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CHAPTER 9502 DEPARTMENT OF HUMAN SERVICES LICENSING OF DAY CARE FACILITIES

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9502.0300 REPEALER AND EFFECTIVE DATE.

Subpart 1. **Repealer.** Minnesota Rules, parts 9545.0310, 9545.0320, 9545.0330, 9545.0340, 9545.0350, 9545.0360, 9545.0370, 9545.0380, 9545.0390, 9545.0400, 9545.0410, 9545.0420, 9545.0430, 9545.0440, and 9545.0450, are repealed, except for providers who are licensed under those parts. As to those providers, parts 9545.0310, 9545.0320, 9545.0330, 9545.0340, 9545.0350, 9545.0360, 9545.0370, 9545.0380, 9545.0390, 9545.0400, 9545.0410, 9545.0420, 9545.0430, 9545.0440, and 9545.0450 are repealed one year after the notice of adoption of parts 9502.0315 to 9502.0445 is published in the State Register.

Subp. 2. **Effective date.** Parts 9502.0315 to 9502.0445 take effect five days after the notice of adoption is published in the State Register, except for providers who are licensed on that date under parts 9545.0310 to 9545.0440. As to those providers, parts 9502.0315 to 9502.0445 take effect six months after the notice of adoption is published in the State Register or on the first date the provider's license is renewed after the notice of adoption is published in the State Register, whichever is later, except that parts 9502.0365 and 9502.0367 shall be construed not to require the exclusion from the day care facility of any child who is receiving care on the date that the notice of adoption is published in the State Register.

Any provider who is licensed under parts 9545.0310 to 9545.0440 five days after the notice of adoption of parts 9502.0315 to 9502.0445 is published in the State Register and who is not providing care in a residence as defined by part 9502.0315, subpart 27, may be licensed under parts 9502.0315 to 9502.0445 until the provider ceases to give care in that facility or obtains a license to operate a day care center.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: The Notice of Adoption of parts 9502.0315 to 9502.0445 was published on March 25, 1985 at 9 State Register, page 2106

9502.0315 DEFINITIONS.

Subpart 1. **Applicability.** As used in parts 9502.0315 to 9502.0445, the following terms have the meanings given them.

Subp. 2. **Adult.** "Adult" means a person at least 18 years of age.

Subp. 3. **Agency.** "Agency" means the county social or human service agency governed by the board of county commissioners.

Subp. 4. **Applicant.** "Applicant" means the person seeking a license to be the primary provider of day care in the residence.

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Subp. 5. **Building official.** "Building official" means the person appointed in accordance with Minnesota Statutes, section 16.861, to administer the State Building Code, or the building official's authorized representative.

Subp. 6. **Caregiver.** "Caregiver" means the provider, substitute, helper, or another adult giving care in the residence.

Subp. 7. **Child.** "Child" means a person ten years of age or younger.

Subp. 8. **Commissioner.** "Commissioner" means the Minnesota commissioner of the Department of Human Services or the commissioner's authorized representative.

Subp. 9. **Day care.** "Day care" means the care of a child in a residence outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24-hour day.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Family day care.** "Family day care" means day care for no more than ten children at one time of which no more than six are under first grade. The licensed capacity must include all children of any caregiver when the children are present in the residence.

Subp. 12. **Fire marshal.** "Fire marshal" means the person designated by Minnesota Statutes, section 299F.011 to administer and enforce the Minnesota Uniform Fire Code, or the fire marshal's authorized representative.

Subp. 13. **Group family day care.** "Group family day care" means day care for no more than 14 children at any one time. The total number of children includes all children of any caregiver when the children are present in the residence.

Subp. 14. **Helper.** "Helper" means a person at least 13 years of age and less than 18 years of age who assists the provider with the care of children.

Subp. 15. **Health officer.** "Health officer" means the designated representative of the state or local public health board authorized by Minnesota Statutes, section 145.01, to enforce state and local health codes.

Subp. 16. **Infant.** "Infant" means a child who is at least six weeks of age but less than 12 months of age.

Subp. 17. **License.** "License" means a certificate issued by the commissioner authorizing the provider to give specified services for a specified period of time in accordance with the terms in parts 9502.0315 to 9502.0445; Minnesota Statutes, sections 245.781 to 245.812, and 252.28, subdivision 2; and the rules of the department.

Subp. 18. **Licensed capacity.** "Licensed capacity" means the total number of children ten years of age or younger permitted at any one time in the residence. The licensed capacity includes all children of any caregiver when the children are present in the residence.

Subp. 19. **Medicine.** "Medicine" means a prescription or nonprescription substance taken internally or applied externally to prevent or cure disease, heal, or relieve pain.

Subp. 20. **Newborn.** "Newborn" means a child between birth and six weeks of age.

Subp. 21. **Parent.** "Parent" means a person who has the legal responsibility for a child such as the child's mother, father, or legally-appointed guardian.

Subp. 22. **Preschooler.** "Preschooler" means a child at least 30 months of age up to enrollment in first grade.

Subp. 23. **Program.** "Program" means those physical, social, emotional, learning, and development activities provided for a child.

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Subp. 24. **Provider.** "Provider" means the license holder and primary caregiver.

Subp. 25. **Related.** "Related" means any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, child, niece, nephew. Related also includes a legally-appointed guardian.

Subp. 26. **Regularly or regular basis.** "Regularly" or "regular basis" means a cumulative total of more than 30 days within any 12-month period.

Subp. 27. **Residence.** "Residence" means the dwelling unit, as defined by section 405 of the State Building Code, in which day care is provided and which is occupied as a home.

Subp. 28. **School age.** "School age" means a child ten years of age or younger and enrolled in at least the first grade.

Subp. 29. **Substitute.** "Substitute" means an adult at least 18 years of age who assumes the responsibility of the provider as specified in part 9502.0365, subpart 5.

Subp. 30. **Toddler.** "Toddler" means a child at least 12 months of age but less than 30 months of age.

Subp. 31. **Variance.** "Variance" means written permission by the commissioner for a provider or applicant to depart from the provisions of parts 9502.0315 to 9502.0445.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545 0315 at 9 State Register page 2106, on March 25, 1985

9502.0325 LICENSING OF FACILITIES FOR CHILDREN FAMILY DAY CARE AND GROUP FAMILY DAY CARE HOMES.

Subpart 1. **Purpose.** The purpose of parts 9502.0315 to 9502.0445 is to establish procedures and standards for licensing family day care and group family day care homes to ensure that minimum levels of care and service are given and the protection, proper care, health, safety, and development of the children are assured.

Subp. 2. **Applicability.** Parts 9502.0315 to 9502.0445 as authorized by Minnesota Statutes, sections 245.781 to 245.812, govern the licensing of family day care homes and group family day care homes.

Subp. 3. **Exclusion from licensure.** Under Minnesota Statutes, section 245.791, the following day care situations are excluded from licensure under parts 9502.0315 to 9502.0445:

- A. day care provided by a relative to only related children; or
- B. day care provided to children from a single, unrelated family, for any length of time; or
- C. day care provided for a cumulative total of less than 30 days in any 12-month period; or
- D. the exclusions contained in items A and B are mutually exclusive.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information

NOTE: This rule was originally numbered as part 9545 0325 at 9 State Register, page 2106, on March 25, 1985

9502.0335 LICENSING PROCESS.

Subpart 1. **License application.** A person who operates a family day care residence or group family day care residence shall obtain a license from the department.

A. Application for a license must be made on the application form issued by the department and obtained from the agency. The application must be made in the county where the applicant resides.

B. The applicant shall be the person who will be the provider of care in the residence, present during the hours of operation, and who shall be legally responsible for the operation of the residence.

C. The agency shall supply the applicant with the department application form, a copy of parts 9502.0315 to 9502.0445, and agency or department documentation forms needed to determine compliance with parts 9502.0315 to 9502.0445. The agency shall stamp and date a signed and completed department application form on the date of receipt.

D. An application for licensure is complete when the applicant completes, signs, and submits all agency and department forms and documentation needed for licensure to the agency and the agency receives all inspection, zoning, evaluation, and investigative reports, documentation, and information required to verify compliance with parts 9545.0315 to 9545.0445 and Minnesota statutes.

