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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3701

02/24/2022

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The bill was read for the first time and referred to the Committee on Early Childhood Finance and Policy

1.1 A bill for an act

1.2 relating to human services; updating and modernizing child care regulations;

1.3 amending Minnesota Statutes 2020, sections 245A.02, subdivision 5a; 245A.04,

1.4 subdivision 4; 245A.1435; 245A.1443; 245A.146, subdivision 3; 245H.05;

1.5 Minnesota Statutes 2021 Supplement, section 245A.14, subdivision 4.

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

1.7 Section 1. Minnesota Statutes 2020, section 245A.02, subdivision 5a, is amended to read:

1.8 Subd. 5a. **Controlling individual.** (a) "Controlling individual" means an owner of a

1.9 program or service provider licensed under this chapter and the following individuals, if

1.10 applicable:

1.11 (1) each officer of the organization, including the chief executive officer and chief

1.12 financial officer;

1.13 (2) the individual designated as the authorized agent under section 245A.04, subdivision

1.14 1, paragraph (b);

1.15 (3) the individual designated as the compliance officer under section 256B.04, subdivision

1.16 21, paragraph (g); ~~and~~

1.17 (4) each managerial official whose responsibilities include the direction of the

1.18 management or policies of a program; and

1.19 (5) the individual designated as the primary provider of care for a special family child

1.20 care program under section 245A.14, subdivision 4, paragraph (i).

1.21 (b) Controlling individual does not include:

2.1 (1) a bank, savings bank, trust company, savings association, credit union, industrial
 2.2 loan and thrift company, investment banking firm, or insurance company unless the entity
 2.3 operates a program directly or through a subsidiary;

2.4 (2) an individual who is a state or federal official, or state or federal employee, or a
 2.5 member or employee of the governing body of a political subdivision of the state or federal
 2.6 government that operates one or more programs, unless the individual is also an officer,
 2.7 owner, or managerial official of the program, receives remuneration from the program, or
 2.8 owns any of the beneficial interests not excluded in this subdivision;

2.9 (3) an individual who owns less than five percent of the outstanding common shares of
 2.10 a corporation:

2.11 (i) whose securities are exempt under section 80A.45, clause (6); or

2.12 (ii) whose transactions are exempt under section 80A.46, clause (2);

2.13 (4) an individual who is a member of an organization exempt from taxation under section
 2.14 290.05, unless the individual is also an officer, owner, or managerial official of the program
 2.15 or owns any of the beneficial interests not excluded in this subdivision. This clause does
 2.16 not exclude from the definition of controlling individual an organization that is exempt from
 2.17 taxation; or

2.18 (5) an employee stock ownership plan trust, or a participant or board member of an
 2.19 employee stock ownership plan, unless the participant or board member is a controlling
 2.20 individual according to paragraph (a).

2.21 (c) For purposes of this subdivision, "managerial official" means an individual who has
 2.22 the decision-making authority related to the operation of the program, and the responsibility
 2.23 for the ongoing management of or direction of the policies, services, or employees of the
 2.24 program. A site director who has no ownership interest in the program is not considered to
 2.25 be a managerial official for purposes of this definition.

2.26 **EFFECTIVE DATE.** This section is effective July 1, 2022.

2.27 Sec. 2. Minnesota Statutes 2020, section 245A.04, subdivision 4, is amended to read:

2.28 Subd. 4. **Inspections; waiver.** (a) Before issuing a license under this chapter, the
 2.29 commissioner shall conduct an inspection of the program. The inspection must include but
 2.30 is not limited to:

2.31 (1) an inspection of the physical plant;

2.32 (2) an inspection of records and documents;

3.1 (3) observation of the program in operation; and

3.2 (4) an inspection for the health, safety, and fire standards in licensing requirements for
3.3 a child care license holder.

3.4 (b) The observation in paragraph (a), clause (3), is not required prior to issuing a license
3.5 under subdivision 7. If the commissioner issues a license under this chapter, these
3.6 requirements must be completed within one year after the issuance of the license.

