

This Document can be made available in alternative formats upon request

Printed Page No. **276**

State of Minnesota
HOUSE OF REPRESENTATIVES
Unofficial Engrossment
House Engrossment of a Senate File

S. F. No. 3310

NINETIETH SESSION

- 05/08/2018 Companion to House File No. 3403. (Authors:Peterson and Jessup)
Read First Time and Sent for Comparison
- 05/09/2018 Substituted for H. F. No. 3403
Read for the Second Time
- 05/15/2018 Calendar for the Day, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act

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

1.3 amending Minnesota Statutes 2016, sections 245A.04, subdivision 9; 245A.05;

1.4 245A.06, subdivision 1; 245A.14, by adding a subdivision; 245A.1435; 245A.152;

1.5 245A.16, subdivision 5, by adding a subdivision; Minnesota Statutes 2017

1.6 Supplement, sections 245A.07, subdivision 3; 245A.1434.

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

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

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

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

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

1.12 manner prescribed by the commissioner;

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

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

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

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

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

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

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

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

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

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

2.1 Failure to advise the commissioner shall result in revocation of the permanent variance and
2.2 may be cause for other sanctions under sections 245A.06 and 245A.07.

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

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

2.13 Sec. 2. Minnesota Statutes 2016, section 245A.05, is amended to read:

2.14 **245A.05 DENIAL OF APPLICATION.**

2.15 (a) The commissioner may deny a license if an applicant or controlling individual:

2.16 (1) fails to submit a substantially complete application after receiving notice from the
2.17 commissioner under section 245A.04, subdivision 1;

2.18 (2) fails to comply with applicable laws or rules;

2.19 (3) knowingly withholds relevant information from or gives false or misleading
2.20 information to the commissioner in connection with an application for a license or during
2.21 an investigation;

2.22 (4) has a disqualification that has not been set aside under section 245C.22 and no
2.23 variance has been granted;

2.24 (5) has an individual living in the household who received a background study under
2.25 section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification that
2.26 has not been set aside under section 245C.22, and no variance has been granted;

2.27 (6) is associated with an individual who received a background study under section
2.28 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to
2.29 children or vulnerable adults, and who has a disqualification that has not been set aside
2.30 under section 245C.22, and no variance has been granted; or

2.31 (7) fails to comply with section 245A.04, subdivision 1, paragraph (f) or (g).

3.1 (b) An applicant whose application has been denied by the commissioner must be given
3.2 notice of the denial, which must state the reasons for the denial in plain language. Notice
3.3 must be given by certified mail or personal service. The notice must state the reasons the
3.4 application was denied and must inform the applicant of the right to a contested case hearing
3.5 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may
3.6 appeal the denial by notifying the commissioner in writing by certified mail or personal
3.7 service. If mailed, the appeal must be postmarked and sent to the commissioner within 20
3.8 calendar days after the applicant received the notice of denial. If an appeal request is made
3.9 by personal service, it must be received by the commissioner within 20 calendar days after
3.10 the applicant received the notice of denial. Section 245A.08 applies to hearings held to
3.11 appeal the commissioner's denial of an application.

3.12 **EFFECTIVE DATE.** This section is effective January 1, 2019.

3.13 Sec. 3. Minnesota Statutes 2016, section 245A.06, subdivision 1, is amended to read:

3.14 Subdivision 1. **Contents of correction orders and conditional licenses.** (a) If the
3.15 commissioner finds that the applicant or license holder has failed to comply with an
3.16 applicable law or rule and this failure does not imminently endanger the health, safety, or
3.17 rights of the persons served by the program, the commissioner may issue a correction order
3.18 and an order of conditional license to the applicant or license holder. When issuing a
3.19 conditional license, the commissioner shall consider the nature, chronicity, or severity of
3.20 the violation of law or rule and the effect of the violation on the health, safety, or rights of
3.21 persons served by the program. The correction order or conditional license must state the
3.22 following in plain language:

3.23 (1) the conditions that constitute a violation of the law or rule;

3.24 (2) the specific law or rule violated;

3.25 (3) the time allowed to correct each violation; and

3.26 (4) if a license is made conditional, the length and terms of the conditional license, and
3.27 the reasons for making the license conditional.

3.28 (b) Nothing in this section prohibits the commissioner from proposing a sanction as
3.29 specified in section 245A.07, prior to issuing a correction order or conditional license.

3.30 **EFFECTIVE DATE.** This section is effective January 1, 2019.