Subp. 2. **Licensing study.** The applicant shall give the agency access to the residence for a licensing study to determine compliance with parts 9502.0315 to 9502.0445.

A. If, in the judgment of the agency representative, a potentially hazardous condition may be present, due to a violation of parts 9502.0315 to 9502.0445, the applicant shall obtain an inspection from a fire marshal, building official, or health officer to verify the absence of hazard and report to the agency.

B. The residence must comply with any applicable local ordinances. Any condition cited by a fire marshal, building official, or health officer as hazardous and creating an immediate danger of fire, or threat to human life and safety, must be corrected.

C. An inspection of the residence by a fire marshal and compliance with orders issued are conditions of licensure for all residences with freestanding solid fuel heating appliances; manufactured (mobile) homes; new group family day care residence applications; day care residences which use the basement for child care; and residences in mixed or multiple occupancy buildings. "Multiple occupancy building" means a structure with two or more residential dwelling units such as a duplex, apartment building, or townhome. "Mixed occupancy building" means a residence in a structure that contains nonresidential occupancies or an attached garage.

D. The commissioner or agency may require, prior to licensure, or anytime during the licensed term of day care, a physical, mental, or chemical dependency evaluation of any caregiver or person living in the residence or present during the hours children are in care if the agency has reasonable cause to believe that any of the disqualification factors in subpart 6, item A or B, exist, or that the provider is not physically able to care for the children. Such evaluations, conducted by a licensed physician, psychiatrist, psychologist, consulting psychologist, or certified chemical dependency practitioner or counselor, may be used to verify physical or mental illness, chemical dependency, or behavior that would reflect on the ability of the provider to give day care.

Subp. 3. **Licensing agency.** The agency shall accept and process applications for licensure and recommend license suspensions and revocations under parts 9502.0315 to 9502.0445.

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A. The agency shall conduct the initial licensing study of the residence and the investigation of caregiver qualifications and the annual relicensing study.

B. The agency shall evaluate and recommend an application for approval or denial of licensure to the department within 60 days after the agency has in its possession all completed and signed forms, reports, evaluations, information, and documentation required from the applicant and all inspection, zoning, and investigative reports required to verify compliance with parts 9502.0315 to 9502.0445.

C. The agency shall notify the local zoning administrator at least 30 days prior to the initial issuance date of a license. The date the local zoning administrator was notified must be noted on the application form.

D. If a recommendation cannot be made by the agency within 60 days after all information, documentation, and evaluations necessary to verify compliance with the rule parts has been received, the agency must inform the applicant and department in writing why a recommendation cannot be made.

Subp. 4. **Period of licensure; nontransfer.** A license must be issued by the department for up to one year when the provider fully complies with parts 9502.0315 to 9502.0445. The license must not be transferred to another provider.

Subp. 5. **Provisional license.** An applicant for initial licensure may be granted a provisional license by the department for up to one year if all laws and rules cannot be met immediately, the deviations from parts 9502.0315 to 9502.0445 do not threaten the health, rights, or safety of the children, and which will be corrected within the time specified by the commissioner but not to exceed one year. Failure to correct deviations within the stated time shall be cause for revocation, suspension, or nonrenewal.

Subp. 6. **Disqualification factors.** An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

A. Is chemically dependent and the behavior has a negative effect on the ability of the provider to give care or is apparent during the hours children are in care. Chemical dependency means the inability to function physically or mentally in an effective manner because of the habitual abuse of a psychological or a physical dependency-producing drug, including alcohol. Recovering chemical dependents must have 12 months of verified abstinence.

B. Is mentally ill. Mental illness means the inability to interpret the environment realistically or the impaired functioning in primary aspects of daily living, such as personal relations, living arrangements, work, and recreation; which is listed in the International Classification of Diseases (ICD-9-CM) Ninth Revision (1980), code range 290.0-299.9, or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) Third Edition (1980), Axes I, II, or III. These publications are available in the state law library.

C. Has had parental rights terminated under Minnesota Statutes, section 260.221, paragraph (b).

D. Has had a conviction of, has admitted to, or there is substantial evidence indicating incest (as prohibited in Minnesota Statutes, section 609.365), or physical abuse, sexual abuse, or neglect (as those terms defined in Minnesota Statutes, section 626.556).

E. Has had a conviction of, has admitted to, or there is a preponderance of the evidence indicating the commission of any crime listed in Minnesota Statutes, sections 609.18 to 609.21 or 609.221 to 609.375, other than those listed in item D.

F. Has had a child placed in foster care within the past 12 months and the agency determines the reasons for placement reflect on the ability of the

provider to give care. A license may not be denied if the primary reason for the placement was due to a physical illness of the parent, mental retardation of the child, a handicap of the child, or for the temporary care of an infant being relinquished for adoption.

G. Has had a child placed in residential treatment within the past 12 months for emotional disturbance or antisocial behavior and the agency determines that the reasons for the placement reflect on the ability of the provider to give care.

Subp. 7. **License suspension or probation.** A license shall be suspended or made probationary if the provider, or any other person living in the day care residence or present during the hours children are in care or working with children, is awaiting trial for a crime listed in subpart 6, item D or E.

Subp. 8. **Variances.** An applicant or provider may request a variance from compliance with parts 9502.0315 to 9502.0445.

A. Request for a variance must comply with and be handled according to the following procedures.

(1) An applicant or provider must submit to the agency a written request for a variance. The request must include the following information:

(a) the sections of parts 9502.0315 to 9502.0445 with which the applicant or provider cannot comply;

(b) the reasons why the applicant or provider needs to depart from the specified sections or why compliance with the specified section would cause undue hardship;

(c) the period of time for which the applicant or provider requests a variance; and

(d) the specific measures which the applicant or provider will take so the health, safety, and development of children in care is ensured if the variance is granted.

(2) An applicant or provider must submit to the agency written approval from a fire marshal of a variance request and the alternative measures identified to ensure the safety of children in care when a variance of the fire safety provisions in part 9502.0425 on physical environment is requested. These are part 9502.0425, subpart 4, on means of escape; subpart 5, on separations; subpart 6, on fire doors; subpart 7, on heating and venting systems; subpart 12, on locks and latches; subpart 15, on interior walls and ceilings; subpart 16, about extinguishers; subpart 17, on smoke detection systems; and subpart 18, on electrical services.

(3) An applicant or provider must submit to the agency written approval from a health officer of a variance request and the alternative measures identified to ensure the safety of children in care when a variance of the health provisions in parts 9502.0435 on sanitation and health, and 9502.0445 on water, food, and nutrition is requested.

B. The agency may request that the commissioner delegate to the county agency the authority to grant variances.

(1) An agency's request must be made in writing and include a procedure for processing variances and the name of the person designated by the agency to review requests for variances. If the proposed procedure is fair and efficient and conforms to the procedures and standards specified in this part, the commissioner shall issue a written delegation of authority to grant and deny variances. At least once a year, the department shall evaluate whether the agency is complying with its procedures and the standards in this subpart. If the agency is not complying with the procedures and standards, the commissioner shall terminate the agency's authority to grant and deny variances and notify the agency in writing of this action.

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(2) If an agency, which has been delegated the authority to rule on requests for variances, receives a written request for a variance that the agency has the power to grant, the agency shall grant or deny the request and mail the written decision to the applicant or provider within 30 days after the request is received. If the agency denies the request for variance, the applicant or provider may request a variance directly from the commissioner within ten days.

(3) If the agency has not been delegated the authority to rule on requests for variances, or if the request seeks variance of a rule part provision the agency does not have the authority to vary, the agency shall, within 15 days after the request is received, mail to the department a copy of the request and the agency's recommendation to approve, further investigate, or deny the request. The agency shall also mail a copy of its recommendation to the applicant or provider. The commissioner shall grant or deny a request for a variance within 30 days after the department receives the request from the agency. If the commissioner denies the applicant's or provider's request for a variance, the applicant or provider may appeal the decision according to Minnesota Statutes, sections 14.57 to 14.70. The applicant or provider shall be informed of the right to appeal at the time of denial.

