the applicant or provider may appeal the decision according to Minnesota Statutes, sections 14.57 to 14.70. The applicant or provider shall be informed of the right to appeal at the time of denial.

Subp. 9. License terms. The license, whether regular or provisional, must indicate:

A. the number and age groupings of children who may receive care at any one time;

B. the expiration date of the license and location of the residence;

C. the name and address of the provider; and

D. that the provider is licensed under parts 9502.0315 to 9502.0445 of Minnesota Rules.

Subp. 10. Posting license. The provider shall post the license in the residence in a prominent place.

Subp. 11. Change in license terms. The following shall apply to changes in the terms of a license.

A. A new department application form must be submitted by the provider and a full licensing study as specified in part 9502.0335, subpart 2, must be completed when the provider wants to move the day care operation to a new residence or the provider wants to change to group family day care from family day care.

B. A new department application form indicating the changes in the ages and numbers of children in care must be completed when the provider wants to change to family day care from group family day care.

C. A licensing study pursuant to Minnesota Statutes, section 245.783, subdivision 3 shall be completed when there is an addition of any adult or child over the age of ten years who is or will be regularly present in the residence.

Subp. 12. Number of licenses. No provider shall be issued a license to operate more than one day care residence.

Subp. 13. Access to residence. The provider shall give authorized representatives of the commissioner or agency access to the residence during the hours of operation to determine whether the residence complies with the standards of parts 9502.0315 to 9502.0445. Access shall include:

A. the residence to be occupied by children in care;

B. any adjoining land or buildings owned or operated by the applicant or provider in conjunction with the provision of day care and designed for use by the children in care;

C. noninterference in interviewing all caregivers and household members present in the residence on a regular basis and present during the hours of operation; and

D. the right to view and photocopy the records and documents specified in part 9502.0405.

Subp. 14. License renewal. The following provisions must be followed by the agency when reviewing a license for renewal.

A. The agency must conduct a relicensing study of the provider and residence to determine continued compliance with parts 9502.0315 to 9502.0445 at least once every 12 months for as long as the provider maintains a license.

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B. The agency must solicit two or more parent evaluations of a provider's care, the residence, and program prior to renewal of a license. The evaluations and all complaints received during the period of licensure must be considered by the agency in determining continued compliance with parts 9502.0315 to 9502.0445.

Subp. 15. Return of license to commissioner. When a provider stops giving care, or if a license is revoked, suspended, or not renewed, the provider shall return the license to the commissioner, stop all advertising and refrain from providing care to children in excess of the exclusions specified in part 9502.0325, subpart 3.

Subp. 16. Unlicensed facilities. When a facility required to be licensed under parts 9502.0315 to 9502.0445 is brought to the attention of the agency, a verification of its licensed status must be made by the agency within five days.

A. If the agency finds that the facility is not licensed, the agency shall contact the person giving care in the facility and inform him or her of the licensing requirements specified in Minnesota Statutes, sections 245.781 to 245.812 and 245.791, and the procedure for obtaining a license.

B. If no attempt has been made within 30 days to obtain a license, then the attorney with jurisdiction to bring charges for misdemeanors shall be notified immediately so legal action may be pursued. The operator of a residence required to be licensed under parts 9502.0315 to 9502.0445, which is operating without a license, is subject to misdemeanor prosecution and injunction under Minnesota Statutes, section 245.803.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0341 NEGATIVE LICENSING ACTIONS.

Subpart 1. Complaints. Every complaint, including anonymous ones, concerning violations of parts 9502.0315 to 9502.0445, shall be investigated by the agency within 14 days. All complaints substantiated by the agency about a provider licensed under parts 9502.0315 to 9502.0445 shall be recorded in the agency file on that provider.

Subp. 2. Definitions. For the purposes of this subpart, negative licensing actions shall mean denial of application for licensure, revocation, nonrenewal, probation, suspension, or immediate suspension of an existing license.

Subp. 3. Procedures. In accordance with Minnesota Statutes, section 245.801, failure to comply with parts 9502.0315 to 9502.0445 or the terms of licensure is grounds for a negative licensing action. If the agency recommends a negative licensing action, the agency shall notify the department and the department shall determine if the standards in parts 9502.0315 to 9502.0445 or the terms of licensure have been violated. If the grounds are sufficient, the commissioner shall notify the applicant or provider by certified mail unless personal service is required by subpart 9. The notice must be addressed to the name and location shown on the application or license and contain a statement of, and the reasons for, the proposed action. The notice must inform the applicant or provider of the right to appeal the decision within the specified time period. The applicant or provider shall have an opportunity for a hearing in accordance with Minnesota Statutes, sections 14.57 to 14.70.

Subp. 4. Denial. If the commissioner denies an application for licensure, the applicant must be informed of the right to appeal the decision within 20 days.

Subp. 5. Revocation. If the commissioner proposes to revoke a license, the provider must be informed of the right to appeal the decision within ten days.

Subp. 6. Nonrenewal. If the commissioner refuses to renew a license, the provider must be informed of the right to appeal the decision within 20 days.

Subp. 7. Probation. If the commissioner proposes to make a license proba-

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tionary, the provider must be informed of the right to appeal the decision within ten days.

Subp. 8. Suspension. If the commissioner proposes to suspend a license, the provider must be informed of the right to appeal the decision within ten days.

Subp. 9. Immediate suspension. If the commissioner finds that the health, safety, or rights of the children in care are in imminent danger, the commissioner shall immediately suspend the license. The provider shall be informed by personal service and informed of the right to appeal the decision within five days. The appeal does not stay the decision of the commissioner to immediately suspend the license.