3.7 (c) Before completing a licensing inspection in a family child care program or child care
3.8 center, the licensing agency must offer the license holder an exit interview to discuss
3.9 violations or potential violations of law or rule observed during the inspection and offer
3.10 technical assistance on how to comply with applicable laws and rules. The commissioner
3.11 shall not issue a correction order or negative licensing action for violations of law or rule
3.12 not discussed in an exit interview, unless a license holder chooses not to participate in an
3.13 exit interview or not to complete the exit interview. If the license holder is unable to complete
3.14 the exit interview, the licensing agency must offer an alternate time for the license holder
3.15 to complete the exit interview.

3.16 (d) If a family child care license holder disputes a county licensor's interpretation of a
3.17 licensing requirement during a licensing inspection or exit interview, the license holder
3.18 may, within five business days after the exit interview or licensing inspection, request
3.19 clarification from the commissioner, in writing, in a manner prescribed by the commissioner.
3.20 The license holder's request must describe the county licensor's interpretation of the licensing
3.21 requirement at issue, and explain why the license holder believes the county licensor's
3.22 interpretation is inaccurate. The commissioner and the county must include the license
3.23 holder in all correspondence regarding the disputed interpretation, and must provide an
3.24 opportunity for the license holder to contribute relevant information that may impact the
3.25 commissioner's decision. The county licensor must not issue a correction order related to
3.26 the disputed licensing requirement until the commissioner has provided clarification to the
3.27 license holder about the licensing requirement.

3.28 (e) The commissioner or the county shall inspect at least ~~annually~~ once each calendar
3.29 year a child care provider licensed under this chapter and Minnesota Rules, chapter 9502
3.30 or 9503, for compliance with applicable licensing standards.

3.31 (f) No later than November 19, 2017, the commissioner shall make publicly available
3.32 on the department's website the results of inspection reports of all child care providers
3.33 licensed under this chapter and under Minnesota Rules, chapter 9502 or 9503, and the

4.1 number of deaths, serious injuries, and instances of substantiated child maltreatment that
4.2 occurred in licensed child care settings each year.

4.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.4 Sec. 3. Minnesota Statutes 2021 Supplement, section 245A.14, subdivision 4, is amended
4.5 to read:

4.6 Subd. 4. **Special family child care homes.** Nonresidential child care programs serving
4.7 14 or fewer children that are conducted at a location other than the license holder's own
4.8 residence shall be licensed under this section and the rules governing family child care or
4.9 group family child care if:

4.10 (a) the license holder is the primary provider of care and the nonresidential child care
4.11 program is conducted in a dwelling that is located on a residential lot;

4.12 (b) the license holder is an employer who may or may not be the primary provider of
4.13 care, and the purpose for the child care program is to provide child care services to children
4.14 of the license holder's employees;

4.15 (c) the license holder is a church or religious organization;

4.16 (d) the license holder is a community collaborative child care provider. For purposes of
4.17 this subdivision, a community collaborative child care provider is a provider participating
4.18 in a cooperative agreement with a community action agency as defined in section 256E.31;

4.19 (e) the license holder is a not-for-profit agency that provides child care in a dwelling
4.20 located on a residential lot and the license holder maintains two or more contracts with
4.21 community employers or other community organizations to provide child care services.
4.22 The county licensing agency may grant a capacity variance to a license holder licensed
4.23 under this paragraph to exceed the licensed capacity of 14 children by no more than five
4.24 children during transition periods related to the work schedules of parents, if the license
4.25 holder meets the following requirements:

4.26 (1) the program does not exceed a capacity of 14 children more than a cumulative total
4.27 of four hours per day;

4.28 (2) the program meets a one to seven staff-to-child ratio during the variance period;

4.29 (3) all employees receive at least an extra four hours of training per year than required
4.30 in the rules governing family child care each year;

4.31 (4) the facility has square footage required per child under Minnesota Rules, part
4.32 9502.0425;

5.1 (5) the program is in compliance with local zoning regulations;

5.2 (6) the program is in compliance with the applicable fire code as follows:

5.3 (i) if the program serves more than five children older than 2-1/2 years of age, but no
5.4 more than five children 2-1/2 years of age or less, the applicable fire code is educational
5.5 occupancy, as provided in Group E Occupancy under the Minnesota State Fire Code 2015,
5.6 Section 202; or