(4) The agency may not grant variances to parts 9502.0315, on definitions; 9502.0325, on licensing purpose, applicability and exclusions; 9502.0335, on licensing process; 9502.0341, on negative licensing actions; 9502.0345, on agency records; 9502.0375, on reporting to the agency; 9502.0405, on behavior guidance and discipline; and 9502.0405, on admissions, provider records and reporting. If an applicant or provider seeks a variance from any of these parts, the request shall be transmitted to the department.

(5) The agency which has been delegated the authority to grant variances may grant a variance to the standards governing licensed capacity, child/adult ratios and age distribution restrictions set forth in parts 9502.0365 and 9502.0367 if the need for the variance is to cover short overlaps of time when children are entering or leaving the residence, or emergencies for a short period of time such that the total of all variances to the standards does not exceed 30 days in any 12-month period of licensure. The applicant or provider must verify in writing that the totals have not been and will not be exceeded for this period of time.

(6) A variance of the standards governing licensed capacity, child/adult ratios and age distribution restrictions in parts 9502.0365 and 9502.0367 in excess of those in subitem (5) may be granted only by the department.

C. A variance may be granted if the following standards are met:

(1) For each section of the rule for which the applicant or provider seeks a variance, specific measures must be identified by the applicant or provider which will ensure the health, safety, and development of the children in care if the variance is granted.

(2) The applicant or provider must comply with all applicable laws, ordinances, and regulations.

(3) Any variance of the fire safety provisions in part 9502.0425, subparts 4, 5, 6, 7, 12, 15, 16, 17, and 18, which relate to the Minnesota Uniform Fire Code, will be granted if and only if the provider or applicant has secured approval from a fire marshal of the variance and alternative measures identified to ensure the safety of children in care.

(4) Any variance of the provisions in part 9502.0435, on sanitation and health and part 9502.0445, on water, food and nutrition will be granted if and only if the provider or applicant has secured approval from a health officer of the variance and alternative measures identified to ensure the health of children in care.

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(5) When reviewing a variance request of parts 9502.0365 and 9502.0367, the department will assess whether the applicant or provider has shown that undue hardship would occur from strict compliance; whether alternative care for the children is available within the county; and whether the alternative methods identified by the applicant or provider will meet the health, safety, and development of the children in care.

(6) A variance will be granted only if the requirements for a provisional license, as provided for in part 9502.0335, subpart 5, are not met.

Subp. 9. **License terms.** The license, whether regular or provisional, must indicate:

- A. the number and age groupings of children who may receive care at any one time;
- B. the expiration date of the license and location of the residence;
- C. the name and address of the provider; and
- D. that the provider is licensed under parts 9502.0315 to 9502.0445 of Minnesota Rules.

Subp. 10. **Posting license.** The provider shall post the license in the residence in a prominent place.

Subp. 11. **Change in license terms.** The following shall apply to changes in the terms of a license.

A. A new department application form must be submitted by the provider and a full licensing study as specified in part 9502.0335, subpart 2, must be completed when the provider wants to move the day care operation to a new residence or the provider wants to change to group family day care from family day care.

B. A new department application form indicating the changes in the ages and numbers of children in care must be completed when the provider wants to change to family day care from group family day care.

C. A new department application form and any necessary agency studies shall be completed when the provider remarries or changes his or her name.

Subp. 12. **Number of licenses.** No provider shall be issued a license to operate more than one day care residence.

Subp. 13. **Access to residence.** The provider shall give authorized representatives of the commissioner or agency access to the residence during the hours of operation to determine whether the residence complies with the standards of parts 9502.0315 to 9502.0445.

Subp. 14. **License renewal.** The following provisions must be followed by the agency when reviewing a license for renewal.

A. The agency must conduct a relicensing study of the provider and residence to determine continued compliance with parts 9502.0315 to 9502.0445 at least once every 12 months for as long as the provider maintains a license.

B. The agency must solicit two or more parent evaluations of a provider's care, residence, and program prior to renewal of a license. The evaluations and all complaints received during the period of licensure must be considered by the agency in determining continued compliance with parts 9502.0315 to 9502.0445.

Subp. 15. **Return of license to commissioner.** When a provider stops giving care, or if a license is revoked, suspended, or not renewed, the provider shall return the license to the commissioner and stop all advertising.

Subp. 16. **Unlicensed facilities.** When a facility required to be licensed under parts 9502.0315 to 9502.0445 is brought to the attention of the agency, a verification of its licensed status must be made by the agency within five days.

A. If the agency finds that the facility is not licensed, the agency shall contact the person giving care in the facility and inform him or her of the

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licensing requirements specified in Minnesota Statutes, sections 245.781 to 245.812 and 245.791, and the procedure for obtaining a license.

B. If no further communication is received from the unlicensed facility within 30 days of contact, and if the facility is still operating and requires licensure and no attempt has been made to obtain a license, then the attorney with jurisdiction to bring charges for misdemeanors shall be notified immediately so legal action may be pursued.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0335 at 9 State Register, page 2106, on March 25, 1985.

9502.0341 NEGATIVE LICENSING ACTIONS.

Subpart 1. **Complaints.** Every complaint, including anonymous ones, concerning violations of parts 9502.0315 to 9502.0445, shall be investigated by the agency within 14 days. All complaints substantiated by the agency about a provider licensed under parts 9502.0315 to 9502.0445 shall be recorded in the agency file on that provider.

Subp. 2. **Definitions.** For the purposes of this subpart, negative licensing actions shall mean denial of application for licensure, revocation, nonrenewal, probation, suspension, or immediate suspension of an existing license.

Subp. 3. **Procedures.** In accordance with Minnesota Statutes, section 245.801, failure to comply with parts 9502.0315 to 9502.0445 or the terms of licensure is grounds for a negative licensing action. If the agency recommends a negative licensing action, the agency shall notify the department and the department shall determine if the standards in parts 9502.0315 to 9502.0445 or the terms of licensure have been violated. If the grounds are sufficient, the commissioner shall notify the applicant or provider by certified mail unless personal service is required by subpart 9. The notice must be addressed to the name and location shown on the application or license and contain a statement of, and the reasons for, the proposed action. The notice must inform the applicant or provider of the right to appeal the decision within the specified time period. The applicant or provider shall have an opportunity for a hearing in accordance with Minnesota Statutes, sections 14.57 to 14.70.

Subp. 4. **Denial.** If the commissioner denies an application for licensure, the applicant must be informed of the right to appeal the decision within 20 days.

Subp. 5. **Revocation.** If the commissioner proposes to revoke a license, the provider must be informed of the right to appeal the decision within ten days.

Subp. 6. **Nonrenewal.** If the commissioner refuses to renew a license, the provider must be informed of the right to appeal the decision within 20 days.

Subp. 7. **Probation.** If the commissioner proposes to make a license probationary, the provider must be informed of the right to appeal the decision within ten days.

Subp. 8. **Suspension.** If the commissioner proposes to suspend a license, the provider must be informed of the right to appeal the decision within ten days.

Subp. 9. **Immediate suspension.** If the commissioner finds that the health, safety, or rights of the children in care are in imminent danger, the commissioner shall immediately suspend the license. The provider shall be informed by personal service and informed of the right to appeal the decision within five days. The appeal does not stay the decision of the commissioner to immediately suspend the license.

Subp. 10. **Notice to parents of negative action.** As soon as the county recommends revocation, suspension, probation, or immediate suspension action, a notice of the circumstances for the action, but not the identity of a child, other

than the parent's own, shall be sent by the agency to the parents of children in care. If a license is not immediately suspended and the provider remains in operation and appeals the decision of the commissioner, the provider must give a copy of the Notice of and Order for Hearing on the appeal to the parents of any child currently enrolled or seeking admission to the residence.