Subp. 9a. Correction orders and fines. If the commissioner finds that the residence or provider does not comply with the provisions of parts 9502.0315 to 9502.0445, the commissioner must issue a correction order in accordance with Minnesota Statutes, section 245.805, and the provider may, upon reinspection, be subject to a fine for each uncorrected deficiency.

Subp. 10. Notice to parents of negative action. As soon as the county recommends revocation, suspension, probation, or immediate suspension action, a notice of the circumstances for the action, but not the identity of a child, other than the parent's own, shall be sent by the agency to the parents of children in care. If a license is not immediately suspended and the provider remains in operation and appeals the decision of the commissioner, the provider must give a copy of the Notice of and Order for Hearing on the appeal to the parents of any child currently enrolled or seeking admission to the residence.

Subp. 11. Reapplication after revocation or nonrenewal. A provider whose license has been revoked or not renewed because of noncompliance with applicable laws or rules, shall not be granted a new license for five years following revocation or nonrenewal. The department may grant a variance to this provision and issue a license after two years following revocation or nonrenewal if the applicant then substantially meets all provisions of parts 9502.0315 to 9502.0445. When the commissioner initiates a negative licensing action against a provider for any of the grounds specified in part 9502.0335, subpart 6, the provider may not voluntarily withdraw his or her license without written assurance from the provider that he or she is voluntarily accepting revocation and will not reapply for two years.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

NOTE: Minnesota Statutes, section 14.70, was repealed by Laws of Minnesota 1983, chapter 247, section 219.

9502.0345 AGENCY RECORDS.

Subpart 1. Agency records. The agency shall maintain the following records for each provider:

A. A copy of the completed licensing application form signed by the applicant and the agency.

B. The physical health reports on any adult giving care in the residence on a regular basis.

C. Any written reports from the fire marshal, health officer, or building official.

D. The agency's initial and any renewal licensing studies.

E. If the applicant has been licensed through another jurisdiction, the agency shall request and keep a reference from the licensing authority in that jurisdiction.

F. The annual relicensing evaluation by the agency of the provider. Any comments of the provider about the evaluation by the agency shall also be noted in the agency record.

G. Documentation of any variances of parts 9502.0315 to 9502.0445.

H. Arrest, conviction, or criminal history records from the Minnesota Bureau of Criminal Apprehension, county attorney, sheriff, local police department, national criminal history record repositories, other public and private social service agencies, and juvenile, municipal, and district courts on any person living or working in the day care residence.

Subp. 2. **Data privacy.** The agency, department, and the health officer shall have access to provider records on children in care to determine compliance with parts 9502.0315 to 9502.0445. The provider shall not disclose any records on children in care to any persons other than the parents of the child, the agency, the department, the persons required by part 9502.0375, subpart 1, and medical or public safety persons if information is necessary to protect the health and safety of the child.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0355 CAREGIVER QUALIFICATIONS.

Subpart 1. **Age.** An applicant for family day care or group family day care shall be an adult at the time of licensure.

Subp. 2. **Health.** An adult caregiver shall be physically able to care for children.

A. The applicant shall supply documentation to the agency with the license application that the applicant has had a physical examination from a licensed physician within 12 months prior to initial licensure and is physically able to care for children.

B. The applicant shall supply documentation to the agency with the license application that all adult caregivers who are assisting with care on a regular basis have had a physical examination from a licensed physician within 12 months prior to employment within the residence and are physically able to care for children.

Subp. 3. **Group family day care.** A group family day care applicant shall meet all the requirements listed in subparts 1 and 2 for family day care. A group family day care applicant shall also meet the qualifications in item A, B, or C.

A. A minimum of one years' substantial compliance with parts 9502.0315 to 9502.0445 as a licensed family day care provider; or

B. A minimum of six months' substantial compliance with parts 9502.0315 to 9502.0445 as a licensed family day care provider; and

(1) completion of an accredited competency-based family day care training and assessment program offered by an accredited institute; or

(2) thirty hours of child care, health, and nutrition training as specified in part 9502.0385, and a minimum of 520 hours of experience as an assistant teacher, student teacher, or intern in an elementary school or licensed child care center, or as an assistant adult caregiver in a licensed group family day care home; or

(3) thirty hours of child development or early childhood education training, as specified in part 9502.0385, and a minimum of 520 hours of experience as a licensed practical or registered nurse; or

C. Certification or licensure indicating:

(1) completion of a two-year child development or early childhood education associate or certificate program at an accredited college or university;

(2) completion of a nine-month child development assistant program at an accredited vocational-technical institute;

(3) a current Level I or Level II prekindergarten license from the State Department of Education;

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(4) a kindergarten through sixth grade teaching degree from an accredited university or college that includes a minimum of 30 hours of child development training; or

(5) documentation of a minimum of six months satisfactory experience as a full-time teacher at a state-licensed group day care center.

Subp. 3a. Accredited. For the purposes of this part, "accredited" means a postsecondary institution or area vocational-technical institution recognized and listed by a regional, state, or national group approved by the department. To be approved, a group must meet the following criteria:

A. it must be capable of conducting site visits to evaluate the facilities used by the program;

B. it must be capable of evaluating the quality of the program and its faculty;

C. it must have standards which ensure that persons who complete the program have the knowledge and training to work as group family day care providers; and

D. it must not be affiliated with any individual program, postsecondary institution, or vocational-technical institution.