4.1 Sec. 4. Minnesota Statutes 2017 Supplement, section 245A.07, subdivision 3, is amended
4.2 to read:

4.3 Subd. 3. **License suspension, revocation, or fine.** (a) The commissioner may suspend
4.4 or revoke a license, or impose a fine if:

4.5 (1) a license holder fails to comply fully with applicable laws or rules;

4.6 (2) a license holder, a controlling individual, or an individual living in the household
4.7 where the licensed services are provided or is otherwise subject to a background study has
4.8 a disqualification which has not been set aside under section 245C.22;

4.9 (3) a license holder knowingly withholds relevant information from or gives false or
4.10 misleading information to the commissioner in connection with an application for a license,
4.11 in connection with the background study status of an individual, during an investigation,
4.12 or regarding compliance with applicable laws or rules; or

4.13 (4) after July 1, 2012, and upon request by the commissioner, a license holder fails to
4.14 submit the information required of an applicant under section 245A.04, subdivision 1,
4.15 paragraph (f) or (g).

4.16 A license holder who has had a license suspended, revoked, or has been ordered to pay
4.17 a fine must be given notice of the action by certified mail or personal service. If mailed, the
4.18 notice must be mailed to the address shown on the application or the last known address of
4.19 the license holder. The notice must state in plain language the reasons the license was
4.20 suspended, or revoked, or a fine was ordered.

4.21 (b) If the license was suspended or revoked, the notice must inform the license holder
4.22 of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts
4.23 1400.8505 to 1400.8612. The license holder may appeal an order suspending or revoking
4.24 a license. The appeal of an order suspending or revoking a license must be made in writing
4.25 by certified mail or personal service. If mailed, the appeal must be postmarked and sent to
4.26 the commissioner within ten calendar days after the license holder receives notice that the
4.27 license has been suspended or revoked. If a request is made by personal service, it must be
4.28 received by the commissioner within ten calendar days after the license holder received the
4.29 order. Except as provided in subdivision 2a, paragraph (c), if a license holder submits a
4.30 timely appeal of an order suspending or revoking a license, the license holder may continue
4.31 to operate the program as provided in section 245A.04, subdivision 7, paragraphs (g) and
4.32 (h), until the commissioner issues a final order on the suspension or revocation.

5.1 (c)(1) If the license holder was ordered to pay a fine, the notice must inform the license
5.2 holder of the responsibility for payment of fines and the right to a contested case hearing
5.3 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The appeal of an
5.4 order to pay a fine must be made in writing by certified mail or personal service. If mailed,
5.5 the appeal must be postmarked and sent to the commissioner within ten calendar days after
5.6 the license holder receives notice that the fine has been ordered. If a request is made by
5.7 personal service, it must be received by the commissioner within ten calendar days after
5.8 the license holder received the order.

5.9 (2) The license holder shall pay the fines assessed on or before the payment date specified.
5.10 If the license holder fails to fully comply with the order, the commissioner may issue a
5.11 second fine or suspend the license until the license holder complies. If the license holder
5.12 receives state funds, the state, county, or municipal agencies or departments responsible for
5.13 administering the funds shall withhold payments and recover any payments made while the
5.14 license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine
5.15 until the commissioner issues a final order.

5.16 (3) A license holder shall promptly notify the commissioner of human services, in writing,
5.17 when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the
5.18 commissioner determines that a violation has not been corrected as indicated by the order
5.19 to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify
5.20 the license holder by certified mail or personal service that a second fine has been assessed.
5.21 The license holder may appeal the second fine as provided under this subdivision.

5.22 (4) Fines shall be assessed as follows:

5.23 (i) the license holder shall forfeit \$1,000 for each determination of maltreatment of a
5.24 child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557
5.25 for which the license holder is determined responsible for the maltreatment under section
5.26 626.556, subdivision 10e, paragraph (i), or 626.557, subdivision 9c, paragraph (c);

5.27 (ii) if the commissioner determines that a determination of maltreatment for which the
5.28 license holder is responsible is the result of maltreatment that meets the definition of serious
5.29 maltreatment as defined in section 245C.02, subdivision 18, the license holder shall forfeit
5.30 \$5,000;

5.31 (iii) for a program that operates out of the license holder's home and a program licensed
5.32 under Minnesota Rules, parts 9502.0300 to 9502.0495, the fine assessed against the license
5.33 holder shall not exceed \$1,000 for each determination of maltreatment;

6.1 (iv) the license holder shall forfeit \$200 for each occurrence of a violation of law or rule
6.2 governing matters of health, safety, or supervision, including but not limited to the provision
6.3 of adequate staff-to-child or adult ratios, and failure to comply with background study
6.4 requirements under chapter 245C; and

6.5 (v) the license holder shall forfeit \$100 for each occurrence of a violation of law or rule
6.6 other than those subject to a \$5,000, \$1,000, or \$200 fine in items (i) to (iv).

