



Implementation Plan for 2018 Legislative Changes for Licensed Child Care Centers

Minnesota Department of Human Services
Office of Inspector General
Licensing Division

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Introduction

The 2018 Legislature changed several laws that impact licensed child care centers, including licensing requirements and background study requirements. Many of the changes clarify licensing requirements or make it easier for providers to comply with requirements.

Each section of this Implementation Plan contains:

- the actual text of the law, including the changes made during the 2018 legislative session
- an overview of each new or changed requirement, and
- what the change means for providers.

Key

The actual text of the laws and how they were changed are shown in the shaded box at the beginning of each section of this plan. Here is how to read those sections:

Plain text is unchanged – it was the law before and continues to be the law.

Stricken text (~~like this~~) is used on words that are being removed from the law.

Underlined text (like this) is used for words that are being added to the law.

Updates from DHS Licensing

New licensors

In 2017, the Department of Human Services (DHS) Licensing Division received funding to hire additional licensors in order to move from licensing inspections every other year to annual licensing inspections. Over the past 12 months, DHS Licensing has hired a number of new licensors and will soon have the capacity to conduct annual inspections as required by federal and state law. Increased staffing also means licensor caseloads will decrease, allowing licensors more time to spend with providers during site visits to offer technical assistance and support.

ELICI & changes to Licensing Information Lookup

Later this fall, some licensors will begin piloting the new Electronic Licensing Inspection Checklist Information (ELICI) tool. This tool will guide licensors through their monitoring activities for all inspections. After an inspection is conducted, the licensor will issue the appropriate notice. The notice may be a Licensing Review Report that indicates that no violations were found, a Fix-It Ticket, or a Correction Order. The results of the licensing inspection will then be published to Licensing Information Lookup website.

DHS Licensing is making changes to the Licensing Information Lookup website to meet several new posting requirements in federal law and to respond to provider feedback about how public licensing information is displayed. The changes are similar to how other states display child care licensing information. The changes also support DHS's goal to provide information about child care programs in plain language and in an easy-to-understand format.

Specifically, a new feature is being added to each program's profile page to display monitoring information, including:

- The date of the licensing visit;
- The type of visit (for example, a licensing review, licensing investigation, etc.);
- Whether violations were found during the visit; and
- How a violation was corrected, including when a violation is corrected on-site or appealed.

Once this new feature goes into effect this winter, correction orders will no longer be posted to the Licensing Information Lookup website. As is currently the practice, fix-it tickets will continue not to be posted to Licensing Information Lookup.

In addition, some other changes have already been made to the Licensing Information Lookup website, including:

- Licensing actions are no longer labeled as "Negative Actions." Instead, each document is labeled using the specific name of the licensing action taken (e.g., Fine Order, Conditional License, etc.);
- Licensing information, licensing actions, and maltreatment investigation documents are only kept on Licensing Information Lookup for four years.
- Documents posted more than four years ago will be removed from Licensing Information Lookup, but will continue to be available to the public, upon request.

In April, DHS Licensing released guidelines describing the type of public child care licensing information that is currently displayed on the Licensing Information Lookup website. The guidelines also explain that changes and improvements that are being made and when they will take effect. The guidelines are available online, [Posting of Child Care Licensing Information DHS-7698 \(PDF\)](#), and will be mailed to each child care center license holder later this year.

Updated licensing webpages

DHS recently revised the child care licensing webpages. Information for all child care provider types can be found on the new [Child Care and Early Education landing page](#). From there, click on [Licensed child care centers](#) for news, updates, another other information specific to licensed child care centers.

Correction order posting

Minn. Stat. 245A.06, subd. 8

Subd. 8. Requirement to post ~~correction order~~ conditional license.

~~(a)~~ For licensed family child care providers and child care centers, upon receipt of any ~~correction order~~ or order of conditional license issued by the commissioner under this section, and notwithstanding a pending request for reconsideration of the ~~correction order~~ or order of conditional license by the license holder, the license holder shall post the ~~correction order~~ or order of conditional license in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the ~~correction order~~ or order of conditional license is accompanied by a maltreatment investigation memorandum prepared under section [626.556](#) or [626.557](#), the investigation memoranda must be posted with the ~~correction order~~ or order of conditional license.

~~(b)~~ If the commissioner reverses or rescinds a violation in a ~~correction order~~ upon reconsideration under subdivision 2, the commissioner shall issue an amended ~~correction order~~ and the license holder shall post the amended order according to paragraph (a).