Subp. 4. Day care insurance coverage. A provider shall have:

A. a certificate of insurance for the residence for general liability coverage for bodily injury in the amount of at least \$100,000 per person and \$250,000 per occurrence; or

B. if the provider has liability coverage of lesser limits or no liability coverage, the provider shall give a written notice of the level of liability coverage to parents of all children in care prior to admission or when there is a change in the amount of insurance coverage; and

C. the provider shall maintain copies of the notice, signed by the parents to indicate they have read and understood it, in the provider's records on the residence as specified in part 9502.0405.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0365 LICENSED CAPACITY, CHILD/ADULT RATIOS, AGE DISTRIBUTION RESTRICTIONS.

Subpart 1. Capacity limits. Family day care and group family day care providers shall comply with part 9502.0367, which limits the total number of children and the number of preschoolers, toddlers, and infants who may be in care at any one time, and provides for the number of adults who are required to be present.

A. Providers shall be licensed for the total number of children, ten years of age or younger, who will be present in the residence at any one time. The licensed capacity must include all children of any caregiver when the children are present in the residence.

B. Within the licensed capacity, the age distribution restrictions specify the maximum number of children under school age, infants, and toddlers who may be in care at any one time.

Subp. 2. Specialized infant and toddler group family day care. In specialized infant and toddler group family day care, the caregivers must be adults.

Subp. 3. Newborn care. When a newborn is in care and only one adult caregiver is present, the newborn shall be the only child under 12 months of age and the provider shall not care for more than two other children at the same time unless another adult caregiver is also present or the newborn is the provider's own.

Subp. 4. Helpers. A helper may be used in place of a second adult caregiver when there is no more than one infant or toddler present.

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Subp. 5. **Supervision and use of substitutes.** A licensed provider must be the primary provider of care in the residence. Children in care must be supervised by a caregiver. The use of a substitute caregiver must be limited to a cumulative total of not more than 30 days in any 12-month period.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0367 CHILD/ADULT RATIOS; AGE DISTRIBUTION RESTRICTIONS.

A. Family Day Care:

Child/Adult Ratio		Age Restrictions	
Licensed Capacity	Adults	Total children under school age	Total infants and toddlers
10	1	6	Of the total children under school age, a combined total of no more than 3 shall be infants and toddlers. Of this total, no more than 2 shall be infants.

B. Specialized Infant and Toddler Family Day Care:

(1) 5	1	3	No more than 3 shall be infants.
(2) 6	1	4	No more than 2 shall be infants.

C. Group Family Day Care:

(1) 10	1	8	Of the total children under school age, no more than 3 shall be infants and toddlers. Of this total, no more than 2 shall be infants.
(2) 12	1	10	Of the total children under school age, no more than 2 shall be infants and toddlers. Of this total, no more than 1 shall be an infant.
(3) 14	2	10	Of the total children under school age, a combined total of no more than 4 shall be infants and toddlers. Of this total, no more than 3 shall be infants.

A helper may be used in place of a second adult caregiver when there is no more than 1 infant or toddler present.

D. Specialized Infant and Toddler Group Family Day Care:

9	2	7	Of the total children, no more than 4 shall be infants.
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Both caregivers shall be adults.

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Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0375 REPORTING TO AGENCY.

Subpart 1. **Abuse; neglect reporting.** All caregivers shall report any suspected physical abuse, sexual abuse, or neglect of a child to the agency or police as required by Minnesota Statutes, section 626.556. If a caregiver has reasonable cause to believe a child has died as a result of physical or sexual abuse or neglect, the caregiver shall report this information to the county medical examiner or coroner.

Subp. 2. **Other reporting.** The provider shall inform the agency:

A. within 30 days of any change in the regular membership of the household within the day care residence or the addition of an employee who will regularly be providing care;

B. immediately of any suspected case of physical or sexual abuse or neglect;

C. within 48 hours after the occurrence of a fire that requires the service of a fire department so the agency may determine continued substantial compliance with parts 9502.0315 to 9502.0445; and

D. immediately after the occurrence of any serious injury or death of a child within the day care residence. A serious injury is one that is treated by a physician.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0385 DAY CARE TRAINING.

Subpart 1. **Agency training role.** The agency shall ensure:

A. that the provider complies with the initial and ongoing training specified in this part;

B. that the training specified in subpart 2 is available on weekends, evenings, or at times convenient to the majority of providers who reside in the county; and

C. that training information is distributed to each provider who operates a residence in the county of the agency at least once a year.

Subp. 2. **Initial day care training.** All providers must complete:

A. six to nine hours of training in a combined course of child-related first aid and cardiopulmonary resuscitation (CPR) provided by or approved by the American Red Cross, American Heart Association, or provided by a licensed physician or a registered or practical nurse trained to provide instruction in CPR and first aid. The training must be completed within one year of or one year prior to the date of initial licensure. Current certification in CPR and first aid by the American Red Cross or American Heart Association may be substituted for the initial CPR and first aid training specified.

B. six hours of training, approved by the agency, in child development and child care within one year of or one year prior to initial licensure.

Subp. 3. **Ongoing training.** Providers must complete six hours of training per year, after the initial year of licensure, in one or more of the subject areas specified in subpart 4. Providers not certified in CPR must also complete one four-hour refresher course in CPR for children within one year after the initial CPR training.

Subp. 4. **Ongoing training subjects.** Ongoing training subjects shall be selected from the following areas:

A. child development;

- B. child abuse;
- C. communicable disease prevention and control;
- D. parent and provider relationships;
- E. communication skills;
- F. community services and resources for children;
- G. methods of guiding behavior or discipline;
- H. home and fire safety and child injury prevention;
- I. learning activities;
- J. observation and assessment of children's needs;
- K. care of bilingual or non-English-speaking children;
- L. care of special needs or gifted children;
- M. nutrition and food safety; and
- N. business management.