6.7 For purposes of this section, "occurrence" means each violation identified in the
6.8 commissioner's fine order. Fines assessed against a license holder that holds a license to
6.9 provide home and community-based services, as identified in section 245D.03, subdivision
6.10 1, and a community residential setting or day services facility license under chapter 245D
6.11 where the services are provided, may be assessed against both licenses for the same
6.12 occurrence, but the combined amount of the fines shall not exceed the amount specified in
6.13 this clause for that occurrence.

6.14 (5) When a fine has been assessed, the license holder may not avoid payment by closing,
6.15 selling, or otherwise transferring the licensed program to a third party. In such an event, the
6.16 license holder will be personally liable for payment. In the case of a corporation, each
6.17 controlling individual is personally and jointly liable for payment.

6.18 (d) Except for background study violations involving the failure to comply with an order
6.19 to immediately remove an individual or an order to provide continuous, direct supervision,
6.20 the commissioner shall not issue a fine under paragraph (c) relating to a background study
6.21 violation to a license holder who self-corrects a background study violation before the
6.22 commissioner discovers the violation. A license holder who has previously exercised the
6.23 provisions of this paragraph to avoid a fine for a background study violation may not avoid
6.24 a fine for a subsequent background study violation unless at least 365 days have passed
6.25 since the license holder self-corrected the earlier background study violation.

6.26 **EFFECTIVE DATE.** This section is effective January 1, 2019.

6.27 Sec. 5. Minnesota Statutes 2016, section 245A.14, is amended by adding a subdivision to
6.28 read:

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

7.1 Sec. 6. Minnesota Statutes 2017 Supplement, section 245A.1434, is amended to read:

7.2 **245A.1434 INFORMATION FOR CHILD CARE LICENSE HOLDERS.**

7.3 The commissioner shall inform family child care and child care center license holders
7.4 on a timely basis of changes to state and federal statute, rule, regulation, and policy relating
7.5 to the provision of licensed child care, the child care assistance program under chapter 119B,
7.6 the quality rating and improvement system under section 124D.142, and child care licensing
7.7 functions delegated to counties. Communications under this section shall be in plain language
7.8 and include information to promote license holder compliance with identified changes.
7.9 Communications under this section may be accomplished by electronic means and shall be
7.10 made available to the public online.

7.11 **EFFECTIVE DATE.** This section is effective January 1, 2019.

7.12 Sec. 7. Minnesota Statutes 2016, section 245A.1435, is amended to read:

7.13 **245A.1435 REDUCTION OF RISK OF SUDDEN UNEXPECTED INFANT DEATH**
7.14 **IN LICENSED PROGRAMS.**

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

7.23 (b) The license holder must place the infant in a crib directly on a firm mattress with a
7.24 fitted sheet that is appropriate to the mattress size, that fits tightly on the mattress, and
7.25 overlaps the underside of the mattress so it cannot be dislodged by pulling on the corner of
7.26 the sheet with reasonable effort. The license holder must not place anything in the crib with
7.27 the infant except for the infant's pacifier, as defined in Code of Federal Regulations, title
7.28 16, part 1511. The requirements of this section apply to license holders serving infants
7.29 younger than one year of age. Licensed child care providers must meet the crib requirements
7.30 under section 245A.146. A correction order shall not be issued under this paragraph unless
7.31 there is evidence that a violation occurred when an infant was present in the license holder's
7.32 care.

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

8.8 (d) Placing a swaddled infant down to sleep in a licensed setting is not recommended
8.9 for an infant of any age and is prohibited for any infant who has begun to roll over
8.10 independently. However, with the written consent of a parent or guardian according to this
8.11 paragraph, a license holder may place the infant who has not yet begun to roll over on its
8.12 own down to sleep on its back in a one-piece sleeper ~~equipped with an attached system that~~
8.13 ~~fastens securely only across the upper torso, that is not currently under a recall or warning~~
8.14 from the United States Consumer Product Safety Commission, that is equipped with a
8.15 swaddling function that fastens securely only across the upper torso, with no constriction
8.16 of the hips or legs, to create a swaddle. Prior to any use of swaddling for sleep by a provider
8.17 licensed under this chapter, the license holder must obtain informed written consent for the
8.18 use of swaddling from the parent or guardian of the infant on a form provided by the
8.19 commissioner and prepared in partnership with the Minnesota ~~Sudden Infant Death Center~~
8.20 Department of Health.

