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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3403

- 03/08/2018 Authored by Peterson, Jessup and Pugh
- The bill was read for the first time and referred to the Committee on Health and Human Services Reform
- 03/22/2018 Adoption of Report: Placed on the General Register as Amended
- Read for the Second Time
- 05/08/2018 Referred to the Chief Clerk for Comparison with S. F. No. 3310
- 05/09/2018 Postponed Indefinitely

1.1 A bill for an act

1.2 relating to human services; modifying provisions relating to child care licensing;

1.3 requiring a report; amending Minnesota Statutes 2016, sections 245A.04,

1.4 subdivision 9; 245A.14, by adding a subdivision; 245A.1435; 245A.152; 245A.16,

1.5 subdivision 2.

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

1.7 Section 1. Minnesota Statutes 2016, section 245A.04, subdivision 9, is amended to read:

1.8 Subd. 9. **Variances.** (a) The commissioner may grant variances to rules that do not affect

1.9 the health or safety of persons in a licensed program if the following conditions are met:

1.10 (1) the variance must be requested by an applicant or license holder on a form and in a

1.11 manner prescribed by the commissioner;

1.12 (2) the request for a variance must include the reasons that the applicant or license holder

1.13 cannot comply with a requirement as stated in the rule and the alternative equivalent measures

1.14 that the applicant or license holder will follow to comply with the intent of the rule; and

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

1.16 The commissioner may grant a permanent variance when conditions under which the

1.17 variance is requested do not affect the health or safety of persons being served by the licensed

1.18 program, nor compromise the qualifications of staff to provide services. The permanent

1.19 variance shall expire as soon as the conditions that warranted the variance are modified in

1.20 any way. Any applicant or license holder must inform the commissioner of any changes or

1.21 modifications that have occurred in the conditions that warranted the permanent variance.

1.22 Failure to advise the commissioner shall result in revocation of the permanent variance and

1.23 may be cause for other sanctions under sections 245A.06 and 245A.07.

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

2.3 (b) The commissioner shall consider variances for child care center staff qualification
2.4 requirements under Minnesota Rules, parts 9503.0032 and 9503.0033, that do not affect
2.5 the health and safety of children served by the center. A variance request must be submitted
2.6 to the commissioner in accordance with paragraph (a) and must include a plan for the staff
2.7 person to gain additional experience, education, or training, as requested by the commissioner.
2.8 When reviewing a variance request under this section, the commissioner shall consider the
2.9 staff person's level of professional development and completion of child care training courses.

2.10 Sec. 2. Minnesota Statutes 2016, section 245A.14, is amended by adding a subdivision to
2.11 read:

2.12 Subd. 4a. **Specialized infant and toddler family child care.** A group family day care
2.13 program licensed as a class D specialized infant and toddler group family day care under
2.14 Minnesota Rules, part 9502.0367, may operate as a class B specialized infant and toddler
2.15 family day care program on days when only one caregiver is present.

2.16 Sec. 3. Minnesota Statutes 2016, section 245A.1435, is amended to read:

2.17 **245A.1435 REDUCTION OF RISK OF SUDDEN UNEXPECTED INFANT DEATH**
2.18 **IN LICENSED PROGRAMS.**

2.19 (a) When a license holder is placing an infant to sleep, the license holder must place the
2.20 infant on the infant's back, unless the license holder has documentation from the infant's
2.21 physician directing an alternative sleeping position for the infant. The physician directive
2.22 must be on a form approved by the commissioner and must remain on file at the licensed
2.23 location. An infant who independently rolls onto its stomach after being placed to sleep on
2.24 its back may be allowed to remain sleeping on its stomach if the infant is at least six months
2.25 of age or the license holder has a signed statement from the parent indicating that the infant
2.26 regularly rolls over at home.

2.27 (b) The license holder must place the infant in a crib directly on a firm mattress with a
2.28 fitted sheet that is appropriate to the mattress size, that fits tightly on the mattress, and
2.29 overlaps the underside of the mattress so it cannot be dislodged by pulling on the corner of
2.30 the sheet with reasonable effort. The license holder must not place anything in the crib with
2.31 the infant except for the infant's pacifier, as defined in Code of Federal Regulations, title
2.32 16, part 1511. The requirements of this section apply to license holders serving infants
2.33 younger than one year of age. Licensed child care providers must meet the crib requirements

3.1 under section 245A.146. A correction order shall not be issued under this paragraph unless
3.2 there is evidence that a violation occurred when an infant was present in the license holder's
3.3 care.

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

3.11 (d) ~~Placing a swaddled~~ an infant swaddled in a blanket down to sleep in a licensed setting
3.12 is not recommended for an infant of any age and is prohibited for any infant who has begun
3.13 to roll over independently. However, with the written consent of a parent or guardian
3.14 according to this paragraph, a license holder may place the infant who has not yet begun to
3.15 roll over on its own down to sleep in a ~~one-piece sleeper equipped with an attached system~~
3.16 ~~that fastens securely only across the upper torso,~~ sleep system that is not under a recall or
3.17 warning from the United States Consumer Product Safety Commission, with no constriction
3.18 of the hips or legs, to create a swaddle. The commissioner of human services shall provide
3.19 photographs of permitted sleep systems and their component parts on the Department of
3.20 Human Services Web site. Prior to any use of swaddling for sleep by a provider licensed
3.21 under this chapter, the license holder must obtain informed written consent for the use of
3.22 swaddling from the parent or guardian of the infant on a form provided by the commissioner
3.23 and prepared in partnership with the Minnesota Sudden Infant Death Center.