Subp. 5. **Adult caregiver and helper training.** Each adult caregiver, other than the provider, who is employed in the residence on a regular basis, must participate in a minimum of six hours of training in a subject area specified in subpart 4 within one year after the date of initial employment, and a minimum of six hours of training every year after that as long as the adult is employed. Helpers who assist with care on a regular basis must complete six hours of training within one year after the date of initial employment.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0395 BEHAVIOR GUIDANCE.

Subpart 1. **Methods.** Caregivers shall give each child guidance which helps the child acquire a positive self-concept, self-control, and teaches acceptable behavior.

A. The provider shall discuss methods of behavior guidance with parents at the time of admission and the parent's standards shall be considered by the provider within the context of this part when guiding the behavior of a child.

B. Behavior guidance used by caregivers must be constructive, positive, and suited to the age of the child. Methods of intervention, guidance, and redirection must be used.

Subp. 2. **Standards.** The following shall apply to all caregivers when guiding behavior in children.

A. No child shall be subject to corporal punishment or emotional abuse. "Corporal punishment" means the nonaccidental infliction of physical pain on a child by a caregiver. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking. "Emotional abuse" means the infliction of verbal or psychological abuse on a child by a caregiver. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, derogatory remarks about the child or child's family, and threats which threaten, humiliate, or frighten the child.

B. Food, light, warmth, clothing, and medical care shall not be withheld from the child.

C. Discipline and punishment shall not be delegated to another child.

D. The separation of a child from a group to guide behavior must be appropriate to the age of the child and circumstances requiring the separation.

E. An infant shall not be separated from the group for disciplinary reasons.

F. A child shall not be separated from the group for a period longer than ten minutes.

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G. A child separated from the group must be placed in an area or separate room that is well-lighted, free from hazards, ventilated, and open to the view of caregivers.

H. No child shall be placed in a locked room to separate the child from the group.

Subp. 3. **Toilet training.** If toilet training is undertaken, the provider and parent shall cooperatively develop a plan for the timing and method of training.

A. No child shall be punished for toileting accidents.

B. A child shall be offered opportunity for toileting.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0405 ADMISSIONS; PROVIDER RECORDS; REPORTING.

Subpart 1. **Cooperating with parents.** When admitting a child to day care, the provider and parents shall discuss child rearing, sleeping, feeding, and behavior guidance practices essential for the care of the child.

Subp. 2. **Rule summary for parents.** A descriptive summary of parts 9502.0315 to 9502.0445 shall be distributed to the parent by the provider at the time a child is admitted to care. The summary shall be provided by the department to the agency for distribution to the provider. The summary shall be written in language that is understandable to the general public and:

A. state that parts 9502.0315 to 9502.0445 of Minnesota Rules govern the licensing of day care residences;

B. specify the rule part headings contained in parts 9502.0315 to 9502.0445; and

C. state that a complete copy of parts 9502.0315 to 9502.0445 may be seen at the day care residence, the agency, department, or state law library, or purchased from the State Register and Public Documents Division, Department of Administration, State of Minnesota, 117 University Avenue, Saint Paul, Minnesota 55155.

Subp. 3. **Provider policies.** The provider shall have the following written information available for discussion with parents or the agency:

A. the ages and numbers of children in care in the residence;

B. the hours and days of operation;

C. meals and snacks to be served;

D. labeling requirements for food brought from the child's home;

E. sleeping and rest arrangements;

F. nondiscrimination practices to comply with subpart 6;

G. policies for the care of ill children, disease notification procedures, immunizations, and medicine permission policies;

H. emergency, fire, and storm plans and the monthly fire drill log;

I. seat belt and transportation plans and field trip and transportation permission requirements;

J. fees;

K. termination and notice procedures;

L. plans for a helper and substitute for emergencies, vacations, or holidays;

M. the presence of pets in the residence;

N. a complete copy of parts 9502.0315 to 9502.0445;

O. insurance coverage; and

P. whether or not smoking is permitted in the residence during the hours children are in care.

Subp. 4. **Records for each child.** The provider shall obtain the information required by items A to C from parents prior to admission of a child. The provider shall keep this information up-to-date and on file for each child.

A. The signed and completed admission and arrangements form of the department must be on file in the provider's home and contain the following information:

- (1) Name and birthdate of the child.
- (2) Full name of parents.
- (3) Home address, work address, and telephone numbers where parents may be reached.
- (4) Name, address, and telephone number of physician, dentist, and hospital to be used for emergencies when parents cannot be reached.
- (5) Name, address, and telephone number of persons to be notified in case of emergency, when parents cannot be reached.
- (6) Names of all persons authorized to remove the child from the residence.
- (7) Enrollment dates.
- (8) Financial arrangements.
- (9) Insurance notification specified in part 9502.0355, subpart 4.

B. Special instructions from the parent shall be obtained in writing and followed about toilet training, eating, sleeping or napping, allergies, and any health problems.

C. Immunization records must be kept in accordance with Minnesota Statutes, section 123.70. The provider shall request, update, and keep on file the dates of immunizations received by a child in regular attendance at the residence as follows:

- (1) for an infant, every six months;
- (2) for a toddler, annually;
- (3) for a preschool child, every 18 months; and
- (4) for a school-age child, every three years.