5.7 (ii) if the program serves more than five children 2-1/2 years of age or less, the applicable
5.8 fire code is Group I-4 Occupancies, as provided in the Minnesota State Fire Code 2015,
5.9 Section 202, unless the rooms in which the children are cared for are located on a level of
5.10 exit discharge and each of these child care rooms has an exit door directly to the exterior,
5.11 then the applicable fire code is Group E occupancies, as provided in the Minnesota State
5.12 Fire Code 2015, Section 202; and

5.13 (7) any age and capacity limitations required by the fire code inspection and square
5.14 footage determinations shall be printed on the license; or

5.15 (f) the license holder is the primary provider of care and has located the licensed child
5.16 care program in a commercial space, if the license holder meets the following requirements:

5.17 (1) the program is in compliance with local zoning regulations;

5.18 (2) the program is in compliance with the applicable fire code as follows:

5.19 (i) if the program serves more than five children older than 2-1/2 years of age, but no
5.20 more than five children 2-1/2 years of age or less, the applicable fire code is educational
5.21 occupancy, as provided in Group E Occupancy under the Minnesota State Fire Code 2015,
5.22 Section 202; or

5.23 (ii) if the program serves more than five children 2-1/2 years of age or less, the applicable
5.24 fire code is Group I-4 Occupancies, as provided under the Minnesota State Fire Code 2015,
5.25 Section 202;

5.26 (3) any age and capacity limitations required by the fire code inspection and square
5.27 footage determinations are printed on the license; and

5.28 (4) the license holder prominently displays the license issued by the commissioner which
5.29 contains the statement "This special family child care provider is not licensed as a child
5.30 care center."

5.31 (g) Notwithstanding Minnesota Rules, part 9502.0335, subpart 12, the commissioner
5.32 may issue up to four licenses to an organization licensed under paragraph (b), (c), or (e).

6.1 Each license must have its own primary provider of care as required under paragraph (i).

6.2 Each license must operate as a distinct and separate program in compliance with all applicable
6.3 laws and regulations.

6.4 (h) For licenses issued under paragraph (b), (c), (d), (e), or (f), the commissioner may
6.5 approve up to four licenses at the same location or under one contiguous roof if each license
6.6 holder is able to demonstrate compliance with all applicable rules and laws. Each licensed
6.7 program must operate as a distinct program and within the capacity, age, and ratio
6.8 distributions of each license.

6.9 (i) For a license issued under paragraph (b), (c), or (e), the license holder must designate
6.10 a person to be the primary provider of care at the licensed location on a form and in a manner
6.11 prescribed by the commissioner. The license holder shall notify the commissioner in writing
6.12 before there is a change of the person designated to be the primary provider of care. The
6.13 primary provider of care:

6.14 (1) must be the person who will be the provider of care at the program and present during
6.15 the hours of operation;

6.16 (2) must operate the program in compliance with applicable laws and regulations under
6.17 chapter 245A and Minnesota Rules, chapter 9502;

6.18 (3) is considered a child care background study subject as defined in section 245C.02,
6.19 subdivision 6a, and must comply with background study requirements in chapter 245C; ~~and~~

6.20 (4) must complete the training that is required of license holders in section 245A.50;

6.21 (5) is authorized to communicate with the county licensing agency and the department
6.22 on matters related to licensing; and

6.23 (6) must meet the requirements of Minnesota Rules, part 9502.0355, subpart 3, before
6.24 providing group family child care.

6.25 (j) For any license issued under this subdivision, the license holder must ensure that any
6.26 other caregiver, substitute, or helper who assists in the care of children meets the training
6.27 requirements in section 245A.50 and background study requirements under chapter 245C.

6.28 **EFFECTIVE DATE.** This section is effective July 1, 2022.

7.1 Sec. 4. Minnesota Statutes 2020, section 245A.1435, is amended to read:

7.2 **245A.1435 REDUCTION OF RISK OF SUDDEN UNEXPECTED INFANT DEATH**
7.3 **IN LICENSED PROGRAMS.**

7.4 (a) When a license holder is placing an infant to sleep, the license holder must place the
7.5 infant on the infant's back, unless the license holder has documentation from the infant's
7.6 physician or advanced practice registered nurse directing an alternative sleeping position
7.7 for the infant. The physician or advanced practice registered nurse directive must be on a
7.8 form ~~approved~~ developed by the commissioner and must remain on file at the licensed
7.9 location.

