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2019 Legislative Recap

This was a very productive session for family child care as we saw the passage of several positive bills that will give some relief to providers.

Eight of MACCP's bills passed thru both the Senate and House and were included in the Health and Human Services Omnibus bill that was signed by the Governor.

We would like to give a special thank you to Senator Mary Kiffmeyer. Again, this year she was instrumental in the outcome of this session for family child care. Senator Kiffmeyer has been an advocate for positive reform for family child care for several years now, and her hard work for providers shows in the passage of positive legislation.

We would also like to thank Senators Bill Weber, Karin Housley, Jim Abeler, Michelle Benson, Mark Koran, and Jerry Relph, as well as Representatives Laurie Pryor, Ami Wazlawik, and Dave Pinto for authoring family child care legislation for MACCP.

We are optimistic that the bipartisan bridges built this year between lawmakers in both the Senate and House and MACCP will continue to bring improvements for family child care.

We are the only policy-centered state association for and run by family child care providers in Minnesota with a long history of legislative accomplishments. If you support family child care policy improvements, please join MACCP. Our low membership fee offsets the operational costs of this organization and allows us to support the family child care profession in Minnesota. We cannot do this without you!

The following sections of SF 12 / HF 14 relate to family child care. Those that were part of MACCP's 2019 Public Policy Agenda have corresponding numbers next to them.

Section 26 (MACCP #11 & #16)

245A.04, subdivision 4, is amended; **EXIT INTERVIEW**

Removes the requirement to have parents evaluate our programs as part of our licensing inspections.

Removes the ability for a licensor to issue a correction order or negative action that was not discussed during an exit interview as long as a provider participates in the "exit interview." If the provider is unable to complete the exit interview at that time, the licensing agency must offer an alternative time to complete the exit interview.

If a provider disputes the validity of a licensor's interpretation of a rule, they will have 5 days to request clarification, in writing, in a manner prescribed by DHS. The county licensor cannot issue a correction order before DHS provides clarification.

Effective September 30, 2019

Section 46 (MACCP #12)

245A.149 is added; **SUPERVISION OF FAMILY CHILD CARE LICENSE HOLDER'S OWN CHILD**

a) Notwithstanding Minnesota Rules, part 9502.0365, subpart 5, an individual may be present in the licensed space, may supervise the family child care license holder's own child both inside and outside of the licensed space, and is exempt from the training and supervision requirements of this chapter and Minnesota Rules, chapter 9502, if the individual:

(1) is related to the license holder, as defined in section 245A.02, subdivision 13;

(2) is not a designated caregiver, helper, or substitute for the licensed program;

(3) is involved only in the care of the license holder's own child; and

(4) does not have direct, unsupervised contact with any nonrelative children receiving services. (b) If the individual in paragraph (a) is not a household member, the individual is also exempt from background study requirements under chapter 245C.

Adds significant clarification that family child care providers' family members do not need training and background studies to take care of their own related children, whether in a licensed area of the home or not.

Effective September 30, 2019

Section 53 (MACCP #13)

245A.50, subdivision 1, is amended; **INITIAL TRAINING**

Clarifies that a provider who is currently licensed in Minnesota and moves to a new county is not required to take additional training or orientation classes.

Effective September 30, 2019

Section 54 (MACCP #17)

245A.51, subdivision 3, is amended; **EMERGENCY PREPAREDNESS PLAN**

Adds a requirement for “accommodations for infants and toddlers” to providers’ emergency plans.

Removes the requirement to give a copy of emergency plans to parents upon enrollment and to post it in a prominent place. (MACCP)

Effective September 30, 2019

Section 58 (MACCP #9 & #10)

245A.53 is added; **SUBSTITUTE CAREGIVERS AND REPLACEMENTS IN FAMILY CHILD CARE.**

Subdivision 1. **Total hours allowed.** Notwithstanding Minnesota Rules, part 9502.0365, subpart 5, the use of a substitute caregiver in a licensed family child care program must be limited to a cumulative total of not more than 500 hours annually. The license holder must document the name, dates, and number of hours of the substitute who provided care.

This is an increase of 200 hours over the current statute and all substitute time will be calculated by hours instead of days. For a program that is open 11 hours per day, this equates to 45.45 days per year. DHS was proposing only 300 hours for substitute care. However, we knew it is important for those situations when a provider may need or want extended time off for maternity leave, illness, or caring for a family member to not have the burden of wondering if their business is in jeopardy.

