



# Interim Legislative Report

## Minnesota Family Child Care Task Force

March 2020

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Minnesota Statutes, Chapter 3.197, requires the disclosure of the cost to prepare this report. The estimated cost of preparing this report is \$5,060.

# Family Child Care Task Force Membership

## Family Child Care Task Force Membership

Ann McCully	Hollee Saville	Representative Ami Wazlawik, Co-chair
Ariane Bromberg	JoAnn Smith	Representative Lisa Demuth
Cyndi Cunningham	Julie Seydel	Samantha Chukuske
Dan Dorman	Kelly Martini	Scott Marquardt
DHS Representative: Cindi Yang or Reggie Wagner	Kim Leipold	Senator Mary Kiffmeyer, Co-chair
Erin Echternach	Lanay Miller	Senator Melissa Wiklund
Erin Johnson-Balstad	Lauryn Schothorst	Stephanie Hogenson
Heidi Hagel Braid	Liz Harris	Tiffany Grant
	Marit Woods	

## Family Child Care Task Force Website

<https://mn.gov/dhs/partners-and-providers/licensing/child-care-and-early-education/family/fcc-task-force.jsp>

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# I. Executive Summary

The Family Child Care Task Force was created by the Minnesota Legislature in 2019 to discuss and make recommendations related to family child care licensing and the Parent Aware program. This interim report identifies findings and recommendations based on three duties the Task Force examined:

*Duty #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.*

After learning about the results of prior surveys conducted of former licensed family child care providers, Task force members agreed that a follow-up survey of providers who have closed their licenses should be conducted. The Task Force discussed the survey questions and methodology at several meetings. The Minnesota's Children Cabinet will conduct a survey of former family child care providers, based upon the draft developed by the Task Force. The Task Force will review and discuss the survey results when it reconvenes later in 2020.

*Duty #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.*

The Task Force recommends pursuing a risk-based, violation system, as described by Dr. Rick Fiene, Research Psychologist and retired Professor of Psychology at Penn State University, a leading international researcher/scholar on licensing measurement and differential monitoring systems. The licensing standards for family child care providers should be updated as part of this process. The Task Force also recommends adding abbreviated inspections to the family child care licensing model, as described by Dr. Fiene.

*Duty #3—Review existing variance authority delegated to counties and recommend changes, if needed.*

The Task Force recommends the adoption of legislation to amend Minnesota Statutes, section 466.03, subd. 6d to remove liability from counties when a variance has been granted to a licensed family child care provider; require counties to post on their websites information about the process for applying for a variance and the circumstances under which it will be considered; require counties to distribute to license holders information about the process for applying for a variance and the circumstances under which it will be considered; collaborate with counties to develop best practices for counties and licensors on the circumstances under which variances are or are not appropriate; communicate with County Attorneys and County Boards to educate and encourage use of variances; provide training on variances for Licensors; and collaborate with counties to develop guidance for licensors to ensure that licensors and counties understand alternatives to variances.

## II. Introduction

This report was submitted by the Family Child Care Task Force pursuant to [Minnesota Laws 2019, 1st Special Session, Chapter 9, Art. 2, Sec. 132](#) (see pages 120-122). Information about the legislation, organization of the Task Force, and summaries of Task Force duties and recommendations are included.

## III. Legislation and Organization

In 2019, the Minnesota Legislature established and directed the Family Child Care Task Force to discuss and make recommendations related to family child care licensing and the Parent Aware program. The Family Child Care Task Force was charged to examine eight duties and prepare two reports. The law that established the Task Force requires that the co-chairs, the Minnesota Department of Human Services (DHS), and the facilitator work together to set the agenda for Task Force meetings.

**Membership.** The Family Child Care Task Force consists of 25 members:

- 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;
- 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;
- One member appointed by the Minnesota Association of Child Care Professionals;
- One member appointed by the Minnesota Child Care Provider Information Network;
- Two members from the house of representatives, including one appointed by the speaker of the house and one appointed by the minority leader;
- Two members from the senate, including one appointed by the senate majority leader and one appointed by the senate minority leader;
- The commissioner of human services or designee;
- Two members representing Department of Human Services-recognized family child care associations from greater Minnesota, appointed by the commissioner of human services;
- 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;
- Four parents of children enrolled in family child care programs, appointed by the commissioner of human services;
- One member appointed by the Greater Minnesota Partnership;
- One member appointed by the Minnesota Chamber of Commerce;
- One member appointed by Child Care Aware of Minnesota;
- One member appointed by the Minnesota Initiative Foundation;
- One member appointed by Minnesota's Children's Cabinet; and
- One member appointed by First Children's Finance.

**Organization.** Per the enacting Legislation, the Family Child Care Task Force is co-chaired by a member from the majority party of the house of representatives and a member from the majority party of the senate. Co-chairs may elect other officers as necessary. The co-chairs alternate possession of the gavel between meetings, and each meeting is moderated by a neutral, third-party facilitator.

The agenda for each meeting is determined by the co-chairs, the commissioner of human services or designee, and the facilitator. Meetings of the task force are subject to the Minnesota Open Meeting Law under Minnesota Statutes, chapter 13D specifying that all meetings of public bodies in Minnesota be open to the public. The task force expires upon submission of the final report or February 1, 2021, whichever is later.

**Duties.** The Family Child Care Task Force is tasked with eight duties:

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.

**Reports and Recommendations.** The Family Child Care Task Force is responsible for two reports to the Legislature. The interim report is due by March 1, 2020, and a final report by February 1, 2021. The reports shall explain the task force's findings and recommendations related to each of the duties.

