EFFECTIVE DATE: 07/20/11

REVISION DATE**:** 12/16/2020

AUTHORITY: Southwest Health and Human Services - Human Services Board

Minnesota Rules Part 9502

Minnesota Statute 245A

**--- AUTHORITY TO ISSUE VARIANCES ---**

**FAMILY CHILD FOSTER CARE AND ADULT FOSTER CARE, AND IN-HOME FAMILY CHILD CARE**

**Section 1 - Purpose**

a. Southwest Health and Human Services has the authority to act on variance requests with the following **exceptions**: (Minnesota Statute 245A.16)

1. Dual licensure

2. Adult foster care capacity

3. Adult foster care minimum age

4. Child foster care maximum age

5. Disqualification factor/s

6. Presence of a caregiver in the residence during normal sleep hours (adult foster care)

7. Variances to requirements relating to chemical use problems of a license holder or a household member of a license holder

8. Variances to section [245A.53](https://www.revisor.mn.gov/statutes/cite/245A.53) regarding the total number of hours a substitute provider may be present per year in a licensed child care home.

These variance requests will be sent to DHS-Family Systems along with an agency recommendation for a decision.

b. The 2020 Legislature 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.

**Section 2 – Family Child Care Variance Policies & Guidelines**

a. Effective 1/01/2021, variance requests for family child care programs must be made on the form developed by the Commissioner of the Dept. of Human Services.

1. The goal of Southwest Health and Human Service’s variance policy is to meet the needs of parents and providers, while keeping the safety of the children as the first priority. The following guidelines will apply to variances granted for family and group child care age distribution and capacity (MN Statute 9502.0367):
2. As part of the request, the provider will be asked to describe additional measures the provider will take to ensure the safety, health, and care of daycare children.
3. If a variance can be avoided by changing a provider’s license class, changing the class of the license will be encouraged as an alternative to the variance.
4. More than one variance may be granted in a 12-month period, but the total number of variance days cannot exceed three months of full time care in a 12 month time frame. Variances will not be overlapping or “stacked”. The frequency of variance requests will be taken into consideration.
5. A provider will not be granted a variance until he/she has been licensed for at least 12 months.
6. A variance will not be granted to care for three infants unless a second adult caregiver is present.
7. All variances must be posted in an area where they are visible to parents and others visiting the day care.
8. When a granted variance is not used, or partly used, the provider should notify the licensor. This is important since the duration of approved variances in a year’s time is tracked.
9. No variance is automatic; a provider shall not enroll a child without first receiving variance approval if the addition of the child will exceed the provider’s licensed capacity.
10. If a provider’s enrollment/attendance exceeds the license holder’s allowable enrollment prior to receiving variance approval, a provider will be issued a correction order. A correction order may have a negative impact on a provider’s license.
11. New variance requests will be reviewed at least weekly.
12. An approved variance is valid only for the specific child(ren) and their scheduled hours listed on the variance request.
13. **A variance will generally be denied if one or more of the following conditions apply:**
14. Children are enrolled prior to the variance request (including being over capacity on a visit).
15. The length of the variance request exceeds three months of full time care.
16. The provider has been licensed less than twelve months.
17. The provider has a correction order item that has not been brought into compliance.
18. The provider has a pending negative licensing recommendation.
19. The provider has a current negative licensing action.
20. The provider is under a complaint or maltreatment investigation.
21. The provider has violated MN Rules for family child care regarding supervision, corporal punishment, maltreatment or other relevant, significant health or safety factors which are deemed serious or chronic in nature.
22. A provider should contact his/her licensor to discuss any unique situations that may warrant an “emergency” variance, such as a pandemic, provider illness/emergency, snow storm, natural disaster, school closing, etc. In these unique situations, verbal approval of a variance may be granted, if it is followed by a written variance request in a timely manner.

**Southwest Health and Human Services reserves the right to make exceptions/ additions to these guidelines. Variances outside of the guidelines require the approval of the unit supervisor or division director.**

**Guidelines**

Provider is operating with a Class C1 License: The agency will consider a variance for up to four children in the infant/toddler group. If four infants/toddlers are present, the provider may not exceed his/her allowable total number under school age and total capacity.

Provider is operating with a Class C1 License: The agency will consider a variance for up to one additional child in the total under kindergarten and one child over total capacity OR will consider a variance up to two school-agers over total capacity if a provider is in compliance with the infant/toddler group. No variance will be approved when a provider exceeds nine children under kindergarten or more than twelve total capacity.

Provider is operating with a Class C2 License: The agency will consider a variance for up to three total children in the infant/toddler age range. If three infants/toddlers are present, the provider may not exceed his/her allowable total number under school age and total capacity.

Provider is operating with a Class C2 License: The agency will consider a variance up to one additional child in the total under kindergarten and one child over total capacity OR will consider approval of a variance up to two school-agers over total capacity if a provider is in compliance with the infant/toddler group. A variance will not be approved for more than eleven under school age or more than fourteen total capacity.

Provider is operating with a Class C3 License with two adults present: The agency will consider a variance up to one additional child in the infant/toddler group and one additional child in the total under kindergarten. If the provider is in compliance with the infant/toddler group, the agency will consider a variance up to two children under school age over total capacity. No variance can be issued for over fourteen (14) children, due to both Fire Marshal and DHS licensing regulations.

Provider is caring for a newborn (birth to 6 weeks): The provider must request a variance to care for a child under six weeks of age, unless the newborn is the provider’s own child. If the newborn is not the provider’s own child, the agency would only consider approval of a newborn infant variance if the newborn is the only infant in care with no more than 2 other children in care OR provider will have a second adult caregiver present for as long as the newborn is in care (at least until it reaches six weeks of age). In order to do this, the provider will not have any other variances in effect if a newborn is placed in their care.

A provider may discuss any multiple birth situations (twins/triplets) with his/her licensor.

All providers currently running under a variance approved prior to 1/01/2021 will be allowed to continue with the variance that has already been granted until the variance expires.