7.10 An infant who independently rolls onto its stomach after being placed to sleep on its
7.11 back may be allowed to remain sleeping on its stomach if the infant is at least six months
7.12 of age or the license holder has a signed statement from the parent indicating that the infant
7.13 regularly rolls over at home.

7.14 (b) The license holder must place the infant in a crib directly on a firm mattress with a
7.15 fitted sheet that is appropriate to the mattress size, that fits tightly on the mattress, and
7.16 overlaps the underside of the mattress so it cannot be dislodged by pulling on the corner of
7.17 the sheet with reasonable effort. The license holder must not place anything in the crib with
7.18 the infant except for the infant's pacifier, as defined in Code of Federal Regulations, title
7.19 16, part 1511. The pacifier must be free from any sort of attachment. The requirements of
7.20 this section apply to license holders serving infants younger than one year of age. Licensed
7.21 child care providers must meet the crib requirements under section 245A.146. A correction
7.22 order shall not be issued under this paragraph unless there is evidence that a violation
7.23 occurred when an infant was present in the license holder's care.

7.24 (c) If an infant falls asleep before being placed in a crib, the license holder must move
7.25 the infant to a crib as soon as practicable, and must keep the infant within sight of the license
7.26 holder until the infant is placed in a crib. When an infant falls asleep while being held, the
7.27 license holder must consider the supervision needs of other children in care when determining
7.28 how long to hold the infant before placing the infant in a crib to sleep. The sleeping infant
7.29 must not be in a position where the airway may be blocked or with anything covering the
7.30 infant's face.

7.31 (d) When a license holder places an infant under one year of age down to sleep, the
7.32 infant's clothing or sleepwear must not have weighted materials, a hood, or a bib.

7.33 (e) A license holder may place an infant under one year of age down to sleep wearing
7.34 a helmet if the license holder has signed documentation by a physician, advanced practice

8.1 registered nurse, licensed occupational therapist, or a licensed physical therapist on a form
 8.2 developed by the commissioner.

8.3 ~~(d)~~ (f) Placing a swaddled infant down to sleep in a licensed setting is not recommended
 8.4 for an infant of any age and is prohibited for any infant who has begun to roll over
 8.5 independently. However, with the written consent of a parent or guardian according to this
 8.6 paragraph, a license holder may place the infant who has not yet begun to roll over on its
 8.7 own down to sleep in a ~~one-piece sleeper equipped with an attached system that fastens~~
 8.8 ~~securely only across the upper torso, with no constriction of the hips or legs, to create a~~
 8.9 swaddle. A swaddle is defined as one-piece sleepwear that wraps over the infant's arms,
 8.10 fastens securely only across the infant's upper torso, and does not constrict the infant's hips
 8.11 or legs. If a swaddle is used by a license holder, the license holder must ensure that it meets
 8.12 the requirements of paragraph (d) and is not so tight that it restricts the infant's ability to
 8.13 breathe or so loose that the fabric could cover the infant's nose and mouth. Prior to any use
 8.14 of swaddling for sleep by a provider licensed under this chapter, the license holder must
 8.15 obtain informed written consent for the use of swaddling from the parent or guardian of the
 8.16 infant on a form ~~provided~~ developed by the commissioner ~~and prepared in partnership with~~
 8.17 ~~the Minnesota Sudden Infant Death Center.~~

8.18 **EFFECTIVE DATE.** This section is effective January 1, 2023.

8.19 Sec. 5. Minnesota Statutes 2020, section 245A.1443, is amended to read:

8.20 **245A.1443 CHEMICAL DEPENDENCY SUBSTANCE USE DISORDER**
 8.21 **TREATMENT LICENSED PROGRAMS THAT SERVE PARENTS WITH THEIR**
 8.22 **CHILDREN.**

8.23 Subdivision 1. **Application.** This section applies to ~~chemical dependency residential~~
 8.24 substance use disorder treatment facilities that are licensed under this chapter and ~~Minnesota~~
 8.25 ~~Rules~~, chapter ~~9530~~, 245G and that provide services in accordance with section 245G.19.

