

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 827

(SENATE AUTHORS: UTKE and Dornink)

DATE	D-PG	OFFICIAL STATUS
02/11/2021	316	Introduction and first reading
		Referred to Human Services Licensing Policy
02/17/2021		Comm report: To pass as amended and re-refer to Human Services Reform Finance and Policy

1.1 A bill for an act

1.2 relating to human services; modifying group family day care child-adult capacity

1.3 ratios and age distribution restrictions; amending Minnesota Statutes 2020, sections

1.4 245A.03, by adding a subdivision; 245A.14, subdivisions 1, 4; 245A.16, subdivision

1.5 1.

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

1.7 Section 1. Minnesota Statutes 2020, section 245A.03, is amended by adding a subdivision

1.8 to read:

1.9 Subd. 10. Group family day care child-adult capacity ratios; age distribution

1.10 restrictions. (a) The commissioner shall issue group family day care licenses according to

1.11 the capacity ratios and age distribution restrictions in this subdivision. For purposes of this

1.12 subdivision, "group family day care" means day care for no more than 18 children at any

1.13 one time. The total number of children includes all children of any caregiver when the

1.14 children are present in the residence.

1.15 (b) For a group family day care program with a licensed capacity of ten children, one

1.16 adult shall serve no more than ten children under 11 years old. Of those ten, no more than

1.17 eight may be under five years old. Of those eight, no more than two may be under 12 months

1.18 but over six weeks old.

1.19 (c) For a group family day care program with a licensed capacity of 12 children, one

1.20 adult shall serve no more than 12 children under 11 years old. Of those 12, no more than

1.21 ten may be under five years old. Of those ten, no more than two may be under 12 months

1.22 but over six weeks old.

2.1 (d) For a group family day care program with a licensed capacity of 18 children, two
2.2 adults shall serve no more than 18 children under 11 years old. Of those 18, no more than
2.3 16 may be under five years old. Of those 16, no more than four may be under 12 months
2.4 but over six weeks old. For licenses issued under this paragraph, a helper may take the place
2.5 of a second adult caregiver when there is no more than one child under 12 months but over
2.6 six weeks old present.

2.7 Sec. 2. Minnesota Statutes 2020, section 245A.14, subdivision 1, is amended to read:

2.8 Subdivision 1. **Permitted single-family residential use.** A licensed nonresidential
2.9 program with a licensed capacity of 12 or fewer persons and a group family day care facility
2.10 licensed under Minnesota Rules, parts 9502.0315 to 9502.0445, to serve ~~14~~ 18 or fewer
2.11 children shall be considered a permitted single-family residential use of property for the
2.12 purposes of zoning and other land use regulations.

2.13 Sec. 3. Minnesota Statutes 2020, section 245A.14, subdivision 4, is amended to read:

2.14 Subd. 4. **Special family day care homes.** Nonresidential child care programs serving
2.15 ~~14~~ 18 or fewer children that are conducted at a location other than the license holder's own
2.16 residence shall be licensed under this section and the rules governing family day care or
2.17 group family day care if:

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

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

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

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

2.27 (e) the license holder is a not-for-profit agency that provides child care in a dwelling
2.28 located on a residential lot and the license holder maintains two or more contracts with
2.29 community employers or other community organizations to provide child care services.
2.30 The county licensing agency may grant a capacity variance to a license holder licensed
2.31 under this paragraph to exceed the licensed capacity of ~~14~~ 18 children by no more than five

3.1 children during transition periods related to the work schedules of parents, if the license
3.2 holder meets the following requirements:

3.3 (1) the program does not exceed a capacity of ~~14~~ 18 children more than a cumulative
3.4 total of four hours per day;

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

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

3.8 (4) the facility has square footage required per child under Minnesota Rules, part
3.9 9502.0425;

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

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

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

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

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

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

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

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

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

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

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

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

4.9 (g) The commissioner may approve two or more licenses under paragraphs (a) to (f) to
 4.10 be issued at the same location or under one contiguous roof, if each license holder is able
 4.11 to demonstrate compliance with all applicable rules and laws. Each license holder must
 4.12 operate the license holder's respective licensed program as a distinct program and within
 4.13 the capacity, age, and ratio distributions of each license.

4.14 (h) The commissioner may grant variances to this section to allow a primary provider
 4.15 of care, a not-for-profit organization, a church or religious organization, an employer, or a
 4.16 community collaborative to be licensed to provide child care under paragraphs (e) and (f)
 4.17 if the license holder meets the other requirements of the statute.

4.18 Sec. 4. Minnesota Statutes 2020, section 245A.16, subdivision 1, is amended to read:

4.19 Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private
 4.20 agencies that have been designated or licensed by the commissioner to perform licensing
 4.21 functions and activities under section 245A.04 and background studies for family child care
 4.22 under chapter 245C; to recommend denial of applicants under section 245A.05; to issue
 4.23 correction orders, to issue variances, and recommend a conditional license under section
 4.24 245A.06; or to recommend suspending or revoking a license or issuing a fine under section
 4.25 245A.07, shall comply with rules and directives of the commissioner governing those
 4.26 functions and with this section. The following variances are excluded from the delegation
 4.27 of variance authority and may be issued only by the commissioner:

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

4.30 (2) adult foster care maximum capacity;

4.31 (3) adult foster care minimum age requirement;

4.32 (4) child foster care maximum age requirement;

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

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

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

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

5.14 Except as provided in section 245A.14, subdivision 4, paragraph (e), a county agency must
5.15 not grant a license holder a variance to exceed the maximum allowable family child care
5.16 license capacity of ~~14~~ 18 children.

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

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

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

5.23 (c) Before the implementation of NETStudy 2.0, county agencies must report information
5.24 about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision
5.25 2, paragraphs (a) and (b), and variances granted under paragraph (a), clause (5), to the
5.26 commissioner at least monthly in a format prescribed by the commissioner.

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

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

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

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

6.1 (1) the role of counties in quality assurance;

6.2 (2) the duties of county licensing staff; and

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

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

6.8 (h) Licensing authority specific to section 245D.06, subdivisions 5, 6, 7, and 8, or
6.9 successor provisions; and section 245D.061 or successor provisions, for family child foster
6.10 care programs providing out-of-home respite, as identified in section 245D.03, subdivision
6.11 1, paragraph (b), clause (1), is excluded from the delegation of authority to county and
6.12 private agencies.

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

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

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

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