Subd. 2. **Emergency replacement supervision.** (a) A license holder may allow an adult who has not completed the training requirements under this chapter or the background study requirements under chapter 245C to supervise children in a family child care program in an emergency. For purposes of this subdivision, an emergency is a situation in which:

(1) the license holder has begun operating the family child care program for the day and for reasons beyond the license holder's control, including, but not limited to a serious illness or injury, accident, or situation requiring the license holder's immediate attention, the license holder needs to leave the licensed space and close the program for the day; and

(2) the parents or guardians of the children attending the program are contacted to pick up their children as soon as is practicable.

(b) The license holder must make reasonable efforts to minimize the time the emergency replacement has unsupervised contact with the children in care, not to exceed 24 hours per emergency incident.

(c) The license holder shall not knowingly use a person as an emergency replacement who has committed an action or has been convicted of a crime that would cause the person to be disqualified from providing care to children, if a background study was conducted under chapter 245C.

(d) To the extent practicable, the license holder must attempt to arrange for emergency care by a substitute caregiver before using an emergency replacement.

(e) To the extent practicable, the license holder must notify the county licensing agency within seven days that an emergency replacement was used, and specify the circumstances that led to the use of the emergency

replacement. The county licensing agency must notify the commissioner within three business days after receiving the license holder's notice that an emergency replacement was used, and specify the circumstances that led to the use of the emergency replacement.

(f) Notwithstanding the requirements in Minnesota Rules, part 9502.0405, a license holder is not required to provide the names of persons who may be used as replacements in emergencies to parents or the county licensing agency.

At the last stakeholder meeting in January, DHS had stated they would be removing the use of an “emergency substitute” and consider them a substitute. They stated that all substitute caregivers would be required to have a background study and several hours of training. Knowing how difficult it is for family child care providers to find a “qualified” substitute, MACCP worked to ensure that providers could still use a trusted individual to care for the children if and when they have to respond to a true emergency.

Effective September 30, 2019

Section 133 (MACCP #14)

INSTRUCTION TO COMMISSIONER; REVIEW OF CHILD CARE LICENSING AND BACKGROUND STUDY PROVISIONS.

The commissioner of human services shall review existing statutes and rules relating to child care licensing and background study requirements and propose legislation for the 2020 legislative session that eliminates unnecessary and duplicative record keeping or documentation requirements for child care providers. The commissioner shall also establish a process for child care providers to electronically submit requested information to the commissioner.

For several years, MACCP has been requesting the ability to electronically store documents for family child care and to share them electronically with DHS. In this day and age of technology, we should be granted the ability to store and transmit documents electronically. This is the first step forward.

Section 32

245A.04, is amended; **PLAIN LANGUAGE HANDBOOK**

DHS has been given a deadline to complete the handbook for which they have been previously allocated funds and have been working on for 3 years. It must be completed by January 1, 2020.

Section 44

245A.145, subdivision 1, is amended; **POLICIES AND PROCEDURES**

Requires DHS to develop policies & procedures for reporting of suspected maltreatment under the requirements of section 626.556.

Section 45

245A.145, subdivision 2, is amended; **LICENSING AGENCY PHONE NUMBER DISPLAYED**

Removes the requirement that the licensing agency's phone number be printed in BOLD on our licenses and changing the word “concerns” to “questions” in regard to your child's care. Most providers should have received their new license by now.

Effective upon final enactment.

Section 40

245A.14, subdivision 4, is amended; **SPECIAL FAMILY DAYCARE HOME**

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

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

Appears to allow multiple family child care license holders in one dwelling. We will learn about the specifics upon implementation.

Effective September 20, 2019

Section 44

245A.145, subdivision 1, is amended; **POLICIES AND PROCEDURES**

Removes the requirement for the child maltreatment reporting form to include policies and procedures to file complaints against a child care program. However, it does require providers use the form that will be created by DHS. It also requires DHS to create the form in plain language.

Effective September 30, 2019

Section 45

245A.145, subdivision 2, is amended; **LICENSING AGENCY PHONE NUMBER DISPLAYED**

Changes how family child care licenses are printed.

The word "concern" has been changed to "questions" about their child's care, and the county licensing information is no longer required to be in a larger bold print on the licenses.

