

Guidance and Best Practices for Developing Family Child Care Variance Policies

Minnesota county agencies are delegated responsibility to process variance requests to allow licensed family child care programs to deviate from a specific rule, under certain conditions, unless excluded from the delegation authority under Minnesota Statutes, section 245A.16, subdivision 1. (MN Rules, part 9543.0300; 9543.0050).

The 2020 Legislature¹ made changes to variance requests by licensed family child care programs that go into effect January 1, 2021. The first change is that counties must use a uniform application form developed by the commissioner for variance requests by family child care license holders. The second change directs counties to publish their policies and criteria for issuing variances on their public websites and also distribute those policies to all family child care license holders annually.

DHS hosted discussions with county supervisors and licensors to identify best practices when considering policies and criteria for issuing variances. From those discussions we created a list of items for counties to consider when either drafting policies or reviewing what is already in place. Some counties will need to document their policy into a written format and others can use the written policies they have already developed.

Legal requirements the county must follow and should include in their policy/criteria:

The license holder must request the variance prior to the situation where it is necessary in accordance with legally required variance standards and procedures, MN Rules, part [9502.0335, subparts 8 and 8a](#).

Factors to consider when developing a process to review variance requests:

- Who (board/committee/staff) will be assigned to review/approve/deny the variance request?
- What types of variances are approved by whom (licensor, supervisor, director, board)?
- Will there be a set timeframe for the county to respond with approval or denial of a request?
- Are there other options available to the license holder instead of a variance (i.e. change in license class)?
- Will there be special procedures for an “emergency variance” for situations such as snow storms, tornados, floods, school closings, etc.?

¹ [Minnesota Laws 2020, 1st Special Session, Chapter 2](#), Article 1, Sections 7 and 9, amending 245A.04, subd. 9 and 245A.16, subd. 1.

Factors to consider in your criteria:

- How long has the license holder been licensed?
- For a variance request for capacity within the first year of licensure, will a licensure holder's education and/or prior experience within the child care field be considered?
- Will there be a limit to the number of variance requests allowed annually?
- Will the license holder's licensing history be considered?
 - a. Supervision history
 - b. Correction orders
 - c. Licensing actions
- Are unique accommodations needed in response to the pandemic and resulting school closures?
- For situations such as snow storms, tornados, floods, school closings, etc., will an "emergency variance" be allowed?

Conditions to consider attaching to variances as part of your policy:

- When granting a variance for age or capacity, are additional children allowed to be enrolled?
- Under what conditions will variances for an additional infant be allowed?
 - a. Will there be a limit to the total number of infants?
 - b. Will there be a limited time frame allowed for caring for the additional infant?
 - c. Even if not allowed under different circumstances, will an additional infant be allowed to accommodate siblings in care?
- Can the variance only be used for the child(ren) specifically named?
- Are there additional considerations for children with special needs?
- Will there be a set time frame for the variance?
 - a. Will it be limited to specific days/week during a calendar year?
 - b. Will it be limited to a specific number of days (for example: 30 calendar days)?
- When the variance expires, will extensions to the current variance be allowed? If so, what is the process?
- Will variances during non-traditional business hours be allowed?
- Will the license holder need to notify the county when/if the approved variance is no longer in use?
- Will there be a limit to the number of variance requests allowed annually?
- Do all parents need to sign off on the request?
- Will license holders need to post approved variances with the license in a prominent place?
- Will "emergency variances" for situations such as snow storms, tornados, floods, school closings, etc. be allowed?