D. Signed written consent must be obtained in advance from the parent so the provider can obtain emergency medical care or treatment. The consent may be used if the parent cannot be reached or is delayed in arriving.

E. Written permission to transport children must be obtained from parents if the provider will be transporting a child.

F. A provider shall release a child from care only to a parent or a person authorized by the parent.

Subp. 5. **Handicapped children.** For the handicapped child requiring special therapy, program, or behavior guidance, the parents, physician, or therapist shall provide and the provider shall follow written instructions for any special needs. "Handicapped child" means a child who has been determined by a physician, a school district multidisciplinary team, or other person licensed to identify handicapping conditions, to have a hearing, mental, neurological, developmental, serious emotional, social, learning, speech or language, physical, or visual impairment.

Subp. 6. **Nondiscrimination.** No caregiver shall discriminate in relation to admissions on the basis of race, creed, color, national origin, religion, or sex.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0415 ACTIVITIES AND EQUIPMENT.

Subpart 1. **General activities.** Day care activities must provide for the physi-

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cal, intellectual, emotional, and social development of the child. The environment must facilitate the implementation of the activities. Activities must:

- A. be scheduled indoors and outdoors, weather permitting;
- B. be appropriate to the developmental stage and age of the child;
- C. include active and quiet activity; and
- D. contain provider-directed and child-initiated activity.

Subp. 2. [Repealed, 10 SR 2617]

Subp. 3. **Equipment.** The provider must have the equipment specified in this part in adequate quantities for the number and ages of children in care and to carry out the activities specified in this part. Equipment may be new, used, commercial, or homemade, as long as it is appropriate for the ages of the children and activities for which it will be used, safe, and in good repair.

Subp. 4. **Newborn or infant activities.** The provider shall:

- A. Hold the infant or newborn during bottle feedings until the child can hold its own bottle. Bottles must not be propped.
- B. Respond to the infant or newborn's attempts to communicate.
- C. Provide freedom of movement to the infant or newborn during a large part of the waking day to the extent that safety and weather permits. The noncreeping child shall spend part of each day out of a crib or infant seat. The creeping infant or newborn shall have freedom to explore outside of the crib or infant seat.

D. Give the infant or newborn opportunity to stimulate the senses by providing a variety of activities and objects to see, touch, feel, smell, hear, and taste.

E. Provide activities for the infant or newborn that develop the child's manipulative and fine motor skills, self-awareness, and social responsiveness.

Subp. 5. **Newborn or infant equipment.** The following minimum equipment is required for each infant or newborn:

- A. an infant seat or high chair; and
- B. a crib, portable crib, or playpen with waterproof mattress or pad which meets the requirements in part 9502.0425, subpart 9.

Subp. 6. **Toddler activities.** The provider shall:

- A. Provide the toddler with freedom of movement and freedom to explore outside the crib or playpen.
- B. Talk to, listen to, and interact with the toddler to encourage language development.
- C. Provide the toddler with large muscle activities and activities which develop the child's small muscles and manipulative skills.
- D. Develop and stimulate learning by reading stories to the child or looking at picture books together.

E. Give the toddler opportunities to stimulate the senses by providing a variety of age-appropriate activities and objects to see, touch, feel, smell, hear, and taste.

Subp. 7. **Toddler equipment.** Each toddler shall be provided with a mat, crib, cot, bed, sofa, or sleeping bag.

Subp. 8. **Preschooler activities.** The provider shall:

- A. Encourage conversation between the child and other children and adults.
- B. Provide opportunity to play near and with other children; provide time and space for individual and group play; allow for quiet times to talk or rest; allow for unplanned time and individual play time.
- C. Foster understanding of personal and peer feelings and actions and allow for the constructive release of feelings and anger through discussion or play.

D. Give assistance in toileting and provide time to carry out self-help skills and provide opportunity to be responsible for activities like putting away play equipment and helping around the house.

E. Provide opportunity for each child to make decisions about daily activities and to take credit for the consequences of decisions.

F. Provide time and areas for age appropriate large muscle play.

G. Provide learning, small muscle, manipulative, creative or sensory activities.

H. Read stories, look at books together, and talk about new words and ideas with the child.

Subp. 9. **Preschooler equipment.** Each preschooler shall be provided with a mat, bed, cot, sofa, or sleeping bag.

Subp. 10. **School-age activities.** The provider shall:

A. provide opportunities for individual discussion about the happenings of the day and planning for activities;

B. provide space and opportunity for games, activities, or sports using the whole body, outdoors, weather permitting;

C. provide space and opportunity for individual rest and quiet time;

D. allow increased freedom as the child demonstrates increased responsibility;

E. provide opportunities for group experiences with other children;

F. provide opportunities to develop or expand self-help skills or real-life experiences; and

G. provide opportunities for creative and dramatic activity, arts and crafts, or field trips.

Subp. 11. [Repealed, 10 SR 2617]

Subp. 12. **Written permission.** Written permission must be obtained from the parent to allow a school-age child in care to participate in activities away from the residence.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0425 PHYSICAL ENVIRONMENT.

Subpart 1. **Indoor space.** The licensed capacity of the day care residence must be limited by the amount of usable indoor space available to children. A minimum of 35 square feet of usable indoor space is required per child.

A. Bathrooms, closets, space occupied by major appliances, and other space not used by children may not be counted as usable space. Space occupied by adult furniture, if it is used by children, may be counted as usable indoor space.

B. Usable indoor space may include a basement if it has been inspected by a fire marshal, is free of hazard, and meets the minimum exiting standards specified in subpart 4.