8.21 Sec. 8. Minnesota Statutes 2016, section 245A.152, is amended to read:

8.22 **245A.152 CHILD CARE LICENSE HOLDER INSURANCE.**

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

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

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

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

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

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

9.7 If a license holder has a continuous insurance policy that renews each year, the license
9.8 holder may indicate the policy's renewal date in the initial written notice to parents and
9.9 guardians. This initial written notice shall remain valid and no further notices are required
9.10 until the insurance coverage changes or the policy lapses.

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

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

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

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

9.22 Sec. 9. Minnesota Statutes 2016, section 245A.16, subdivision 5, is amended to read:

9.23 Subd. 5. **Instruction and technical assistance.** (a) The commissioner shall provide
9.24 instruction and technical assistance to county and private agencies that are subject to this
9.25 section. County and private agencies shall cooperate with the commissioner in carrying out
9.26 this section by ensuring that affected employees participate in instruction and technical
9.27 assistance provided by the commissioner.

9.28 (b) Within existing appropriations, the commissioner shall provide training to county
9.29 and private licensing agencies that perform child care licensing functions on identifying
9.30 and preventing fraud relating to provider reimbursement in the child care assistance program,
9.31 by December 31, 2019.

10.1 Sec. 10. Minnesota Statutes 2016, section 245A.16, is amended by adding a subdivision
10.2 to read:

10.3 Subd. 8. **Notice of county recommendation.** The county or private agency shall provide
10.4 written notice to the license holder when the agency recommends a licensing action to the
10.5 commissioner under subdivision 2 or subdivision 3. The written notice shall inform the
10.6 license holder about the process for determining a licensing action and how the license
10.7 holder will be notified of a licensing action determination. The notice shall include the
10.8 following:

10.9 (1) that the county or private agency made a recommendation to the commissioner to
10.10 deny an application or suspend, revoke, or make conditional a license;

10.11 (2) that the commissioner will review the recommendation from the county or private
10.12 agency and then determine if a licensing action will be issued;

10.13 (3) that the license holder will receive written notice from the commissioner indicating
10.14 the reasons for the licensing action issued; and

10.15 (4) instructions on how to request reconsideration or appeal, if a licensing action is
10.16 issued.

10.17 County or private agency recommendations under this section are classified as confidential
10.18 data under Minnesota Statutes, chapter 13, and may only be disclosed as permitted by law.

10.19 Sec. 11. **DIRECTION TO COMMISSIONER; CHILD CARE LICENSING REFORM.**

10.20 (a) By December 31, 2018, the commissioner shall:

10.21 (1) make enhancements to the department's licensing information lookup Web site that
10.22 comply with federal requirements to make program-specific monitoring results available,
10.23 including the date of inspections, any violations noted, and how the violation was addressed
10.24 by the provider;

10.25 (2) provide each license holder with a printed copy of the posting guidelines for child
10.26 care licensing information; and

10.27 (3) convene regional meetings with license holders and county licensing agencies to
10.28 review the posting guidelines and the enhancements made to the department's licensing
10.29 Web site and obtain feedback and recommendations for future enhancements to ensure
10.30 accuracy and transparency for license holders and families using or seeking licensed child
10.31 care.

11.1 (b) In the 2019 report to the legislature on the status of child care required under
11.2 Minnesota Statutes, section 245A.153, the commissioner shall include the following:

11.3 (1) a description of the federal and state requirements and any guidelines established
11.4 for the posting of child care licensing information and monitoring results;

11.5 (2) a summary of how the department is engaging licensed child care providers, county
11.6 licensing agencies, and families seeking or using child care services to obtain feedback
11.7 about the posting guidelines on the department's Web site;

11.8 (3) a summary of the administrative reform and actions identified by licensed child care
11.9 providers through stakeholder meetings that could be implemented without statutory changes
11.10 that would reduce the regulatory and administrative burden to license holders;

11.11 (4) a description of administrative reforms and actions the department has taken in the
11.12 prior year or is in the process of implementing; and

11.13 (5) an evaluation of existing laws, models, and initiatives from other states that have
11.14 implemented child care licensing reforms to reduce barriers and unnecessary administrative
11.15 burdens for child care providers.