

Position Statement

2019

End delegation of authority to counties to issue variances to family child care licensing regulations

Short Description

Issue:	Some family child care provider groups have objected to inconsistency between counties in regulatory enforcement for licensed programs. One aspect that has gained attention is practices between counties in issuing variances, especially to allow enrollment of an additional infant over age restrictions and/or total license capacity. While counties recognize the shortage of infant care in many regions, counties also are subject to legal exposure when having knowledge of a failure to meet licensing standards, such as occurs with a variance. Removing the delegated authority to issue such variances from counties facilitates statewide consistency in variance practices and arguably lessens counties' culpability from variances.
Administrative Simplification (optional):	This change centralizes the variance process at the state level, allowing for consistency in administration and economy of scale in processing and tracking of variances. It removes these tasks from counties.
Implementation Strategy:	Amend MN Statute 245A.16, subd. 1, to add item "(8) family child care age restriction or capacity", striking the final sentence of the subdivision. Alternately, amend MN Statute 245A.16, subd. 1, to add item "(8) family child care licensing regulations", striking the final sentence of the subdivision.

Long Description:

Recent subcommittees in both the House and Senate of the Minnesota Legislature have focused on perceived differences in regulatory enforcement between counties. Access to variances from the licensing regulations has been of particular interest to licensed family child care provider groups participating in these subcommittee hearings. With regard to county legal exposure in family child care licensing, MN Statute 466.03, Subd. 6d. limits claims made against municipalities in family child care licensing "unless the municipality had actual knowledge of a failure to meet licensing standards that resulted in a dangerous condition that foreseeably threatened the plaintiff. ..." Because issuing a variance from licensing regulations gives a county actual knowledge that the license holder is not following licensing standards, some County Attorneys advise counties not to issue variances, especially for the most common request of exceeding the age restrictions in order to provide care for an additional infant. In order to gain the consistency between counties sought by provider groups and reduce counties' exposure when variances are issued, language could be changed in MN Statute 245A.16, subd. 1, the delegation of authority to counties to issue variances except in specific areas. Variances to age restrictions and capacity in family child care could be added to the variances only to be issued by the commissioner, removing this authority and responsibility from counties to centralize it at the state, achieving consistency in access to variances that expand the number of children in an age group or overall who are cared for in a licensed family child care program. Alternately, all variances in family child care could be exceptions to the delegated variance authority. If these changes are proposed, consideration also may be given to whether language changes would be recommended to the Municipal Tort Claims Act in MN Stat. 466.03, Subd. 6d to make explicit that the municipality is immune to claims arising out of a variance issued by the Commissioner of Human Services.

Additional Information:



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Approved by: [insert the name of the program committee] on [insert date position was approved]

Date Approved: [insert date]