Subp. 2. **Outdoor play space.** There must be an outdoor play space of at least 50 square feet per child in attendance, adjacent to the residence, for regular use, or a park, playground, or play space within 1,500 feet of the residence. On-site supervision must be provided by a caregiver for children of less than school age when play space is not adjacent to the residence. Enclosure may be required by the agency to provide protection from rail, traffic, water, or machinery hazard. The area must be free of litter, rubbish, toxic materials, water hazards, machinery, unlocked vehicles, human or animal wastes, and sewage contaminants.

Subp. 3. **Water hazards.** Swimming and wading pools, beaches, or other bodies of water on or adjacent to the site of the residence must be inaccessible

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to children except during periods of supervised use. Wading pools, as defined in chapter 4717, must be kept clean. When children use a swimming pool, as defined in chapter 4717, or beach, an attendant trained in first aid and resuscitation shall be present. Any public swimming pool, as defined in chapter 4717, used by children must meet the requirements of chapter 4717.

Subp. 4. Means of escape. From each room of the residence used by children, there must be two means of escape. One means of escape must be a stairway or door leading to the floor of exit discharge. The other must be a door or window leading directly outside. The window must be openable without special knowledge. It must have a clear opening of not less than 5.7 square feet and have a minimum clear opening dimension of 20 inches wide and 24 inches high. The window must be within 48 inches from the floor.

Subp. 5. Occupancy separations. Day care residences with an attached garage must have a self-closing, tight-fitting solid wood bonded core door at least 1-3/8 inch thick, or door with a fire protection rating of 20 minutes or greater and a separation wall consisting of 5/8 inch thick gypsum wallboard or its equivalent on the garage side between the residence and garage.

Subp. 6. Vertical separations. For group family day care homes with a licensed capacity of more than ten children, a 1-3/4 inch solid wood core door or a door and frame with at least a 20-minute fire protection rating, must be provided whenever more than two floors of the residence are connected. These doors must be equipped with self-closing devices.

Subp. 7. Heating and venting systems. The following heating and venting guidelines must be met:

A. Stove and heater locations must not block escape in case of a fire.

B. Gas, coal, wood, kerosene, or oil heaters must be vented to the outside in accordance with the State Building Code.

C. Combustible items must not be located within 36 inches of the furnace or other heating sources.

D. Whenever in use, fireplaces, woodburning stoves, solid fuel appliances, space heaters, steam radiators, and other potentially hot surfaces, such as steam pipes, must be protected by guards to prevent burns. All fireplaces, woodburning stoves, space heaters, steam radiators, and furnaces must be installed according to the State Building Code.

E. The furnace, hot water heater, and workshop area must be inaccessible to children. Separation may be by a door, partition, or gate. There must be allowance for air circulation to the furnace.

F. Ventilation of usable space must meet the requirements of the State Building Code. Outside doors and windows used for ventilation in summer months must be screened when biting insects are prevalent.

Subp. 8. Temperature. A minimum temperature of 62 degrees Fahrenheit must be maintained in indoor areas used by children.

Subp. 9. Infant and newborn sleeping space. There must be a safe, comfortable sleeping space for each infant and newborn. A crib, portable crib, or playpen with waterproof mattress or pad must be provided for each infant or newborn in care. The equipment must be of safe and sturdy construction that conforms to volume 16, parts 1508 to 1508.7 and parts 1509 to 1509.9 of the Code of Federal Regulations, its successor, or have a bar or rail pattern such that a 2-3/8 inch diameter sphere cannot pass through. Playpens with mesh sidings must not be used for the care or sleeping of infants or newborns.

Subp. 10. Stairways. All stairways must meet the following conditions.

A. Stairways of three or more steps must have handrails.

B. Any open area between the handrail and stair tread must be enclosed with a protective guardrail as specified in the State Building Code. The back of the stair risers must be enclosed.

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C. Gates or barriers must be used when children between the ages of 6 and 18 months are in care.

D. Stairways must be well-lighted, in good repair, and free of clutter and obstructions.

Subp. 11. **Decks.** Decks, balconies, or lofts used by children more than 30 inches above the ground or floor must be surrounded by a protective guardrail and be constructed in accordance with the State Building Code. Wooden decks must be free of splinters and coated with wood preservative, paint, or constructed with treated wood.

Subp. 12. **Locks and latches.** Door locks and latches must meet the following guidelines:

A. a closet door latch must be made so that children can open the door from inside the closet;

B. every bathroom door lock must permit opening of the locked door from the outside and the opening device must be readily accessible to all caregivers; and

C. double cylinder (key required both sides) locks on exit doors are prohibited.

Subp. 13. **Sewage disposal.** Day care residences must have toilet facilities and sewage disposal systems that conform to the State Building Code or local septic system ordinances. The toilets must flush thoroughly. Outdoor toilets are permissible when local ordinances allow.

Subp. 14. **Construction, remodeling.** During construction or remodeling, children shall not have access to dangerous construction or remodeling areas within or around the residence.

Subp. 15. **Interior walls and ceilings.** The interior walls and ceilings within the residence, as well as corridors, stairways, and lobbies must have a flame spread rating of 200 or less.

Subp. 16. **Extinguishers.** A portable, operational, multipurpose, dry chemical fire extinguisher with a minimum 2 A 10 BC rating must be maintained in the kitchen and cooking areas of the residence at all times. All caregivers shall know how to use the fire extinguisher.

Subp. 17. **Smoke detection systems.** Smoke detectors that have been listed by the Underwriter Laboratory must be properly installed and maintained on all levels.