8.26 Subd. 2. **Requirements for providing education.** (a) On or before the date of a child's
 8.27 initial physical presence at the facility, the license holder must provide education to the
 8.28 child's parent related to safe bathing and reducing the risk of sudden unexpected infant death
 8.29 and abusive head trauma from shaking infants and young children. The license holder must
 8.30 use the educational material developed by the commissioner to comply with this requirement.
 8.31 At a minimum, the education must address:

9.1 (1) instruction that a child or infant should never be left unattended around water, a tub
 9.2 should be filled with only two to four inches of water for infants, and an infant should never
 9.3 be put into a tub when the water is running; and

9.4 (2) the risk factors related to sudden unexpected infant death and abusive head trauma
 9.5 from shaking infants and young children, and means of reducing the risks, including the
 9.6 safety precautions identified in section 245A.1435 and the ~~dangers~~ risks of co-sleeping.

9.7 (b) The license holder must document the parent's receipt of the education and keep the
 9.8 documentation in the parent's file. The documentation must indicate whether the parent
 9.9 agrees to comply with the safeguards. If the parent refuses to comply, program staff must
 9.10 provide additional education to the parent ~~at appropriate intervals, at least weekly as described~~
 9.11 in the parental supervision plan. The parental supervision plan must include the intervention,
 9.12 frequency, and staff responsible for the duration of the parent's participation in the program
 9.13 or until the parent agrees to comply with the safeguards.

9.14 Subd. 3. **Parental supervision of children.** (a) On or before the date of a child's initial
 9.15 physical presence at the facility, the license holder must ~~complete and document an~~
 9.16 ~~assessment of the parent's capacity to meet the health and safety needs of the child while~~
 9.17 ~~on the facility premises, including identifying circumstances when the parent may be unable~~
 9.18 ~~to adequately care for their child due to~~ considering the following factors:

9.19 (1) the parent's physical ~~or~~ and mental health;

9.20 (2) the parent being under the influence of drugs, alcohol, medications, or other chemicals;

9.21 ~~(3) the parent being unable to provide appropriate supervision for the child; or~~

9.22 (3) the child's physical and mental health; and

9.23 (4) any other information available to the license holder that indicates the parent may
 9.24 not be able to adequately care for the child.

9.25 (b) The license holder must have written procedures specifying the actions to be taken
 9.26 by staff if a parent is or becomes unable to adequately care for the parent's child.

9.27 (c) If the parent refuses to comply with the safeguards described in subdivision 2 or is
 9.28 unable to adequately care for the child, the license holder must develop a parental supervision
 9.29 plan in conjunction with the client. The plan must account for any factors in paragraph (a)
 9.30 that contribute to the parent's inability to adequately care for the child. The plan must be
 9.31 dated and signed by the staff person who completed the plan.

10.1 Subd. 4. **Alternative supervision arrangements.** The license holder must have written
10.2 procedures addressing whether the program permits a parent to arrange for supervision of
10.3 the parent's child by another client in the program. If permitted, the facility must have a
10.4 procedure that requires staff approval of the supervision arrangement before the supervision
10.5 by the nonparental client occurs. The procedure for approval must include an assessment
10.6 of the nonparental client's capacity to assume the supervisory responsibilities using the
10.7 criteria in subdivision 3. The license holder must document the license holder's approval of
10.8 the supervisory arrangement and the assessment of the nonparental client's capacity to
10.9 supervise the child, and must keep this documentation in the file of the parent of the child
10.10 being supervised.

10.11 **EFFECTIVE DATE.** This section is effective January 1, 2023.

10.12 Sec. 6. Minnesota Statutes 2020, section 245A.146, subdivision 3, is amended to read:

10.13 Subd. 3. **License holder documentation of cribs.** (a) Annually, from the date printed
10.14 on the license, all license holders shall check all their cribs' brand names and model numbers
10.15 against the United States Consumer Product Safety Commission website listing of unsafe
10.16 cribs.