Effective the day following final enactment

Section 48

245A.16, subdivision 1, is amended; **DELEGATION OF AUTHORITY TO AGENCIES**

Any fires that require the service of a fire department must be reported within 48 hours of the fire. The information under this clause must also be reported to the State Fire Marshal within two business days of receiving notice from a licensed family child care provider.

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

Effective September 30, 2019

Section 49

245A.18, subdivision 2, is amended; **CHILD PASSENGER RESTRAINT SYSTEM; TRAINING REQUIREMENT**

Lowers the children's age requirement for which providers need to take C.A.R.S. training from age nine to age eight.

Effective September 30, 2019

Section 56

245A.51, is amended by adding subd 5; **TELEPHONE REQUIREMENTS**

Removes the requirement to post a list of emergency numbers and clarifies that a cell phone meets this requirement. It must be sufficiently charged for use at all times.

Effective September 30, 2019

Section 57

245A.52 is added; **FAMILY CHILD CARE PHYSICAL SPACE REQUIREMENTS.**

Subdivision 1. **Means of escape.**

(a)(1) At least one emergency escape route separate from the main exit from the space must be available in each room used for sleeping by anyone receiving licensed care, and

(2) a basement used for child care. 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. A window used as an emergency escape route must be openable without special knowledge.

(b) In homes with construction that began before May 2, 2016, the interior of the window leading directly outside must have a net clear opening area of not less than 4.5 square feet or 648 square inches and have minimum clear opening dimensions of 20 inches wide and 20 inches high. The opening must be no higher than 48 inches from the floor. The height to the window may be measured from a platform if a platform is located below the window.

(c) In homes with construction that began on or after May 2, 2016, the interior of the window leading directly outside must have minimum clear opening dimensions of 20 inches wide and 24 inches high. The net clear opening dimensions shall be the result of normal operation of the opening. The opening must be no higher than 44 inches from the floor.

(d) Additional requirements are dependent on the distance of the openings from the ground outside the window:

(1) windows or other openings with a sill height not more than 44 inches above or below the finished ground level adjacent to the opening (grade-floor emergency escape and rescue openings) must have a minimum opening of five square feet; and

(2) non-grade floor emergency escape and rescue openings must have a minimum opening of 5.7 square feet

Subd. 2. **Door to attached garage.** Notwithstanding Minnesota Rules, part 9502.0425, subpart 5, day care residences with an attached garage are not required to have a self-closing door to the residence. The door to the residence may be a steel insulated door if the door is at least 1-3/8 inches thick.

Subd. 3. **Heating and venting systems.** Notwithstanding Minnesota Rules, part 9502.0425, subpart 7, items that can be ignited and support combustion, including but not limited to plastic, fabric, and wood products must not be located within 18 inches of a gas or fuel-oil heater or furnace. If a license holder produces manufacturer instructions listing a smaller distance, then the manufacturer instructions control the distance combustible items must be from gas, fuel-oil, or solid-fuel burning heaters or furnaces.

Subd. 4. **Fire extinguisher.** A portable, operational, multipurpose, dry chemical fire extinguisher with a minimum 2 A 10 BC rating must be located in or near the kitchen and cooking areas of the residence at all times. The fire extinguisher must be serviced annually by a qualified inspector. All caregivers must know how to properly use the fire extinguisher.

Subd. 5. **Carbon monoxide and smoke alarms.** (a) All homes must have an approved and operational carbon monoxide alarm installed within ten feet of each room used for sleeping children in care.

(b) Smoke alarms that have been listed by the Underwriter Laboratory must be properly installed and maintained on all levels including basements, but not including crawl spaces and uninhabitable attics, and in hallways outside rooms used for sleeping children in care.

(c) In homes with construction that began on or after May 2, 2016, smoke alarms must be installed and maintained in each room used for sleeping children in care.

Subd. 6. **Updates.** After readoption of the Minnesota State Fire Code, the fire marshal must notify the commissioner of any changes that conflict with this section and Minnesota Rules, chapter 9502. The state fire marshal must identify necessary statutory changes to align statutes with the revised code. The commissioner must recommend updates to sections of chapter 245A that are derived from the Minnesota State Fire Code in the legislative session following readoption of the code.