3.24 When an infant displays the ability to roll over, the use of a swaddle, a sleep system that
3.25 creates a swaddle, or a sleep system that has a hood or any other attachment is prohibited.

3.26 Sec. 4. Minnesota Statutes 2016, section 245A.152, is amended to read:

3.27 **245A.152 CHILD CARE LICENSE HOLDER INSURANCE.**

3.28 (a) A license holder must provide a written notice to all parents or guardians of all
3.29 children to be accepted for care prior to admission stating whether the license holder has
3.30 liability insurance. This notice may be incorporated into and provided on the admission
3.31 form used by the license holder.

3.32 (b) If the license holder has liability insurance:

4.1 (1) the license holder shall inform parents in writing that a current certificate of coverage
4.2 for insurance is available for inspection to all parents or guardians of children receiving
4.3 services and to all parents seeking services from the family child care program;

4.4 (2) the notice must provide the parent or guardian with the date of expiration or next
4.5 renewal of the policy; and

4.6 (3) upon the expiration ~~date~~ of the policy or a change in coverage, the license holder
4.7 must provide a new written notice informing all parents or guardians of children receiving
4.8 services of the change and indicating whether the insurance policy has lapsed or whether
4.9 the license holder has renewed the policy.

4.10 ~~If the policy was renewed, the license holder must provide the new expiration date of the~~
4.11 ~~policy in writing to the parents or guardians.~~

4.12 If a license holder has an insurance policy that automatically renews each year, the license
4.13 holder may indicate the policy's annual renewal date in the initial written notice to parents
4.14 and guardians. This initial written notice shall remain valid and no further notices are required
4.15 until the insurance coverage changes or the policy lapses.

4.16 (c) If the license holder does not have liability insurance, the license holder must provide
4.17 an annual notice, on a form developed and made available by the commissioner, to the
4.18 parents or guardians of children in care indicating that the license holder does not carry
4.19 liability insurance.

4.20 (d) The license holder must notify all parents and guardians in writing immediately of
4.21 any change in insurance status.

4.22 (e) The license holder must make available upon request the certificate of liability
4.23 insurance to the parents of children in care, to the commissioner, and to county licensing
4.24 agents.

4.25 (f) The license holder must document, with the signature of the parent or guardian, that
4.26 the parent or guardian received the notices required by this section.

4.27 Sec. 5. Minnesota Statutes 2016, section 245A.16, subdivision 2, is amended to read:

4.28 Subd. 2. **Investigations.** (a) The county or private agency shall conduct timely
4.29 investigations of allegations of maltreatment of children or adults in programs for which
4.30 the county or private agency is the commissioner's designated representative and record a
4.31 disposition of each complaint in accordance with applicable law or rule. The county or

5.1 private agency shall conduct similar investigations of allegations of violations of rules
5.2 governing licensure of the program.

5.3 (b) If an investigation conducted under paragraph (a) results in evidence that the
5.4 commissioner should deny an application or suspend, revoke, or make conditional a license,
5.5 the county or private agency shall make that recommendation to the commissioner within
5.6 ten working days. If the commissioner's determination differs from the county's
5.7 recommendation, the commissioner must, on the notice of the determination, provide the
5.8 applicant or license holder with the reasons for the deviation, with specificity and in clear
5.9 and plain language, as defined in section 256.016.

5.10 (c) If an investigation conducted under paragraph (a) does not result in evidence that
5.11 the commissioner should deny an application or suspend, revoke, or make a conditional
5.12 license, and the commissioner's determination differs from the county's determination, the
5.13 commissioner must, on the notice of the determination, provide the applicant or license
5.14 holder with the reasons for the deviation, with specificity and in clear and plain language,
5.15 as defined in section 256.016.

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

5.17 **Sec. 6. DIRECTION TO COMMISSIONER; CHILD CARE LICENSING REFORM.**

5.18 The commissioner of human services shall:

5.19 (1) review best practices and related research regarding child care licensing and technical
5.20 assistance to providers;

5.21 (2) review best practices and related research regarding the alignment of child care
5.22 licensing and technical assistance with other programs and supports related to child care,
5.23 including but not limited to the Quality Rating and Improvement System and the Child and
5.24 Adult Food Care Program, in order to maximize available resources and supports and avoid
5.25 duplication;

5.26 (3) review relevant administrative data to assist the commissioner and the legislature
5.27 with efforts to reform existing child care licensing and technical assistance practices;

5.28 (4) establish and implement a stakeholder engagement process to present the
5.29 commissioner's findings under this section and receive feedback about potential rulemaking
5.30 and other regulatory reform; and

5.31 (5) by January 31, 2019, deliver a report on the commissioner's activities under this
5.32 section, timeline for child care reforms, and plan for the rulemaking process to the chairs

- 6.1 and ranking minority members of the legislative committees with jurisdiction over child
- 6.2 care.