~~(c)~~ If the ~~correction order~~ is rescinded or reversed in full upon reconsideration under subdivision 2, the license holder shall remove the original ~~correction order~~ posted according to paragraph (a).

Overview: As of August 1, providers are no longer required to post correction orders at the program location.

What do providers need to do?

As of August 1, 2018, providers may remove any correction orders that are posted at the child care center. After that date, providers do not need to post any correction orders that are received.

Please note, providers are still required to post all other licensing actions (including an order to pay a fine, or a conditional license, suspension, temporary immediate suspension, or revocation) in a conspicuous place in the center for two years. If a licensing action is accompanied by a maltreatment investigation memorandum, the investigation memorandum must also be posted with the licensing order.

Positive Supports Rule (PSR)

Minn. Stat. 245.8251, subd. 1

Subdivision 1. Rules governing the use of positive support strategies and restrictive interventions.

The commissioner of human services shall, by August 31, 2015, adopt rules to govern the use of positive support strategies, and ensure the applicability of chapter 245D prohibitions and limits on the emergency use of manual restraint and on the use of restrictive interventions to facilities and services governed by the rules. The rules apply to all facilities and services licensed under chapter 245D, and all licensed facilities and licensed services serving persons with a developmental disability or related condition, except child care is governed by section 245A.23. For the purposes of this section, "developmental disability or related condition" has the meaning given in Minnesota Rules, part 9525.0016, subpart 2, items A to E.

[245A.23] POSITIVE SUPPORT STRATEGIES; CHILD CARE.

(a) Programs under paragraphs (b) and (c) are exempt from the requirements under Minnesota Rules, chapter 9544.

(b) Programs licensed as family child care or group family child care under Minnesota Rules, chapter 9502, that care for a child with a developmental disability or related condition must comply with the individualized education program (IEP) developed in accordance with section 125A.08, if one exists for a child.

(c) A program licensed as a child care center under Minnesota Rules, chapter 9503, that cares for a child with a developmental disability or related condition must comply with the individual child care program plan under Minnesota Rules, part 9503.0065, subpart 3, if one exists for the child.

(d) When providing services to a child with a developmental disability or a related condition, staff at a program licensed under paragraphs (b) and (c) are prohibited from using procedures identified in section 245D.06, subdivision 5.

Overview: In August 2015, the Positive Supports Rule (PSR) took effect, which required all DHS license holders, including licensed child care centers, to use "positive support strategies" when providing services to adults and children, with developmental disabilities or related conditions. The Positive Supports Rule required providers to take additional training, complete more documentation, and follow certain procedures.

The 2018 Legislature changed the law to exempt licensed child care providers from the Positive Supports Rule, including the training requirements. Instead, child care providers who care for a child with developmental disabilities or related conditions must develop an Individual Child Care Program Plan and comply with additional prohibited procedures for staff.

Positive Supports Rule (PSR), continued

What do providers need to do?

As has long been true under Rule 3 ([9503.0065, subpart 3](#)), providers who care for a child with special needs, including a child with a developmental disability or related condition, must develop and follow the child's Individual Child Care Program Plan (ICCPP). The plan should be developed in coordination with parent/legal guardians and reports from other professionals as applicable, such as a licensed physician, licensed psychiatrist, licensed psychologist, school district personnel, etc.

In addition, the new law has special protections for a child with a developmental disability or a related condition.* Staff cannot separate a child with a developmental disability or related condition from the group. However, a staff person can ask the child to "take a break" or to "cool down" and the child can voluntarily choose to separate themselves from the group.

As is true for all children, remember to follow the child care licensing requirements for behavior guidance, including the prohibition against withholding food, light, warmth, clothing and medical care as a form of punishment ([9503.0055](#)).

*These special protections apply to children who:

- Have a developmental disability, which means that they have been diagnosed as having an intellectual disability that substantially limits their cognitive functioning and other skills, including communication and self-care, or
- Have a "related condition," which means that they:
 - have been diagnosed with a condition (such as cerebral palsy, Prader-Willi syndrome, or autism spectrum disorder) that closely resembles a developmental disability because the condition impairs general intellectual functioning or adaptive behavior similar to that of persons with developmental disabilities,
 - and**
 - require treatment or services similar to those required for children with developmental disabilities.

A diagnosis alone does not determine if a child has a related condition because the issues presented may be relatively minor or not impair the child. Talk with the child's parent or legal guardian about the child's development.