Subp. 11. **Reapplication after revocation or nonrenewal.** A provider whose license has been revoked or not renewed because of noncompliance with applicable laws or rules, shall not be granted a new license for five years following revocation or nonrenewal. The department may grant a variance to this provision and issue a license after two years following revocation or nonrenewal if the applicant then substantially meets all provisions of parts 9502.0315 to 9502.0445. When the commissioner initiates a negative licensing action against a provider for any of the grounds specified in part 9502.0335, subpart 6, the provider may not voluntarily withdraw his or her license without written assurance from the provider that he or she is voluntarily accepting revocation and will not reapply for two years.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0341 at 9 State Register, page 2106, on March 25, 1985.

9502.0345 AGENCY RECORDS.

Subpart 1. **Agency records.** The agency shall maintain the following records for each provider:

A. A copy of the completed licensing application form signed by the applicant and the agency.

B. The physical health reports on any adult giving care in the residence on a regular basis.

C. Any written reports from the fire marshal, health officer, or building official.

D. The agency's initial and any renewal licensing studies.

E. Reports and documents from persons who have evaluated the applicant as a potential day care provider. If the applicant has been licensed through another jurisdiction, the agency shall also request and keep a reference from the licensing authority in that jurisdiction.

F. The annual relicensing evaluation by the agency of the provider which covers services provided by both the provider and agency. Any comments of the provider about the evaluation by the agency shall also be noted in the agency record.

G. Documentation of any variances of parts 9502.0315 to 9502.0445.

H. A record of training completed by the provider, and all other regular caregivers.

I. Results of well water tests as specified in part 9502.0445.

J. Arrest, conviction, or criminal history records from the Minnesota Bureau of Criminal Apprehension, county attorney and sheriff, local police department, national criminal history record repositories, other public and private social service agencies, and juvenile, municipal, and district courts on any person living or working in the day care residence.

Subp. 2. **Data privacy.** The agency, department, and the health officer shall have access to provider records on children in care to determine compliance with parts 9502.0315 to 9502.0445. The provider shall not disclose any records on children in care to any persons other than the parents of the child, the agency, the department, the persons required by part 9502.0375, subpart 1, and medical or public safety persons if information is necessary to protect the health and safety of the child.

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Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information

NOTE: This rule was originally numbered as part 9545.0345 at 9 State Register page 2106 on March 25 1985.

9502.0355 CAREGIVER QUALIFICATIONS.

Subpart 1. **Age.** An applicant for family day care shall be an adult at the time of licensure.

Subp. 2. **Health.** An adult caregiver shall be physically able to care for children.

A. The applicant shall supply documentation to the agency with the license application that the applicant has had a physical examination from a licensed physician within 12 months prior to initial licensure and is physically able to care for children.

B. The applicant shall supply documentation to the agency with the license application that all adult caregivers who are assisting with care on a regular basis have had a physical examination from a licensed physician within 12 months prior to employment within the residence and are physically able to care for children.

Subp. 3. **Group family day care.** A group family day care applicant shall meet all the requirements listed in subparts 1 and 2 for family day care. A group family day care applicant shall also meet the qualifications in item A, B, C, or D.

A. A minimum of two years' substantial compliance with parts 9502.0315 to 9502.0445 as a licensed family day care provider.

B. A minimum of one year's substantial compliance with parts 9502.0315 to 9502.0445 as a licensed family day care provider; and

(1) completion of a two-year child development or early childhood education associate or certificate program at an accredited college or university, or completion of a nine-month child development assistant program at an accredited vocational-technical institute; or

(2) completion of an accredited competency-based family day care training and assessment program offered by an accredited institute; or

(3) a current Level I or Level II prekindergarten license from the State Department of Education; or

(4) a kindergarten through sixth grade teaching degree from an accredited university or college; or

(5) documentation of a minimum of one year's satisfactory experience as a full-time, direct caregiver at a state-licensed group day care center.

C. Thirty hours of child care, health, and nutrition training as specified in part 9545.0385, and a minimum of 520 hours of experience as a teacher, assistant teacher, student teacher, or intern in an elementary school or licensed child care center, or as an assistant adult caregiver in a licensed group family day care home.

D. Thirty hours of child development or early childhood education training, as specified in part 9545.0385, and a minimum of 520 hours of experience as a licensed practical or registered nurse.

E. "Accredited" for the purposes of this subpart, means a postsecondary institution or area vocational-technical institution recognized and listed by a regional, state, or national group approved by the department. To be approved, a group must meet the following criteria:

(1) it must be capable of conducting site visits to evaluate the facilities used by the program;

(2) it must be capable of evaluating the quality of the program and its faculty;

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(3) it must have standards which ensure that persons who complete the program have the knowledge and training to work as group family day care providers; and

(4) it must not be affiliated with any individual program, post-secondary institution, or vocational-technical institution.

Subp. 4. **Day care insurance coverage.** A provider shall have a certificate of insurance for the residence for general liability coverage for bodily injury in the amount of at least \$100,000 per person and \$300,000 per occurrence.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0355 at 9 State Register, page 2106, on March 25, 1985.

9502.0365 LICENSED CAPACITY, CHILD/ADULT RATIOS, AGE DISTRIBUTION RESTRICTIONS.

Subpart 1. **Capacity limits.** Family day care and group family day care providers shall comply with part 9502.0367, which limits the total number of children and the number of preschoolers, toddlers, and infants who may be in care at any one time, and provides for the number of adults who are required to be present.

A. Providers shall be licensed for the total number of children, ten years of age or younger, who will be present in the residence at any one time. The licensed capacity must include all children of any caregiver when the children are present in the residence.

B. Within the licensed capacity, the age distribution restrictions specify the maximum number of children under first grade, infants, and toddlers who may be in care at any one time.

Subp. 2. **Specialized infant and toddler group family day care.** In specialized infant and toddler group family day care, the caregivers must be adults.

Subp. 3. **Newborn care.** When a newborn is in care and only one adult caregiver is present, the newborn shall be the only child under 12 months of age and the provider shall not care for more than two other children at the same time unless another adult caregiver is also present or the newborn is the provider's own.

Subp. 4. **Helpers.** A helper may be used in place of a second adult caregiver when there is no more than one infant or toddler present.

Subp. 5. **Use of substitutes.** A licensed provider must be the primary provider of care in the residence. The use of a substitute caregiver must be limited to a cumulative total of not more than 30 days in any 12-month period unless the substitute is also a licensed provider or the provider has the written consent of the agency and of a parent of each child in care.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0365 at 9 State Register, page 2106, on March 25, 1985.

9502.0367 CHILD/ADULT RATIOS; AGE DISTRIBUTION RESTRICTIONS.

A. Family Day Care:

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Child/Adult Ratio		Age Restrictions	
Licensed Capacity	Adults	Total children under first grade	
10	1	6	Total infants and toddlers Of the total children under first grade, a combined total of no more than 3 shall be infants and toddlers. Of this total, no more than 2 shall be infants.
B. Specialized Infant and Toddler Family Day Care:			
(1) 5	1	3	No more than 3 shall be infants.
(2) 6	1	4	No more than 2 shall be infants.
C. Group Family Day Care:			
(1) 10	1	8	Of the total children under first grade, no more than 3 shall be infants and toddlers. Of this total, no more than 2 shall be infants.
(2) 12	1	10	Of the total children under first grade, no more than 2 shall be infants and toddlers. Of this total, no more than 1 shall be an infant.
(3) 14	2	10	Of the total children under first grade, a combined total of no more than 4 shall be infants and toddlers. Of this total, no more than 3 shall be infants.
A helper may be used in place of a second adult caregiver when there is no more than 1 infant or toddler present.			
D. Specialized Infant and Toddler Group Family Day Care:			
9	2	7	Of the total children, no more than 4 shall be infants.
Both caregivers shall be adults.			

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0367 at 9 State Register, page 2106, on March 25, 1985

9502.0375 REPORTING TO AGENCY.

Subpart 1. **Abuse; neglect reporting.** All caregivers shall report any suspected physical abuse, sexual abuse, or neglect of a child to the agency or police as required by Minnesota Statutes, section 626.556. If a caregiver has reasonable cause to believe a child has died as a result of physical or sexual abuse or neglect, the caregiver shall report this information to the county medical examiner or coroner.