Effective September 30, 2019

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Section 128

DIRECTION TO COMMISSIONER; CORRECTION ORDER ENFORCEMENT REVIEW

By January 1, 2020, the commissioner of human services shall develop and implement a process to review licensing inspection results provided under Minnesota Statutes, section 245A.16, subdivision 1, paragraph (h), clause (1), by county to identify trends in correction order enforcement. The commissioner shall develop guidance and training as needed to address any imbalance or inaccuracy in correction order enforcement. The commissioner shall include the results in the annual report on child care under Minnesota Statutes, section 245A.153, provided that the results are limited to summary data as defined in Minnesota Statutes, section 13.02, subdivision 19.

Effective the day following final enactment.

This will be an interesting report that will show what DHS has allowed to be affirmed and what is actually a violation worthy of a correction order.

Section 132

FAMILY CHILD CARE TASK FORCE.

Subdivision 1. Membership.

(a) The Family Child Care Task Force shall consist of 25 members, appointed as follows:

(1) two members representing family child care providers from greater Minnesota, including one appointed by the speaker of the house and one appointed by the senate majority leader;

(2) two members representing family care providers from the metropolitan area as defined in Minnesota Statutes, section 473.121, subdivision 2, including one appointed by the speaker of the house and one appointed by the senate majority leader;

(3) one member appointed by the Minnesota Association of Child Care Professionals;

(4) one member appointed by the Minnesota Child Care Provider Information Network;

(5) two members from the house of representatives, including one appointed by the speaker of the house and one appointed by the minority leader;

(6) two members from the senate, including one appointed by the senate majority leader and one appointed by the senate minority leader;

(7) the commissioner of human services or designee;

(8) two members representing Department of Human Services-recognized family child care associations from greater Minnesota, appointed by the commissioner of human services;

(9) two members appointed by the Association of Minnesota Child Care Licensors, including one from greater Minnesota and one from the metropolitan area, as defined in Minnesota Statutes, section 473.121, subdivision 2;

(10) four parents of children enrolled in family child care programs, appointed by the commissioner of human services;

(11) one member appointed by the Greater Minnesota Partnership;

(12) one member appointed by the Minnesota Chamber of Commerce;

(13) one member appointed by Child Care Aware of Minnesota;

(14) one member appointed by the Minnesota Initiative Foundation;

(15) one member appointed by Minnesota's Children's Cabinet; and

(16) one member appointed by First Children's Finance.

(b) Appointments to the task force must be made by July 15, 2019.

Subd. 2. Compensation. Public members of the task force may be compensated as provided by Minnesota Statutes, section 15.059, subdivision 3.

Subd. 3. **Duties.** The task force shall:

- (1) identify difficulties that providers face regarding licensing and inspection, including specific licensing requirements that have led to the closure of family child care programs, by reviewing previous survey results and conducting follow-up surveys, if necessary;
- (2) propose regulatory reforms to improve licensing efficiency, including discussion of criteria that would qualify a provider for an abbreviated licensing review based on statistically significant key indicators that predict full compliance with all applicable rules and statutes, and discussion of the development of a risk-based, data driven, tiered violation system with corresponding enforcement mechanisms that are appropriate to the risk presented by a violation;
- (3) review existing variance authority delegated to counties and recommend changes, if needed;
- (4) recommend business development and technical assistance resources to promote provider recruitment and retention, including the potential need for mentors, a family child care provider network, or shared services;
- (5) develop recommendations for alternative child care delivery systems that could be more financially viable in smaller communities with unmet child care capacity needs in greater Minnesota, which could include new licensure models for large group family child care or small capacity child care centers;
- (6) review Parent Aware program participation and identify obstacles and suggested improvements;
- (7) review how trainings for licensed family child care providers are offered, provided, coordinated, and approved, and make a recommendation on the establishment of a family child care continuing education training committee, to advise on compliance with federal and state training requirements; and
- (8) consider methods to improve access to and understanding of the rules and statutes governing family child care providers.

Subd. 4. **Officers; meetings.**

- (a) The task force shall be co-chaired by the task force member from the majority party of the House of Representatives and the task force member from the majority party of the senate, and may elect other officers as necessary.
- (b) The commissioner of human services shall convene the first meeting by August 15, 2019.
- (c) The co-chairs shall alternate possession of the gavel between meetings.
- (d) Each meeting shall be moderated by a neutral third-party facilitator.
- (e) The agenda for each meeting shall be determined by the co-chairs, the commissioner of human services or designee, and the facilitator.
- (d) Meetings of the task force are subject to the Minnesota Open Meeting Law under Minnesota Statutes, chapter 13D.