Providers who need support working with children with developmental disabilities or related conditions, or children with challenging behaviors, should visit the website for the Center for Inclusive Child Care, <https://www.inclusivechildcare.org/>.

Additional flexibility for staff qualifications

Minn. Stat. 245A.04, subd. 9:

Subd. 9. Variances

(a) The commissioner may grant variances to rules that do not affect the health or safety of persons in a licensed program if the following conditions are met:

(1) the variance must be requested by an applicant or license holder on a form and in a manner prescribed by the commissioner;

(2) the request for a variance must include the reasons that the applicant or license holder cannot comply with a requirement as stated in the rule and the alternative equivalent measures that the applicant or license holder will follow to comply with the intent of the rule; and

(3) the request must state the period of time for which the variance is requested.

The commissioner may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any applicant or license holder must inform the commissioner of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the commissioner shall result in revocation of the permanent variance and may be cause for other sanctions under sections [245A.06](#) and [245A.07](#).

The commissioner's decision to grant or deny a variance request is final and not subject to appeal under the provisions of chapter 14.

(b) The commissioner shall consider variances for child care center staff qualification requirements under Minnesota Rules, parts 9503.0032 and 9503.0033, that do not affect the health and safety of children served by the center. A variance request must be submitted to the commissioner in accordance with paragraph (a) and must include a plan for the staff person to gain additional experience, education, or training, as requested by the commissioner. When reviewing a variance request under this section, the commissioner shall consider the staff person's level of professional development, including but not limited to steps completed on the Minnesota career lattice.

Overview: In an effort to respond to child care center workforce shortages around the state and recognize quality, non-credit-based professional development training that does not meet current Rule 3 staff qualification requirements, DHS will consider additional variances for staff qualification requirements. When reviewing a variance request, DHS will consider the staff person's experience and level of professional development, including the steps completed on the Minnesota Career Lattice.

Additional flexibility for staff qualifications, continued

What do providers need to do?

Providers can request a variance for staff qualification requirements for staff who have completed quality, non-credit-based professional development training that is not currently recognized for qualification purposes in Rule 3. DHS Licensing worked with DHS Child Development Services staff to create a [list](#) of approved training organizations taken from the training organizations approved by [Achieve](#), the Minnesota Center for Professional Development.

You can now request a variance for an individual who has completed courses from the list of approved training organizations. When reviewing these types of variance requests, DHS will consider the individual's experience and level of professional development. As part of the variance, the individual will be required to complete a number of hours of training from the approved list each calendar year. This training will also count toward the individual's annual in-service training hours.

When requesting one of these variances, you need submit the following to your licensor:

1. [Variance Request Form](#). Please be sure to complete all sections.
2. A completed [Personnel Information Form](#) for the individual for whom you are requesting a variance that clearly shows the individual's child care experience to date.
3. Documentation of the individual's completed professional development training from the list of approved training organizations, such as a Learning Record from Develop or training certificates.
4. [Professional Development Plan](#) signed by both the director and the individual for whom the variance is being requested.

As before, you can still submit a variance request for an individual who is working toward meeting one of the options in Rule 3 for qualification as a director, teacher, or assistant teacher. Those types of variance requests will still be considered.

Reasonable cause for FBI background studies

Sec. 5. Minnesota Statutes 2016, section 245C.02, is amended by adding a subdivision to read:

Subd. 15a. Reasonable cause to require a national criminal history record check. (a) "Reasonable cause to require a national criminal history record check" means information or circumstances exist that provide the commissioner with articulable suspicion that further pertinent information may exist concerning a background study subject that merits conducting a national criminal history record check on that subject. The commissioner has reasonable cause to require a national criminal history record check when:

(1) information from the Bureau of Criminal Apprehension indicates that the subject is a multistate offender;

(2) information from the Bureau of Criminal Apprehension indicates that multistate offender status is undetermined;

(3) the commissioner has received a report from the subject or a third party indicating that the subject has a criminal history in a jurisdiction other than Minnesota; or

(4) information from the Bureau of Criminal Apprehension for a state-based name and date of birth background study in which the subject is a minor that indicates that the subject has a criminal history.

(b) In addition to the circumstances described in paragraph (a), the commissioner has reasonable cause to require a national criminal history record check if the subject is not currently residing in Minnesota or resided in a jurisdiction other than Minnesota during the previous five years.

Note: The section above consolidated existing language from other places in statute. Item (4) and paragraph (b) are generally the section's new concepts

Overview: The 2018 law requires individuals affiliated with a DHS-licensed program, including a licensed child care center, to have a fingerprint-based FBI check if the individual:

- Currently lives outside of Minnesota or
- Has lived outside of Minnesota in the last five years.