Subp. 2. **Other reporting.** The provider shall inform the agency:

A. within 30 days of any change in the composition of the family or membership of the household within the day care residence;

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B. within 30 days of a new child enrolled in day care or when a child stops receiving day care at the residence;

C. immediately of any suspected case of physical or sexual abuse or neglect;

D. within 48 hours after the occurrence of a fire that requires the service of a fire department;

E. immediately after the occurrence of any serious injury or death of a child within the day care residence. A serious injury is one that is treated by a physician; and

F. within 24 hours of the onset of any repairs or improvements to the residence which require a building permit.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0375 at 9 State Register, page 2106, on March 25, 1985.

9502.0385 DAY CARE TRAINING.

Subpart 1. **Agency training role.** The agency shall ensure that a minimum of 24 hours of day care training is available within the provider's county or within 50 miles of a provider's residence annually.

A. Training must be available on weekends, evenings, or at times convenient to the majority of providers who reside in the county.

B. The agency must submit a plan to the department annually of 24 hours of training that will be available to all caregivers.

C. The agency shall ensure distribution of training information to each provider who operates a residence in the county of the agency at least once a year.

Subp. 2. **Training subjects.** Training subjects shall be selected from the following areas:

A. child development;

B. child abuse;

C. communication skills;

D. communicable disease prevention and control;

E. parent and provider relationships;

F. special needs referrals;

G. community services and resources for children;

H. methods of guiding behavior or discipline;

I. constructive problem solving;

J. first aid and cardiopulmonary resuscitation;

K. home and fire safety;

L. learning activities;

M. healthy environments for children;

N. observation and assessment of children's needs;

O. care of bilingual or non-English-speaking children;

P. care of special needs or gifted children;

Q. business management skills;

R. parenting skills; and

S. nutrition.

Subp. 3. **Family day care training.** All family day care providers shall participate in a minimum of six hours of day care training and six hours of approved first aid training within one year of or one year prior to the date of initial licensure, and a minimum of six hours of day care training every year after as long as the license is maintained. No more than half of the annual training requirement shall relate to day care administration, finances, and

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records. Previous training of up to six of the required 12 hours taken during the year preceding initial licensing may be used to meet the training requirement of the first year of licensure.

Subp. 4. **Group family day care training.** Group family day care providers shall participate in a minimum of 12 hours of day care training each year as long as the license is maintained. No more than half of the annual training requirement shall relate to day care administration, finances, or records.

Subp. 5. **Adult caregiver and helper training.** Each adult caregiver giving care in the residence on a regular basis shall participate in a minimum of 12 hours of training within one year after the date of initial employment, and a minimum of six hours of training every year after as long as they are employed. Helpers who assist with care on a regular basis shall complete six hours of training within one year after the date of initial employment. Training must not relate to day care administration, finances, or records.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545 0385 at 9 State Register, page 2106, on March 25, 1985.

9502.0395 BEHAVIOR GUIDANCE; DISCIPLINE.

Subpart 1. **Methods.** Caregivers shall give each child guidance and discipline which helps the child acquire a positive self-concept, self-control, and teaches acceptable behavior.

A. The provider shall discuss methods of discipline with parents at the time of admission and the parent's standards shall be considered by the provider within the context of this part when guiding the behavior of a child.

B. Discipline and behavior guidance used by caregivers must be constructive, positive, and suited to the age of the child. Methods of intervention, guidance, and redirection must be used.

Subp. 2. **Discipline.** The following shall apply to all caregivers when guiding behavior in children.

A. No child shall be subject to corporal punishment or emotional abuse. "Corporal punishment" means the nonaccidental infliction of physical pain on a child by a caregiver. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking. "Emotional abuse" means the infliction of verbal or psychological abuse on a child by a caregiver. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, derogatory remarks about the child or child's family, and threats which threaten, humiliate, or frighten the child.

B. Food, light, warmth, clothing, and medical care shall not be withheld from the child.

C. Discipline and punishment shall not be delegated to another child.

D. The separation of a child from a group to guide behavior must be appropriate to the age of the child.

E. An infant shall not be separated from the group for disciplinary reasons.

F. A toddler shall not be separated from the group for a period longer than three minutes.

G. The preschool and school-age child shall not be separated from the group for a period longer than ten minutes.

H. A child separated from the group must be placed in an area or separate room that is well-lighted, free from hazards, ventilated, and open to the view of caregivers.

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I. No child shall be placed in a locked room to separate the child from the group.

Subp. 3. **Toilet training.** Toilet training must be undertaken when appropriate to the child's age and stage of development.

A. The provider and parent shall cooperatively develop a plan for the timing and method of training.

B. No child shall be punished for toileting accidents.

C. A child shall be offered opportunity for toileting.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0395 at 9 State Register, page 2106, on March 25, 1985.

9502.0405 ADMISSIONS; PROVIDER RECORDS; REPORTING.

Subpart 1. **Cooperating with parents.** When admitting a child to day care, the provider and parents shall discuss child rearing, sleeping, feeding, and discipline practices essential for the care of the child. The provider shall keep parents informed of the child's progress and development.

Subp. 2. **Rule summary for parents.** A descriptive summary of parts 9502.0315 to 9502.0445 shall be distributed to the parent by the provider at the time a child is admitted to care. The summary shall be provided by the department to the agency for distribution to the provider. The summary shall:

A. state that parts 9502.0315 to 9502.0445 of Minnesota Rules govern the licensing of day care residences;

B. specify the rule part headings contained in parts 9502.0315 to 9502.0445; and

C. state that a complete copy of parts 9502.0315 to 9502.0445 may be seen at the day care residence, the agency, department, or state law library, or purchased from the State Register and Public Documents Division, Department of Administration, State of Minnesota, 117 University Avenue, Saint Paul, Minnesota 55155.

Subp. 3. **Provider policies.** The provider shall have the following written information available for discussion with parents or the agency:

A. the ages and numbers of children in care in the residence;

B. the hours and days of operation;

C. meals and snacks to be served;

D. labeling requirements for food brought from the child's home;

E. sleeping and rest arrangements;

F. nondiscrimination practices to comply with subpart 6;

G. policies for the care of ill children, disease notification procedures, immunizations, and medicine permission policies;

H. emergency, fire, and storm plans and the monthly fire drill log;

I. seat belt and transportation plans and field trip and transportation permission requirements;

J. fees;

K. termination and notice procedures;

L. plans for a helper and substitute for emergencies, vacations, or holidays;

M. the presence of pets in the residence; and

N. a complete copy of parts 9545.0315 to 9545.0445.

Subp. 4. **Records for each child.** The provider shall obtain the information required by items A to C from parents prior to admission of a child. The provider shall keep this information up-to-date and on file for each child.

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A. The admission and arrangements form of the department must be on file in the provider's home and contain the following information:

(1) Name and birthdate of the child.

(2) Full name of parents.

(3) Home address, work address, and telephone numbers where parents may be reached.

(4) Name, address, and telephone number of physician, dentist, and hospital to be used for emergencies when parents cannot be reached.

(5) Name, address, and telephone number of persons to be notified in case of emergency, when parents cannot be reached.

(6) Names of all persons authorized to remove the child from the residence.

(7) Enrollment dates.

(8) Financial arrangements.

B. Special instructions from the parent shall be obtained in writing and followed about toilet training, eating, sleeping or napping arrangements, allergies, communication, discipline, comforting, and any health problems.

C. The caregiver shall disregard parents' standards or instructions that are contrary to or violate any provisions of parts 9502.0315 to 9502.0445. The provider must notify the parents of the reasons why their instructions cannot be followed.

D. Immunization records must be kept in accordance with Minnesota Statutes, section 123.70. The provider shall request, update, and keep on file the dates of immunizations received by a child in regular attendance at the residence as follows:

(1) for an infant, every six months;

(2) for a toddler, annually;

(3) for a preschool child, every 18 months; and

(4) for a school-age child, every three years.

E. Signed written consent must be obtained in advance from the parent so the provider can obtain emergency medical care or treatment. The consent may be used if the parent cannot be reached or is delayed in arriving.