Subd. 5. **Report required.** The task force shall submit an interim written report by March 1, 2020, and a final written report by February 1, 2021, to the chairs and ranking minority members of the committees in the House of Representatives and the senate with jurisdiction over child care. The reports shall explain the task force's findings and recommendations relating to each of the duties under subdivision 3, and include any draft legislation necessary to implement the recommendations.

Subd. 6. **Expiration.** The task force expires upon submission of the final report in subdivision 5 or February 1, 2021, whichever is later.

Effective the day following final enactment.

We have concerns with this task force as only 8 out of the 25 members will be family child care providers—with 2 of the providers being appointed by DHS—and 6 members of special interest groups. We already know the mass exodus of providers is due to burdensome paperwork/regulation AND unnecessarily punitive methods of oversight by the Department of Human Services, which is now in charge of the task force.

The legislature already formed a child care task force and a child care committee in the past three years. There are still 30+ recommendations from the last task force that have not been addressed.

With the low representation of the provider community and a significant number of members hand-picked by DHS, we are very concerned that this task force will not only fail to result in the common sense regulatory and oversight relief the family child care profession needs, but it may actually result in more regulation and the loss of even more rights for family child care providers and our families.

We strongly encourage the provider population to closely watch these meetings and communicate with the provider and legislative appointees, ensuring our community is being adequately represented. MACCP will be there advocating for our members.



Child Care Professionals



Summary of MACCP's 2019 Bills

- #1: [SF 1030](#)** – Starts the process to codify Rule into statute. This will remove DHS' ability to make rule changes without the proper legislative process.
- #2: [SF 669](#)** – Adds language to allow a “Fix-It Ticket” for any violation that can be corrected immediately, rather than a restrictive list compiled by DHS.
- #3: [SF 1064](#)** – Requires anyone reporting a complaint to leave identifying information. It makes false reporting a crime and allows for a provider to seek damages in civil court.
- #4: [SF 981](#)** – Prohibits insurance companies from denying coverage for providers who carry a separate business liability policy.
- #5: [SF 977](#)** – Requires a child's health insurance to cover medical bills for injuries on a provider's property.
- #6:** Changes the requirement for reporting injuries to one that required medical treatment.
- #7: [SF 789](#)/[HF 711](#)** – Requires DHS to develop one annual refresher course for SUID/AHT, Active Supervision, and any additional CCDBG requirements into one 2-hour class.
- #8: [SF 979](#)** – Makes trainings that are required every 2 or 5 years to be completed prior to your license anniversary date in the year it is due, not based on the month the training was taken.
- #9: [SF 887](#)** – Exempts emergency subs from training requirements. This bill also exempts helpers who do not provide direct care without supervision of the provider.
- #10: [SF 1034](#)/[HF 1685](#)** – Increases the time allowed to use a substitute to 60 days or 180 hours, whichever is greater.
- #11: [SF 886](#) / [HF 2047](#)** – Requires a county licensor to seek clarification from DHS when the licensor and provider have a dispute over the interpretation of a licensing requirement.
- #12 [SF 882](#) / [HF 1926](#)** – Provides more clarification that family members do NOT need training to take care of their own/related children during daycare hours, including in unlicensed areas (indoors or outdoors). It also exempts from a background study all individuals (not household members) who have no unsupervised contact with child care children.

#13 [SF 980](#) / [HF 2049](#) – Clarifies that currently licensed providers who move into a new county do not have to go through additional classes or orientations meant for NEW providers.

#14: Streamline and eliminate unnecessary paperwork by allowing forms to be transmitted and stored electronically.

#15 [SF 1097](#) – Clarifies that there is no minimum water temperature.

#16 [SF 978](#) / [HF 1925](#) – Licensors cannot issue a correction order that is not discussed during the exit interview, unless the provider chooses to not participate in the exit interview.

#17 [SF982](#) / [HF 1924](#) – Removes the requirement to give a copy of the Emergency Plan to families in care. *The bill is being amended to also remove the requirement to use a form created by the commissioner and posting the emergency plan in a prominent place.*