This change is effective starting in August 2018 for all background studies conducted by DHS and is separate from enhanced study requirements for child care programs. Any studies submitted starting in August will automatically include an FBI criminal record check if the person currently lives outside of Minnesota or has lived outside of Minnesota in the last five years. More information about these FBI studies will be posted on the DHS website and in NETStudy 2.0.

What do providers need to do?

Providers do not need to take any action at this time or do anything differently. In addition, until the enhanced child care studies start, there will not be changes in background study fees, who needs a study, or when a study is required.

Implementation of enhanced background studies

To see the statutory changes passed during the 2017 and 2018 Legislative Sessions, please see:

- [Laws of Minnesota, 2017 1st Special Session, Chapter 6, Article 16, Sections 18-42](#)
- [Laws of Minnesota 2018, chapter 166](#)

Overview: In 2017 and 2018, the Legislature made changes to state law that require enhanced background studies for all licensed child care programs. These changes were made to comply with federal law. They broaden the number of databases that are reviewed during a background study. Further, studies will include a finger-print based search of the FBI criminal records.

Additionally, when the enhanced studies become available, there will be new permanent disqualifications for serious crimes that apply to child care programs (for a list of disqualifying crimes or conducts, please see “What do providers need to do”). While these crimes were previously disqualifications under state law, some of them did not permanently disqualify the person. This means that a staff person working in the program may have a conviction for a crime, but it was long enough ago that the person was not disqualified from providing care or having access to the children in care. However, with the new federal and state standards, this person would now be permanently disqualified as a part of the enhanced study. There will be an opportunity to request reconsideration for this disqualification, but only if the person was not actually convicted of the crime.

When the new studies are implemented, the fee will change to:

- \$40 for adults, plus a fingerprinting fee of \$9.10
- \$20 for minors, plus a fingerprinting fee of \$9.10.

What do providers need to do?

Providers should continue to submit background studies as you have been. Providers will be notified when the enhanced studies are available for your program.

For new staff: Beginning October 2018, any study initiated by a licensed child care center will include the new study elements, including the finger-print based FBI criminal record check and a search of maltreatment records in any state where the person has lived in the last five years.

For existing staff: All existing staff will be required to have a study by Fall 2020 on a schedule to be determined. Providers will be notified with plenty of advance notice about when the program will be required to have new studies for all existing staff. Once the enhanced studies are available, if a provider chooses, enhanced studies on existing staff can be initiated ahead of the proposed schedule.

Additional information on the following topics is available on the DHS webpage (<https://mn.gov/dhs/general-public/background-studies/faqs/ccdbg/>) including:

- [Draft guidance on who needs a study](#) (To offer feedback about ways this guidance document can be improved, please send an email to DHS.CCDFReform@state.mn.us by September 1, 2018. A final version of this guidance will be posted this fall.)
- The different components of a background study
- Frequently asked questions, including the list of new disqualifying crimes and conducts.

Additional information

Plain language communications

When issuing a correction order, order of conditional license, fine, revocation, or suspension, the law now requires DHS to write in plain language and provide the reasons for the correction order or licensing action. Additionally, DHS must use plain language when communicating with providers about changes to law or policy.

Information to be added to the Status of Child Care Report

DHS is required to add the following information to Status of Child Care Report that will be provided to the legislature in February 2019 and 2020:

- Administrative reforms DHS has taken or is in the process of taking
- An evaluation of other state's models to reduce the barriers and burdens for child care providers
- A summary of ideas from providers of administrative reforms that could be undertaken without legislative action
- A summary of the Department's outreach efforts
- The guidelines about the information that is posted on the Licensing Look-up website

Regional meetings for providers

DHS is required to hold regional meetings with child care providers to discuss the changes to the information that is being posted online and to gather input about potential future enhancements to the Licensing Information Lookup website. The regional meetings will be held during the fall and winter of 2018.

Sign up for email updates from DHS Licensing

Providers with licensed child care centers can now subscribe to the [Child Care Center email list](#) to receive periodic emails from DHS Licensing about the implementation of the legislative changes and other child care information.

Changes to Minnesota's Child Care Assistance Program and Parent Aware

For information about changes to Minnesota's Child Care Assistance Program and Parent Aware (Minnesota's quality rating and improvement system), please visit <https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/child-care-and-early-education/>.