10.17 (b) The license holder shall maintain written documentation to be reviewed on site for
10.18 each crib showing that the review required in paragraph (a) has been completed, and which
10.19 of the following conditions applies:

10.20 (1) the crib was not identified as unsafe on the United States Consumer Product Safety
10.21 Commission website;

10.22 (2) the crib was identified as unsafe on the United States Consumer Product Safety
10.23 Commission website, but the license holder has taken the action directed by the United
10.24 States Consumer Product Safety Commission to make the crib safe; or

10.25 (3) the crib was identified as unsafe on the United States Consumer Product Safety
10.26 Commission website, and the license holder has removed the crib so that it is no longer
10.27 used by or accessible to children in care.

10.28 (c) Documentation of the review completed under this subdivision shall be maintained
10.29 by the license holder on site and made available to parents or guardians of children in care
10.30 and the commissioner.

10.31 (d) Notwithstanding Minnesota Rules, part 9502.0425, a family child care provider that
10.32 complies with this section may use a mesh-sided or fabric-sided play yard, pack and play,

11.1 or playpen or crib that has not been identified as unsafe on the United States Consumer
 11.2 Product Safety Commission website for the care or sleeping of infants.

11.3 (e) On at least a monthly basis, the family child care license holder shall perform safety
 11.4 inspections of every mesh-sided or fabric-sided play yard, pack and play, or playpen used
 11.5 by or that is accessible to any child in care, and must document the following:

11.6 (1) there are no tears, holes, or loose or unraveling threads in mesh or fabric sides of
 11.7 crib;

11.8 (2) the weave of the mesh on the crib is no larger than one-fourth of an inch;

11.9 (3) no mesh fabric is unsecure or unattached to top rail and floor plate of crib;

11.10 (4) no tears or holes to top rail of crib;

11.11 (5) the mattress floor board is not soft and does not exceed one inch thick;

11.12 (6) the mattress floor board has no rips or tears in covering;

11.13 (7) the mattress floor board in use is ~~a waterproof~~ an original mattress or replacement
 11.14 mattress provided by the manufacturer of the crib;

11.15 (8) there are no protruding or loose rivets, metal nuts, or bolts on the crib;

11.16 (9) there are no knobs or wing nuts on outside crib legs;

11.17 (10) there are no missing, loose, or exposed staples; and

11.18 (11) the latches on top and side rails used to collapse crib are secure, they lock properly,
 11.19 and are not loose.

11.20 **EFFECTIVE DATE.** This section is effective January 1, 2023.

11.21 Sec. 7. Minnesota Statutes 2020, section 245H.05, is amended to read:

11.22 **245H.05 MONITORING AND INSPECTIONS.**

11.23 (a) The commissioner must conduct an on-site inspection of a certified license-exempt
 11.24 child care center at least ~~annually~~ once each calendar year to determine compliance with
 11.25 the health, safety, and fire standards specific to a certified license-exempt child care center.

11.26 (b) No later than November 19, 2017, the commissioner shall make publicly available
 11.27 on the department's website the results of inspection reports for all certified centers including
 11.28 the number of deaths, serious injuries, and instances of substantiated child maltreatment
 11.29 that occurred in certified centers each year.

11.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

12.1 Sec. 8. **CHILD CARE REGULATION MODERNIZATION; PILOT PROJECTS.**

12.2 The commissioner of human services may conduct and administer pilot projects to test
12.3 methods and procedures for the projects to modernize regulation of child care centers and
12.4 family child care allowed under Laws 2021, First Special Session chapter 7, article 2, sections
12.5 75 and 81. To carry out the pilot projects, the commissioner of human services may, by
12.6 issuing a commissioner's order, waive enforcement of existing specific statutory program
12.7 requirements, rules, and standards in one or more counties. The commissioner's order
12.8 establishing the waiver must provide alternative methods and procedures of administration
12.9 and must not be in conflict with the basic purposes, coverage, or benefits provided by law.
12.10 In no event may a pilot project under this section extend beyond February 1, 2024. Pilot
12.11 projects must comply with the requirements of the child care and development fund plan.

12.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.