F. Written permission to transport children must be obtained from parents if the provider will be transporting a child.

G. A provider shall release a child from care only to a parent or a person authorized by the parent.

Subp. 5. **Handicapped children.** For the handicapped child requiring special therapy, program, or behavior guidance, the parents, physician, or therapist shall provide and the provider shall follow written instructions for any special needs. "Handicapped child" means a child who has been determined by a physician, a school district multi-disciplinary team, or other person licensed to identify handicapping conditions, to have a hearing, mental, neurological, developmental, serious emotional, social, learning, speech or language, physical, or visual impairment.

Subp. 6. **Nondiscrimination.** No caregiver shall discriminate in relation to admissions on the basis of race, creed, color, national origin, religion, or sex.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0405 at 9 State Register, page 2106, on March 25, 1985.

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9502.0415 CHILD CARE DEVELOPMENT PROGRAM.

Subpart 1. **Program content.** Day care activities must provide for the physical, intellectual, emotional, and social development of the child. The environment must facilitate the implementation of the activities. Program activities must:

- A. be scheduled indoors and outdoors, weather permitting;
- B. be appropriate to the developmental stage and age of the child;
- C. include active and quiet activity; and
- D. contain provider-directed and child-initiated activity.

Subp. 2. **Definitions.** For the purposes of this part, the following terms have the meanings given them.

A. "Cognitive equipment" means equipment designed to enhance intellectual development and stimulate thought processes, such as games and toys which use number, letter, shape, size, and color concepts.

B. "Creative dramatic play equipment" means equipment which can be used to design a setting or space that stimulates the child's imagination and encourages role playing such as dress up clothes, large or miniature play sets, and figures.

C. "Large muscle equipment" means equipment and accessories designed to enhance large muscle development and coordination such as pull toys, large boxes and pillows, balls, playground equipment, riding toys, climbers, and rocking boats.

D. "Manipulatives" means equipment designed to enhance fine motor development, creativity, and coordination such as pegs and pegboards, blocks, puzzles, beads and strings, and interlocking plastic or wooden forms.

E. "Sand, grain, or water play and exploration equipment" means equipment and accessories such as a washtub, sandbox, or dishpan and funnels, measuring cups, or strainers which encourage learning through exploration and experimentation with water, sand, or ground grains.

F. "Sensory stimulation items" means items of different shape, color, and texture which stimulate the child's visual and tactile senses.

Subp. 3. **Equipment.** The provider must have the equipment specified in this subpart in adequate quantities for the number and ages of children in care. Toys and equipment may be new, used, commercial, or homemade, as long as they are appropriate for the ages of the children and activities for which they will be used, safe, and in good repair. An item of equipment may be used to meet the requirements of more than one category in subpart 2 if the item satisfies more than one of the definitions.

Subp. 4. **Newborn or infant activities.** The provider shall:

A. Hold the infant or newborn during bottle feedings until the child can hold its own bottle. Bottles must not be propped.

B. Show affection to the infant or newborn by rocking, cuddling, hugging, and playing with the child.

C. Respond to the infant or newborn's attempts to communicate.

D. Provide freedom of movement to the infant or newborn during a large part of the waking day to the extent that safety and weather permits. The noncreeping child shall spend part of each day on a washable rug or blanket. The creeping infant or newborn shall have freedom to explore outside of the crib or infant seat.

E. Give the infant or newborn opportunity to stimulate the senses. A variety of activities and objects to see, touch, feel, smell, hear, and taste must be provided.

F. Provide activities for the infant or newborn that develop the child's manipulative and fine motor skills, self-awareness, and social responsiveness.

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Subp. 5. **Newborn or infant equipment.** The following minimum equipment is required for infants or newborns:

- A. an infant seat or high chair, one per child;
- B. a crib or portable crib with waterproof mattress or pad, one per child;
- C. books, two per child;
- D. large muscle equipment, one per child;
- E. manipulative equipment, two per child;
- F. cognitives which are washable and small enough to grasp but too large to swallow, two per child;
- G. music source or instrument, one per residence;
- H. noise-making items, one per child; and
- I. sensory stimulation items, two per child.

Subp. 6. **Toddler activities.** The provider shall:

- A. Provide the toddler with freedom of movement and freedom to explore outside the playpen.
- B. Talk to, listen to, and interact with the toddler to encourage language development.
- C. Assist the child in developing independence and self-esteem.
- D. Provide the toddler with large muscle activities and activities which develop the child's small muscles and manipulative skills.
- E. Develop and stimulate learning by reading stories to the child or looking at picture books together.
- F. Provide activities that stimulate the senses, creativity, learning, and social development.

Subp. 7. **Toddler equipment.** The following minimum equipment is required for toddlers:

- A. mat, crib, cot, bed, sofa, or sleeping bag, one per child;
- B. art and craft supplies;
- C. books, two per child;
- D. manipulatives larger than one inch in diameter, one set per child;
- E. creative dramatic play equipment, two per child;
- F. large muscle equipment, one per child;
- G. music source or instrument, one per residence;
- H. cognitive equipment, two per child;
- I. sensory stimulation items, two per child;
- J. washable, soft toys, dolls and doll clothes, one per child; and
- K. sand, water, or grain play and exploration equipment.

Subp. 8. **Preschooler activities.** The provider shall:

- A. Interact and show affection toward each child by talking, listening, and hugging. Conversation must be encouraged between the child and other children and adults.
- B. Provide opportunity to play near and with other children; provide time and space for individual and group play; allow for quiet times to talk or rest; allow for unplanned time and individual play time.
- C. Foster understanding of personal and peer feelings and actions and allow for the constructive release of feelings and anger through discussion or play.
- D. Give assistance in toileting and provide time to carry out self-help skills and provide opportunity to be responsible for activities like putting away play equipment and helping around the house.
- E. Provide opportunity for each child to make decisions about daily activities and to take credit for the consequences of decisions.

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- F. Provide time and areas for age appropriate large muscle play.
- G. Provide learning, small muscle, manipulative, creative or sensory activities.
- H. Read stories, look at books together, and talk about new words and ideas with the child.

Subp. 9. **Preschooler equipment.** The following minimum equipment is required for preschoolers:

- A. mat, bed, cot, sofa, or sleeping bag, one per child;
- B. art and craft supplies;
- C. books and magazines, two per child;
- D. manipulative equipment, two per child;
- E. creative, dramatic play items, two per child;
- F. large muscle equipment, one per child;
- G. music source or instrument, one per residence;
- H. cognitive equipment, two per child;
- I. sand, grain, or water play and exploration equipment;
- J. sensory stimulation items, two per child;
- K. washable, soft toys, dolls, one per child; and
- L. social board or card games, three per residence.

Subp. 10. **School-age activities.** The provider shall:

- A. provide opportunities for individual discussion about the happenings of the day and planning for activities;
- B. provide space and opportunity for games, activities, or sports using the whole body, outdoors, weather permitting;
- C. provide space and opportunity for individual rest and quiet time;
- D. allow increased freedom as the child demonstrates increased responsibility;
- E. provide opportunities for group experiences with other children;
- F. provide opportunities to develop or expand self-help skills or real-life experiences; and
- G. provide opportunities for creative and dramatic activity, arts and crafts, or field trips.

Subp. 11. **School-age equipment.** The following minimum equipment is required for school-age activities:

- A. books and magazines, two per child;
- B. toys and equipment required for preschool children when age appropriate;
- C. social board or card games, strategy and skill games, one per child; and
- D. construction materials and sets using interlocking plastic, metal, or wooden pieces designed for the school-age child, two per residence.

Subp. 12. **Written permission.** Written permission must be obtained from the parent to allow a school-age child in care to participate in activities outside the residence.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0415 at 9 State Register, page 2106, on March 25, 1985.

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9502.0425. PHYSICAL ENVIRONMENT.

Subpart 1. **Indoor space.** The licensed capacity of the day care residence must be limited by the amount of usable indoor space available to children. A minimum of 35 square feet of usable indoor space is required per child.

A. Bathrooms, closets, space occupied by major appliances, and other space not used by children may not be counted as usable space. Space occupied by adult furniture, if it is used by children, may be counted as usable indoor space.