Subp. 18. **Electrical services.** The following electrical guidelines must be met:

A. all electric receptacles accessible to children under first grade must be tamper-proof or shielded when not in use;

B. all major electrical appliances must be properly installed, grounded in accordance with the state electric code, and in good working order;

C. extension cords shall not be used as a substitute for permanent wiring; extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, floors, under doors or floor coverings, nor be subject to environmental damage or physical impact; and

D. electrical wiring must be sized to provide for the load and be in good repair.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0435 SANITATION AND HEALTH.

Subpart 1. **Sanitation and cleanliness.** The residence must be free from accumulations of dirt, rubbish, or peeling paint.

Subp. 2. **Pest control.** Effective measures must be taken to protect the home

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against vermin and insects. Chemicals for insect and rodent control must not be applied in areas accessible to children when children are present.

Subp. 3. Rubbish. Indoor and outdoor garbage and rubbish containers must not be accessible to infants and toddlers.

Subp. 4. Toxic substances. All medicines, chemicals, detergents, poisonous plants, alcoholic beverages, and other toxic substances must be inaccessible to children. They must be stored away from food products. Equipment or toys which are mouthed or may be chewed must be free of lead-based paint. Toys and equipment with chipped, cracked, or peeling paint must be tested to verify the absence of lead or be replaced.

Subp. 5. Firearms. All firearms must be unloaded and inaccessible to children. Ammunition and firearms must be stored in separate locked areas.

Subp. 6. Hazardous activity materials. Knives, matches, plastic bags, and other potential hazards must be kept out of the reach of infants, toddlers, and preschoolers. The use of potentially hazardous materials and tools must be supervised.

Subp. 7. First aid kit. The provider shall have a first aid kit that contains bandages, sterile compresses, ipecac syrup, scissors, an ice bag or cold pack, an oral or surface thermometer, mild liquid soap, and adhesive tape. A first aid manual must be included. The kit and manual must be accessible and taken on field trips.

Subp. 8. Emergencies. The provider shall be prepared for emergencies.

A. An operable telephone must be located within the residence.

B. Emergency phone numbers must be posted by the telephone. The numbers must be those of the local fire department, police department, emergency transportation, and poison control center.

C. The emergency phone numbers of the parents and child's physician and dentist must be readily available within the residence and taken on field trips.

D. Prior arrangements must be made for a substitute to provide care during emergencies.

E. For severe storms and tornadoes, the provider shall have a designated area within the residence that children shall go to for cover, and an operable battery flashlight, and portable radio or TV available.

F. The provider shall have a written fire escape plan and a log of monthly fire and storm drills on file in the residence. The plan must be approved by the agency and specify:

(1) emergency phone numbers;

(2) a place to meet outdoors for roll call;

(3) smoke detector and fire extinguisher locations;

(4) plans for monthly fire and tornado drill sessions; and

(5) escape routes to the outside from all levels used by children. In buildings with three or more dwelling units, enclosed exit stairs must be indicated.

Subp. 9. Transportation of children. When transportation is given to children in a motor vehicle other than a bus or school bus operated by a common carrier, the following provisions for their safety must be made.

A. A child may be transported only if the child is fastened in a safety seat, seat belt, or harness appropriate to the child's weight and the restraint is installed and used in accordance with the manufacturer's instructions.

B. A child under the age of four may be transported only if the child is securely fastened in a child passenger restraint system which meets the federal motor vehicle safety standards contained in Code of Federal Regulations, title 49, section 571.213 or its successor.

C. Any vehicle operated by the provider for the transportation of children must be licensed in accordance with the laws of the state and the driver shall hold a current, valid driver's license.

D. Written permission to transport children must be obtained from parents.

E. No child is permitted to remain unattended in any vehicle.

Subp. 10. **Separation of personal articles.** Separate towels, wash cloths, drinking cups, combs, and other personal articles must be used for each child.

Subp. 11. **Bedding.** Clean, separate bedding must be provided for each child in care.

Subp. 12. **Pets.** All pets housed within the residence shall be maintained in good health and limited to dogs, cats, fish, guinea pigs, gerbils, rabbits, hamsters, rats, mice, and birds if the birds are clear of *chlamydia-psittaci*. The provider shall ensure that:

A. parents are notified prior to admission of the presence of pets in the residence;

B. children handle animals only with supervision;

C. rabies shots and tags are current for all dogs and cats;

D. pet cages are located and cleaned away from any food preparation, storage, or serving areas;

E. play areas are free of animal excrement not confined to pet cages;

F. parents of a child whose skin is broken by an animal bite or scratch, are notified of the injury on the day the injury occurs; and

G. the health officer is immediately notified whenever a child in care is bitten by an animal, the notification shall be given before any steps are taken to destroy the animal, and the provider shall take reasonable steps to confine the animal.

Subp. 13. **Diapers.** Children in diapers shall be kept clean and dry. The following sanitary procedures must be used to reduce the spread of communicable disease.

A. An adequate supply of clean diapers must be available for each child and stored in a clean place inaccessible to children. If cloth diapers are used, parents must provide a change of the outer plastic pants for each fecally-soiled diaper change. Cloth diapers, except those supplied by a commercial diaper service, and plastic pants, if supplied by parents, must be labeled with the child's name.

B. Diapers and clothing must be changed when wet or soiled.

C. For disposable diapers, a covered diaper disposal container must be located in the diaper changing area and lined with a disposable plastic bag. The container must be emptied when full, and at least daily.

