

# Licensed Child Care Centers: Implementation plan for 2023 legislative changes

September 2023

New laws passed by the 2023 Legislature include several provisions that impact licensed child care centers. This document outlines an overview of each change, instructions for what centers need to do about the change, the date the change is effective, and guidance on how licensors will monitor these changes.

The hyperlinks within this document direct centers to where the new law can be found. When reviewing the new law:

- Text that is stricken with a line through it reflects words that are being removed from the law.
- Text that is underlined reflects words that are being added to the law.
- Text that is unchanged reflects what the law was before and continues to be the law.

Later this year, the Minnesota Office of the Revisor of Statutes will update the statute sections on their website to reflect the new laws.

## Staff distribution

### Overview

Temporary changes were made to allow additional staff distribution flexibility during morning arrival and afternoon departure times. This is the same information that was shared in the [June 13, 2023 GovDelivery email](#) to child care centers. The new language is similar to the staff distribution modifications that were in place during the COVID-19 peacetime emergency, however, there are some important differences. Under the new language, an aide who is substituting for a teacher during the morning arrival or afternoon departure time must be at least 18 years old, have worked in the center for at least 30 days, and have completed all of their orientation training and all training that is required within the first 90 days of employment. The requirement for the individual to have worked in the center for at least 30 days means the individual's first 30 days of employment.

See [MN Laws, Chapter 70, Article 8, Section 63](#).

**Effective date: July 1, 2023. Expires July 1, 2025.**

## What providers need to do

Centers may have an aide substitute for a teacher during morning arrival or afternoon departure time. A program must designate on the staffing pattern how they are applying the 25% flexibility. Centers must ensure the aide is at least 18 years old, has worked in the center for at least 30 days, and has completed all training required at orientation and within the first 90 days of employment.

## How licensors will monitor for compliance

Licensors will check to make sure staff distribution requirements are met and that any aide used as a substitute for a teacher during morning arrival or afternoon departure meets the requirements in the new language.

## Prone restraint and contraindicated restraint prohibitions

### Overview

**Prone restraint prohibition.** A prone restraint is a physical hold or mechanical restraint that places a person in a face-down position. New requirements for all licensed and certified programs prohibit the use of prone restraints except in very specific brief instances. These exceptions include:

- a person rolling into a prone position during a restraint if the person is restored to a non-prone position as quickly as possible;
- holding a person briefly in a prone restraint to apply mechanical restraints if the person is restored to a non-prone position as quickly as possible; and
- holding a person briefly in a prone restraint to allow staff to safely exit a seclusion room.

**Contraindicated restraint prohibition.** Programs must not use any type of restraint that is contraindicated for a person's known medical or psychological conditions. In this context, "contraindicated" means the restraint could be harmful for children with certain medical or psychological conditions. If a restraint is contraindicated for a given child, it means the child's medical or psychological conditions rule out the use of that restraint due to the harm that would be caused. An assessment of any contraindications must occur prior to using restraints on a person and the program must document this determination.

See [MN Laws, Chapter 70, Article 17, Section 19 \(2023 245A.211\)](#).

**Effective date: July 1, 2023.**

## What providers need to do

Centers will need to update their behavior guidance policy and staff training materials to prohibit prone restraints and any contraindicated restraints, train staff on the changes, and document the training. If a child has a known medical or psychological condition, centers should include whether any type of restraint is contraindicated for their condition in the child's Individual Child Care Program Plan (ICCPP), as applicable. Centers should rely on existing documentation of medical or psychological conditions and any indication of contraindicated restraints. If the documentation of a child's medical or psychological condition does not indicate that a restraint is contraindicated, centers do not need to request further information from parents.

## How licensors will monitor for compliance

Licensors will look to see that the center's behavior guidance policy has been updated to specifically prohibit prone restraints and any contraindicated restraints, and staff have been trained on the changes. Licensors will continue to assess a center's compliance with ICCPP requirements.

## Non-profit controlling individuals

### Overview

The definitions for **owner** and **controlling individual** changed to include a nonprofit corporation as one type of owner of a licensed program and therefore also a controlling individual. Programs with a nonprofit corporation included as a controlling individual can change their board of directors without applying for a new license. This eliminates a burdensome and redundant licensing process for nonprofit corporations that other types of organizations do not have to complete. This change also clarifies the definition of a controlling individual by including the president and treasurer of the board of directors of a nonprofit corporation which were previously part of the owner definition.

See [MN Laws, Chapter 70, Article 17, Sections 9 and 10 \(2023 245A.02, subds. 5a and 10b\)](#).

