



Variations

Task Force Duty #1

Task Force Duty:

(3) Review existing variance authority delegated to counties and recommend changes, if needed

245A.16 Subdivision 1: Delegation of authority to agencies.

(a) The following variances are excluded from the delegation of variance authority and may be issued only by the commissioner:

(1) dual licensure of family child care and child foster care, dual licensure of child and adult foster care, and adult foster care and family child care; (2) adult foster care maximum capacity; (3) adult foster care minimum age requirement; (4) child foster care maximum age requirement;

(5) variances regarding disqualified individuals except that, before the implementation of NETStudy 2.0, county agencies may issue variances under section [245C.30](#) regarding disqualified individuals when the county is responsible for conducting a consolidated reconsideration according to sections [245C.25](#) and [245C.27, subdivision 2](#), clauses (a) and (b), of a county maltreatment determination and a disqualification based on serious or recurring maltreatment;

- (6) the required presence of a caregiver in the adult foster care residence during normal sleeping hours; and*
- (7) variances to requirements relating to chemical use problems of a license holder or a household member of a license holder.*
- Except as provided in section [245A.14, subdivision 4](#), paragraph (e), a county agency must not grant a license holder a variance to exceed the maximum allowable family child care license capacity of 14 children. [This relates to “special family daycare homes” that are licensed for locations other than the license holder’s own home. As such, this does not apply to your situation.]*

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

It is a request 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.

Family child care providers make requests to counties, who have the final say. Variances are not reported to DHS. The provider cannot appeal the decision to not grant a variance.

When variances are granted, county licensors tell us that decisions are fact-dependent and specific to that provider's request.

With 87 counties, there are differences among the counties on when variances are considered and what criteria are used in reaching a decision.

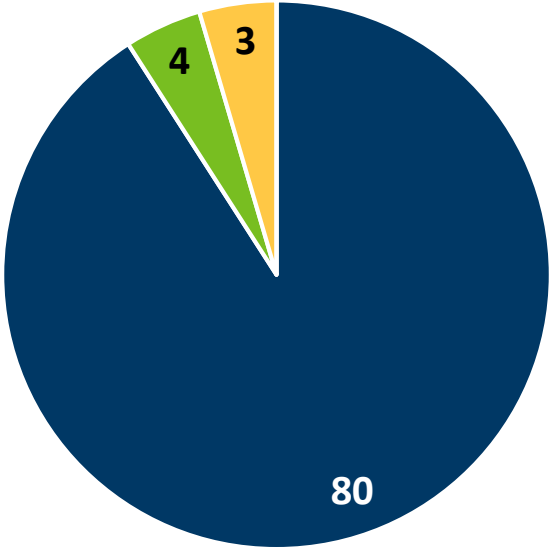
Examples of Variances

- Asking to delay installing/repairing fencing are typical during winter months when the required structure cannot be installed due to frozen ground.
- Provider must still explain how children will be kept away from pond/hazard/road/etc.
- Anecdotally, these are usually granted by most counties.
- Asking to caring for one more infant than allowed under the license type for a short period, usually several weeks or several months until the oldest infant in care ages up and is considered a toddler.
- Anecdotally, only as few as 1/3 of counties will consider granting this request, always on a case-by-case basis.

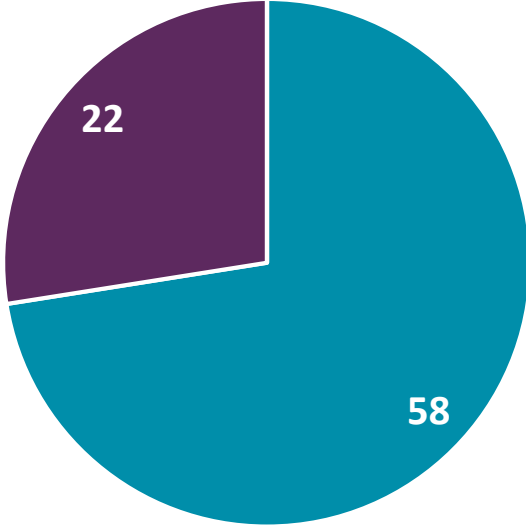
Variance summary

In 2018, DHS asked Minnesota's 87 counties if they grant variances and whether they have policies about granting variances for family child care providers.

Variations



Written policies



■ Variance issued ■ No variances ■ Unknown

■ Yes ■ No

Variations, continued

- Many county policies do not allow variations during the first year of licensure.
 - 32 of the 87 counties have a limit of time a provider must be licensed prior to receiving a variance
- Across Minnesota variance policies differ with regards to the length of time one may be requested.
- Roughly one-third of the counties grant variations for infants, capacity, and age groups.

Variations, continued

- Counties may impose conditions when granting a variance, such as:
 - All parents must be notified of the request.
 - No additional children can be enrolled until variances ends.
 - Variance may be limited to specific number of days.
 - Second caregiver or helper may be required if going above ratios.
- Many county policies do not allow variances during the first year of licensure.
 - 32 of the 87 counties have a limit of time a provider must be licensed prior to receiving a variance
- Across Minnesota variance policies differ with regards to the length of time one may be requested.
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Variations, continued

- DHS does frequently hear that counties are reluctant to consider variations to the established capacity/age distribution requirements because these are the minimal health and safety standards established by the rule, after a lengthy and formal rulemaking process.
- In addition, we sometimes hear from county licensing staff that a County's decision to grant a variance, such as allowing more infants than is allowed by the rule by not requiring a fence near a water hazard/pond/retaining pond, could raise concerns of tort liability and possible legal action against a county if a child is harmed in care after approving such a variance.
- Some county licensing staff believe this actually contributes to the "inconsistencies" that providers frequently express concern about.
- However, Statute Sec. 245A.16 clearly does allow each county to make its own decisions on whether to grant variance to Rule 9502.

Information from Counties Questions?