D. Diapering must not take place in a food preparation area. The diaper changing area must be covered with a smooth, nonabsorbent surface. If the surface is not disposable and is wet or soiled, it must be washed with soap and water to remove debris and then disinfected with a solution of at least two teaspoons of chlorine bleach to one quart of water. If the surface is not soiled with feces or urine, then it must be disinfected with the solution of chlorine bleach and water after each diapering.

E. Single service disposable wipes or freshly laundered cloths must be used for washing a soiled child. A child who has soiled or wet must be washed with a disposable wipe or a freshly laundered cloth before rediapering.

F. Cloth diapers, except those supplied by a commercial diaper service, plastic pants, and soiled clothing must be placed in the plastic bag after removal and sent home with the parent daily.

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Subp. 14. **Toilet training chairs.** Toilet training chairs, chairs, stools, and seats must be washed with soap and water when soiled, and at least daily.

Subp. 15. **Hand washing.** A child's hands must be washed with soap and water when soiled, after the use of a toilet or toilet training chair, and before eating a meal or snack. The provider shall monitor and assist the child who needs help.

A. In sinks and tubs accessible to children, the water temperature must not exceed 120 degrees Fahrenheit to prevent children from scalding themselves while washing.

B. Caregivers shall wash their hands with soap and water after each diaper change, after assisting a child on the toilet, after washing the diapering surface, and before food preparation. Hands must be dried on a single use towel.

Subp. 16. **Care of ill children, medicine administration.** The following provisions must be followed for the care of ill children and the administration of medicine.

A. The provider shall notify the parent immediately when a child in care develops any of the following symptoms:

(1) underarm temperature of 100 degrees Fahrenheit or over, or an oral temperature of 101 degrees Fahrenheit or over;

(2) vomiting;

(3) diarrhea; or

(4) rash, other than mild diaper or heat-related rash.

B. The provider shall follow written instructions from a health officer or the physician of an ill child placed in the provider's care if the child has any of the illnesses specified in item E.

C. The provider shall require that a child's parent notify the provider within 24 hours of the diagnosis of a serious contagious illness or parasitic infestation listed in item E so the provider may notify the parents of other children in care.

D. The provider shall inform a parent of each exposed child the same day the provider is notified a positive diagnosis has been made for any of the illnesses or parasitic infestations in item E.

E. The provider shall notify the health officer or Minnesota Department of Health of any suspected case of reportable disease as specified in part 4605.7000. The agency shall provide the provider with a copy of part 4605.7000 at the time of initial licensure.

F. The following govern the administration of medicine by the provider to children in care:

(1) The provider shall obtain written permission from the child's parent prior to administering medicine, diapering products, sunscreen lotions, and insect repellents. Nonprescription medicines, diapering products, sunscreen lotions, and insect repellents must be administered according to the manufacturer's instructions unless there are written instructions for their use provided by a licensed physician or dentist.

(2) The provider shall obtain and follow written instructions from a licensed physician or dentist prior to administering each prescription medicine. Medicine with the child's name and current prescription information on the label constitutes instructions.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*

9502.0445 WATER, FOOD, AND NUTRITION.

Subpart 1. **Water.** There must be a safe water supply in the residence.

A. Water from privately-owned wells, must be tested annually by a Minnesota Health Department certified laboratory for coliform bacteria and nitrate nitrogens to verify safety. The provider shall file a record of the test results with the agency. Retesting and corrective measures may be required by the agency if results exceed state drinking water standards or where the supply may be subject to off-site contamination.

B. Drinking water must be available to the children and offered at frequent intervals in separate or single service drinking cups or bottles.

Subp. 2. **Milk.** Milk served to children in care must be pasteurized.

Subp. 3. **Meals and snacks.** Well-balanced meals and snacks must be offered daily.

A. Food served during the day must include servings from each of the basic food groups as defined by the United States Department of Agriculture's Code of Federal Regulations, title 7, section 226.20.

B. The provider shall follow written instructions obtained from the parents, at the time of enrollment, on each child's special diet or food needs. Parents shall be consulted about special food preferences.

C. Flexible feeding schedules must be provided for infants and toddlers, and the infant or toddler's usual diet and feeding schedule must be followed.

D. Food, lunches, and bottles brought from home must be labeled with the child's name and refrigerated when necessary. Bottles must be washed after use.

Subp. 4. **Food safety.** Food must be handled and stored properly to prevent contamination and spoilage.

A. All food and cooking utensils must be stored to protect them from dust, vermin, pipe leakage, or other contamination.

B. Food requiring refrigeration must be maintained at no more than 40 degrees Fahrenheit. Food requiring heating must be maintained at no less than 150 degrees Fahrenheit until ready to serve. Frozen food must be maintained in a solid state until used.

C. Appliances used in food storage and preparation must be safe and clean.

D. No hermetically sealed (canned), nonacid or low-acid food which has been processed in a place other than a commercial food-processing establishment shall be served to children in care. Low-acid food includes meats, fish, and poultry and most vegetables and is required to be steam-pressure canned by the United States Department of Agriculture in Bulletin number 8, "Home Canning of Fruits and Vegetables," 1983 Edition. Fresh and frozen foods, properly canned tomatoes, pickled foods, and canned fruits such as apples, berries, peaches, apricots, jams, and jellies may be served to children in care. The USDA "Home Canning of Fruits and Vegetables," Home and Garden Bulletin number 8, 1983 Edition, is incorporated by reference. It is not subject to frequent change and is available through Minitex interlibrary loan system, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington D.C., 20402.

Statutory Authority: *MS s 245.781 to 245.812; 252.28*

History: *9 SR 2106; 10 SR 2617*