B. Usable indoor space may include a basement if it has been inspected by a fire marshal, is free of hazard, and meets the minimum exiting standards specified in subpart 5.

Subp. 2. **Outdoor play space.** There must be an outdoor play space of at least 50 square feet per child in attendance, adjacent to the residence, for regular use, or a park, playground, or play space within 1,500 feet of the residence. On-site supervision must be provided by a caregiver for children of less than school age when play space is not adjacent to the residence. Enclosure may be required by the agency to provide protection from rail, traffic, water, or machinery hazard. The area must be free of litter, rubbish, toxic materials, water hazards, machinery, unlocked vehicles, human or animal wastes, and sewage contaminants.

Subp. 3. **Water hazards.** Swimming and wading pools, beaches, or other bodies of water on or adjacent to the site of the residence must be inaccessible to children except during periods of supervised use. Wading pools, as defined in chapter 4717, must be kept clean. When children use a swimming pool, as defined in chapter 4717, or beach, an attendant trained in first aid and resuscitation shall be present. Any public swimming pool, as defined in chapter 4717, used by children must meet the requirements of chapter 4717.

Subp. 4. **Means of escape.** From each room of the residence used by children, there must be two means of escape. One means of escape must be a stairway or door leading to the floor of exit discharge. The other must be a door or window leading directly outside. The window must be openable without special knowledge. It must have a clear opening of not less than 5.7 square feet and have a minimum clear opening dimension of 20 inches wide and 24 inches high. The window must be within 48 inches from the floor. If the distance from the floor to the window is more than 24 inches, a permanently-positioned platform must be located not more than 24 inches under the window.

Subp. 5. **Separations.** Day care residences with an attached garage must have a self-closing, tight-fitting solid wood bonded core door at least 1-3/8 inch thick, or door with a fire protection rating of 20 minutes or greater and a separation wall consisting of 5/8 inch thick gypsum wallboard or its equivalent on the garage side between the residence and garage.

Subp. 6. **Fire doors.** For group family day care homes, a 1-3/4 inch solid wood core door or a door and frame with at least a 20-minute fire protection rating, must be provided whenever more than two floors of the residence are connected. These doors must be equipped with self-closing devices.

Subp. 7. **Heating and venting systems.** The following heating and venting guidelines must be met:

A. Stove and heater locations must not block escape in case of a fire.

B. Gas, coal, wood, kerosene, or oil heaters must be vented to the outside in accordance with the State Building Code.

C. Combustible items must not be located within 36 inches of the furnace or other heating sources.

D. Whenever in use, fireplaces, woodburning stoves, solid fuel appliances, space heaters, steam radiators, and other potentially hot surfaces, such as steam pipes, must be protected by guards to prevent burns. All

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fireplaces, woodburning stoves, space heaters, steam radiators, and furnaces must be installed according to the State Building Code.

E. The furnace, hot water heater, and workshop area must be inaccessible to children. Separation may be by a door, partition, or gate. There must be allowance for air circulation to the furnace.

F. Ventilation of useable space must meet the requirements of the State Building Code. Outside doors and windows used for ventilation in summer months must be screened when biting insects are prevalent.

Subp. 8. **Temperature.** A minimum temperature of 62 degrees Fahrenheit must be maintained in indoor areas used by children.

Subp. 9. **Sleeping space.** There must be a safe, comfortable sleeping space for each child under school age. A crib or portable crib with waterproof mattress or pad must be provided for each infant or newborn in care. The equipment must be of safe and sturdy construction which conforms to volume 16, parts 1508 to 1508.7 and parts 1509 to 1509.9 of the Code of Federal Regulations, its successor, or have a bar, mesh, or rail pattern such that a 2-3/8 inch diameter sphere cannot pass through. Playpens with mesh sidings must not be used for the care or sleeping of infants or newborns.

Subp. 10. **Stairways.** All stairways must meet the following conditions.

A. Stairways of three or more steps must have handrails.

B. Any open area between the handrail and stair tread must be enclosed with a protective guardrail as specified in the Uniform Building Code. The back of the stair risers must be enclosed.

C. Gates or barriers must be used when children between the ages of 6 and 18 months are in care.

D. Stairways must be well-lighted, in good repair, and free of clutter and obstructions.

Subp. 11. **Decks.** Decks, balconies, or lofts used by children more than 30 inches above the ground or floor must be surrounded by a protective guardrail and be constructed in accordance with the Uniform Building Code. Wooden decks must be free of splinters and coated with wood preservative, paint, or constructed with treated wood.

Subp. 12. **Locks and latches.** Door locks and latches must meet the following guidelines:

A. a closet door latch must be made so that children can open the door from inside the closet;

B. every bathroom door lock must permit opening of the locked door from the outside and the opening device must be readily accessible to all caregivers; and

C. double cylinder (key required both sides) locks on exit doors are prohibited.

Subp. 13. **Sewage disposal.** Day care residences must have toilet facilities and sewage disposal systems that conform to the Uniform Building Code or local septic system ordinances. The toilets must flush thoroughly. Outdoor toilets are permissible when local ordinances allow.

Subp. 14. **Construction, remodeling.** During construction or remodeling, children shall not have access to dangerous construction or remodeling areas within or around the residence.

Subp. 15. **Interior walls and ceilings.** The interior walls and ceilings within the residence, as well as corridors, stairways, and lobbies must have a flame spread rating of 200 or less.

Subp. 16. **Extinguishers.** A portable, operational, multi-purpose, dry chemical fire extinguisher with a minimum 2 A 10 BC rating must be maintained in the kitchen and cooking areas of the residence at all times. All caregivers shall know how to use the fire extinguisher.

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Subp. 17. **Smoke detection systems.** Smoke detectors that have been listed by the Underwriter Laboratory must be properly installed and maintained on all levels.

Subp. 18. **Electrical services.** The following electrical guidelines must be met:

A. all electric receptacles accessible to children under first grade must be tamperproof or shielded when not in use;

B. all major electrical appliances must be properly installed, grounded in accordance with the state electric code, and in good working order;

C. extension cords shall not be used as a substitute for permanent wiring; extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, floors, under doors or floor coverings, nor be subject to environmental damage or physical impact; and

D. electrical wiring must be sized to provide for the load and be in good repair.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0425 at 9 State Register, page 2106, on March 25, 1985.

9502.0435 SANITATION AND HEALTH.

Subpart 1. **Sanitation and cleanliness.** The residence must be free from accumulations of dirt, rubbish, or peeling paint.

Subp. 2. **Pest control.** Effective measures must be taken to protect the home against vermin and insects. Chemicals for insect and rodent control must not be applied in areas accessible to children when children are present.

Subp. 3. **Rubbish.** Indoor and outdoor garbage and rubbish containers must not be accessible to infants and toddlers.

Subp. 4. **Toxic substances.** All medicines, chemicals, detergents, poisonous plants, alcoholic beverages, and other toxic substances must be inaccessible to children. They must be stored away from food products. Equipment or toys which are mouthed or may be chewed must be free of lead-based paint. Toys and equipment with chipped, cracked, or peeling paint must be tested to verify the absence of lead or be replaced.

Subp. 5. **Firearms.** All firearms must be unloaded and inaccessible to children. Ammunition and firearms must be stored in separate locked areas.

Subp. 6. **Hazardous activity materials.** Knives, matches, plastic bags, and other potential hazards must be kept out of the reach of infants, toddlers, and preschoolers. The use of potentially hazardous materials and tools must be supervised.

Subp. 7. **First aid kit.** The provider shall have a first aid kit that contains bandages, sterile compresses, ipecac syrup, scissors, an ice bag or cold pack, an oral or surface thermometer, mild liquid soap, and adhesive tape. A first aid manual must be included. The kit and manual must be accessible and taken on field trips.

Subp. 8. **Emergencies.** The provider shall be prepared for emergencies.

A. An operable telephone must be located within the residence.

B. Emergency phone numbers must be posted by the telephone. The numbers must be those of the local fire department, police department, emergency transportation, and poison control center.