## IV. Topics Discussed

The Family Child Care Task Force met six times.

At the first meeting on **September 18, 2019**, the Task Force reviewed the duties assigned to them in the enacting legislation and prioritized which to focus on prior to the Interim Report due in March 2020.

They prioritized:

*Duty #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;*

*Duty #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;*

*Duty #3: Review existing variance authority delegated to counties and recommend changes, if needed; and*

*Duty #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.*

The next meetings were held on the following dates and focused on the following duties:

- **October 12, 2019:** Duties 1 and 3
- **November 12, 2019:** Duties 1, 2, and 3
- **December 16, 2019:** Duty 1
- **January 14, 2020:** Duties 1 and 3
- **February 4, 2020:** Discussed and approved the interim report

Due to time constraints, the Task Force did not yet discuss Duty #5.

The Task Force will not hold meetings during the 2020 legislative session. It will resume meeting after the 2020 legislative session is over to address the remaining duties assigned to the Task Force.



## V. Findings and Recommendations

**Duty #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.*

### **Duty #1 Findings and Recommendations:**

After learning about the results of [prior surveys](#) conducted of former licensed family child care providers, task force members agreed that a follow-up survey of providers who have closed their licenses should be conducted. The Task Force discussed the survey questions and methodology at several meetings.

The Minnesota's Children Cabinet will conduct a survey of former family child care providers, based upon the draft developed by the Task Force. The Task Force will review and discuss the survey results when it reconvenes later in 2020.

**Duty #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.*

### **Duty #2 Findings and Recommendations:**

The Task Force had a presentation from Dr. Rick Fiene, Research Psychologist and retired Professor of Psychology at Penn State University, a leading international researcher/scholar on licensing measurement and differential monitoring systems. He described how other states are replacing their licensing framework with a risk-based violation system, which recognizes that violations of licensing standards vary in the amount of risk that they pose to children. A system like this has a variety of enforcement mechanisms that correlate with the risk that a violation posed to children.

Dr. Fiene also described licensing systems that include abbreviated inspections for providers with a history of being in compliance. During an abbreviated inspection, a licensor would review whether a provider was in compliance with a shortened list of requirements. Dr. Fiene has developed a statistical method for identifying requirements to be included in abbreviated inspections since they are statistically correlated with compliance with all of the licensing requirements. If the provider was out-of-compliance with any of the items that were part of an abbreviated inspection, the licensor would then conduct a full inspection.

The Task Force recommends:

- pursuing a risk-based, violation system, as described by Dr. Fiene. The licensing standards for family child care providers should be updated as part of this process.

- adding abbreviated inspections to the family child care licensing model, as described by Dr. Fiene.

**Duty #3:** *Review existing variance authority delegated to counties and recommend changes, if needed.*

**Duty #3 Findings and Recommendations:**

Several members of the Task Force, including the county licensors, the licensed family child care providers and the DHS representative, brought firsthand knowledge about variances to the Task Force discussion. In addition, the Task Force heard from Matt Freeman, the Executive Director of the Minnesota Association of County Social Services Administrators (MACSSA), about that organization's position on variances as well.

A variance is written permission by the commissioner for a licensed family child care provider or applicant to depart from the standards required by the Rule. Providers must explain how they will otherwise ensure the health, safety, and protection of children in care.

With limited exceptions, family child care providers make requests to counties, who have the final say. Counties do not report data about variances to DHS. If a county denies a request for a variance, a family child care provider cannot appeal the decision. With 87 counties, there are differences among the counties on when variances are considered and what criteria are used in reaching a decision.

In addition, state statutes relating to county civil liability includes a provision that holds counties liable when a licensor has actual knowledge that a licensed family child care provider failed to meet a licensing standard that resulted in a dangerous condition. Some task force members have pointed to this law as part of what has made some counties reluctant to grant variances to the rules governing family child care providers.

This provision, Minnesota Statutes, section 466.03, subd. 6d, states:

**Subd. 6d. Licensing of providers.** A claim against a municipality based on the failure of a provider to meet the standards needed for a license to operate a day care facility under chapter 245A for children, unless the municipality had actual knowledge of a failure to meet licensing standards that resulted in a dangerous condition that foreseeably threatened the plaintiff. A municipality shall be immune from liability for a claim arising out of a provider's use of a swimming pool located at a family day care or group family day care home under section 245A.14, subdivision 10, unless the municipality had actual knowledge of a provider's failure to meet the licensing standards under section 245A.14, subdivision 10, paragraph (a), clauses (1) to (3), that resulted in a dangerous condition that foreseeably threatened the plaintiff.

The Task Force recommends:

The adoption of legislation to:

- Amend Minnesota Statutes, section 466.03, subd. 6d to remove liability from counties when a variance has been granted to a licensed family child care provider
- Require counties to post on their websites information about the process for applying for a variance and the circumstances under which it will be considered;
- Require counties to distribute to license holders information about the process for applying for a variance and the circumstances under which it will be considered;
- Collaborate with counties to develop best practices for counties and licensors on the circumstances under which variances are or are not appropriate;
- Communicate with County Attorneys and County Boards to educate and encourage use of variances;
- Provide training on variances for Licensors; and
- Collaborate with counties to develop guidance for licensors to ensure that licensors and counties understand alternatives to variances.

# Appendix A: Legislation

[Minnesota Laws 2019, 1st Special Session, Chapter 9, Art. 2, Sec. 132](#) (pages 120-122) established the Family Child Care Task Force.

## Sec. 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 cochaired 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 cochairs 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 cochairs, 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.

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