C. The emergency phone numbers of the parents and child's physician and dentist must be readily available within the residence and taken on field trips.

D. Prior arrangements must be made for a substitute to provide care during emergencies.

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E. For severe storms and tornadoes, the provider shall have a designated area within the residence that children shall go to for cover, and an operable battery flashlight, and portable radio or TV available.

F. The provider shall have a written fire escape plan and a log of monthly fire and storm drills on file in the residence. The plan must be approved by the agency and specify:

- (1) emergency phone numbers;
- (2) a place to meet outdoors for roll call;
- (3) smoke detector and fire extinguisher locations;
- (4) plans for monthly fire and tornado drill sessions; and
- (5) escape routes to the outside from all levels used by children.

In buildings with three or more dwelling units, enclosed exit stairs must be indicated.

Subp. 9. **Transportation of children.** When transportation is given to children, the following provisions for their safety must be made.

A. A child under the age of four may be transported in a motor vehicle which is equipped with factory-installed seat belts only if the child is securely fastened in a child passenger restraint system which meets the requirements of Minnesota Statutes, section 169.685 for transporting a child in his or her parent's own car.

B. A child being transported in a motor vehicle which is equipped with factory-installed seat belts shall use a safety seat, seat belt, or harness appropriate to the child's weight.

C. Any vehicle operated by the provider for the transportation of children must be licensed in accordance with the laws of the state and the driver shall hold a current, valid driver's license.

D. Written permission to transport children must be obtained from parents.

E. No child is permitted to remain unattended in any vehicle.

Subp. 10. **Separation of personal articles.** Separate towels, wash cloths, drinking cups, combs, and other personal articles must be used for each child.

Subp. 11. **Bedding.** Clean, separate bedding must be provided for each child in care.

Subp. 12. **Pets.** All pets housed within the residence shall be maintained in good health and limited to dogs, cats, fish, guinea pigs, gerbils, rabbits, hamsters, rats, mice, and birds. The provider shall ensure that:

A. parents are notified prior to admission of the presence of pets in the residence;

B. children handle animals only with supervision;

C. rabies shots and tags are current for all dogs and cats;

D. pet cages are located and cleaned away from any food preparation, storage, or serving areas;

E. play areas are free of animal excrement not confined to pet cages;

F. parents of a child whose skin is broken by an animal bite or scratch, are notified of the injury on the day the injury occurs; and

G. the health officer is immediately notified whenever a child in care is bitten by an animal, the notification shall be given before any steps are taken to destroy the animal, and the provider shall take reasonable steps to confine the animal.

Subp. 13. **Diapers.** Children in diapers shall be kept clean and dry. The following sanitary procedures must be used.

A. An adequate supply of clean diapers must be available for each child and stored in a clean place inaccessible to children. If cloth diapers are used, parents must provide a change of the outer plastic pants for each

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fecally-soiled diaper change. Cloth diapers, except those supplied by a commercial diaper service, and plastic pants, if supplied by parents, must be labeled with the child's name.

B. Diapers and clothing must be changed when wet or soiled.

C. For disposable diapers, a covered diaper disposal container must be located in the diaper changing area and lined with a disposable plastic bag. The container must be emptied when full, and at least daily.

D. Diapering must not take place in a food preparation area. The diaper changing area must be covered with a smooth, nonabsorbent surface and washed with a solution of soap and water or chlorine bleach and water after each diapering.

E. Single service disposable wipes or freshly laundered cloths must be used for washing a soiled child. A child who has soiled or wet must be washed with a disposable wipe or a freshly laundered cloth before rediapering.

F. Cloth diapers, except those supplied by a commercial diaper service, plastic pants, and soiled clothing must be placed in the plastic bag after removal and sent home with the parent daily.

Subp. 14. **Toilet training chairs.** Toilet training chairs, chairs, stools, and seats must be washed with soap and water when soiled, and at least daily.

Subp. 15. **Handwashing.** A child's hands must be washed with soap and water after each diaper change, after the use of a toilet or toilet training chair, and before eating a meal or snack. The provider shall monitor and assist the child who needs help.

A. Hot water temperatures must be no higher than 110 degrees Fahrenheit to prevent children from scalding themselves while washing.

B. Caregivers shall wash their hands with soap and water after each diaper change, after assisting a child on the toilet, after washing the diapering surface, and before food preparation. Hands must be dried on a single use towel.

Subp. 16. **Care of ill children, medicine administration.** The following provisions must be followed for the care of ill children and the administration of medicine.

A. The provider's policies on the care of ill children must be given to parents prior to admission.

B. The provider shall notify the parent immediately when a child in care develops any of the following symptoms:

(1) underarm temperature of 100 degrees Fahrenheit or over, or an oral temperature of 101 degrees Fahrenheit or over;

(2) vomiting;

(3) diarrhea; or

(4) rash, other than mild diaper or heat-related rash.

C. The provider shall follow written instructions from the parent of an ill child placed in the provider's care with any of the illnesses specified in item F.

D. The provider shall require that a child's parent notify the provider within 24 hours of the diagnosis of a serious contagious illness or parasitic infestation listed in item F so the provider may notify the parents of other children in care.

E. The provider shall inform a parent of each exposed child the same day the provider is notified a positive diagnosis has been made for any of the illnesses or parasitic infestations in item F.

F. The provider shall notify the health officer or Minnesota Department of Health of any suspected case of reportable disease as specified in part 4605.0200. The agency shall provide the provider with a copy of part 4605.0200 at the time of initial licensure.

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G. The following govern the administration of medicine by the provider to children in care:

(1) The provider shall obtain written permission and instructions from the child's parent prior to administering medicine, diapering products, sunscreen lotions, and insect repellants.

(2) The provider shall obtain and follow written instructions from a licensed physician or dentist prior to administering each prescription medicine. Medicine with the child's name and current prescription information on the label constitutes instructions.

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

NOTE: See part 9502.0300 for repealer and effective date information.

NOTE: This rule was originally numbered as part 9545.0435 at 9 State Register, page 2106, on March 25, 1985.

9502.0445 WATER, FOOD, AND NUTRITION.

Subpart 1. **Water.** There must be a safe water supply in the residence.

A. Water from privately-owned wells, must be tested annually by a Minnesota Health Department certified laboratory for coliform bacteria and nitrate nitrogens to verify safety. The provider shall file a record of the test results with the agency. Retesting and corrective measures may be required by the agency if results exceed state drinking water standards or where the supply may be subject to off-site contamination.

B. Drinking water must be available to the children and offered at frequent intervals. Drinking water for children, including older infants, must be provided in separate or single service drinking cups or bottles.

Subp. 2. **Milk.** Milk served to children in care must be pasteurized.

Subp. 3. **Meals and snacks.** Well-balanced meals and snacks must be offered daily.

A. Food served during the day must include servings from each of the basic food groups as defined by the United States Department of Agriculture's Code of Federal Regulations, title 7, section 226.20.

B. The provider shall follow written instructions obtained from the parents, at the time of enrollment, on each child's special diet or food needs. Parents shall be consulted about special food preferences.

C. Flexible feeding schedules must be provided for infants and toddlers, and the infant or toddler's usual diet and feeding schedule must be followed.

D. Food, lunches, and bottles brought from home must be labeled with the child's name and refrigerated when necessary. Bottles must be washed after use.

Subp. 4. **Food safety.** Food must be handled and stored properly to prevent contamination and spoilage.

A. All food and cooking utensils must be stored to protect them from dust, vermin, pipe leakage, or other contamination.

B. Food needing refrigeration must be stored at no more than 40 degrees Fahrenheit.

C. Appliances used in food storage and preparation must be safe and clean.

D. Except for home-canned meat, fish, and poultry, the use of home-canned food is acceptable if processed by methods approved by the United States Department of Agriculture, Bulletin number 8, or University of Minnesota, Extension Bulletin 413, "Homecanning Fruits, Vegetables and Meats."

Statutory Authority: *MS s 245.781 to 245.812*

History: *9 SR 2106*

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NOTE: See part 9502.0300 for repealer and effective date information.

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