**Effective date: July 1, 2023.**

### What providers need to do

License holders that are a nonprofit corporation and that are not listed as a controlling individual for the license will need to update their license information with DHS. To update this information, please contact the licensor for your program. If you do not know who your licensor is, email: [dhs.ccc.licensing@state.mn.us](mailto:dhs.ccc.licensing@state.mn.us). As the president and treasurer of the board of directors changes, license holders must update this information with DHS.

## How licensors will monitor for compliance

Licensors will verify ownership information when a nonprofit corporation applies for a new license. Licensors will continue to work with nonprofit corporations to ensure the president and treasurer of the board of directors are identified as controlling individuals.

## Definition of experience

### Overview

Legislative changes clarify and expand the definition of experience that can be counted toward teacher and assistant teacher positions. The expansion added/clarified experience as a teacher, assistant teacher, aide, or student intern in a licensed or certified child care center, family child care program (not only as the license

holder), public or nonpublic school, Tribally licensed child care program, and in a position providing direct contact services in a home or residential facility serving children with disabilities that requires a background study under Minnesota Statutes, Chapter 245C.03.

See [Minnesota Laws, Chapter 70, Article 8, Section 5](#).

**Effective date: October 1, 2023.**

### **What providers need to do**

Centers may hire someone as a teacher or assistant teacher whose experience meets this definition and aligns with the number of hours of experience required in Minnesota Rules 9503.0032 or 9503.0033. License holders are responsible for verifying an individual's experience. All areas of the [Personnel Information Form](#) must be filled out, including but not limited to, the individual's date of birth and the addresses of former employers.

### **How licensors will monitor for compliance**

Licensors will review the Personnel Information Form to ensure employees meet the qualifications, including experience required, for their position.

## **Prospective employee observation**

### **Overview**

For purposes of allowing a license holder to observe how a prospective employee interacts with children, new language allows a prospective employee to interact with children in a child care center for a period of time not to exceed two hours, without needing a background study, as long as the prospective employee is under continuous direct supervision and is not counted in the staff-to-child ratio.

See [Minnesota Laws, Chapter 70, Article 8, Section 26](#).

**Effective date: October 1, 2023.**

### **What providers need to do**

As a part of the hiring process, centers may observe a potential employee in a classroom for two hours or less but must keep the potential employee under continuous direct supervision and cannot count the individual in staff-to-child ratios.

### **How licensors will monitor for compliance**

Licensors will continue to monitor staffing and background study requirements as part of licensing visits, including classroom observation and review of personnel records.

# Infant safe sleep

## Overview

New language has been added to Minnesota Statutes, section 245A.1435 to align with the American Association of Pediatrics' (AAP) recommendations for infant safe sleep and to provide greater clarity for license holders. When an infant younger than one year of age is placed down to sleep, the infant's pacifier cannot have anything attached to it and the infant's clothing or sleepwear cannot have weighted materials, a hood, or a bib. An infant younger than one year of age may wear a helmet while sleeping if the license holder has specific documentation. A plain language definition of swaddling has been incorporated into the statute, as well as clarity on the type of sleepwear that is appropriate for swaddling. License holders have the option to request a variance to permit the use of a cradleboard, if requested by a parent or guardian for a cultural accommodation. **Effective January 1, 2024.** [Chapter 70, Article 8, Sections 4, 19, 20, 21 \(2023 245A.02, subd. 5b; 245A.1435; 245A.146, subd. 3\)](#)

## What providers need to do

Centers must ensure staff are familiar with the new language and do not place infants under one year of age down to sleep wearing clothing or sleepwear that has weighted materials, a hood, or a bib; or a pacifier with an attachment. A pacifier must continue to be labeled with the child's name or other individual identifier, but the label must be in good condition and securely adhered to the pacifier. There are different ways centers may label a pacifier. For example, centers may label the pacifier directly with the child's first and last name, or may create a chart or system with numbers, colors, or the child's initials to label and match pacifiers with the appropriate child.

If a swaddle is used, it must be wrapped over the infant's arms, fastened securely across the infant's upper torso, and not constrict the infant's hips or legs. Like other clothing or sleepwear, a swaddle cannot have weighted materials, a hood, or a bib.

If an infant under one year of age requires a helmet for their development and would wear it while being placed down to sleep, centers must use the DHS form to obtain signed documentation from a physician, advanced practice registered nurse, physician assistant, licensed occupational therapist, or licensed physical therapist. The DHS helmet documentation form will be developed and shared prior to the January 1, 2024, effective date.

If a parent or guardian requests the use of a cradleboard for a cultural accommodation, centers may request a variance to Minnesota Statutes, section 245A.1435. The DHS cradleboard variance request form will be developed and shared prior to the January 1, 2024, effective date. If a variance is granted, the license holder must check the cradleboard not less than monthly to ensure it is structurally sound and there are no loose or protruding parts and maintain written documentation of this review. A form to track the monthly safety checks will be developed and shared prior to the January 1, 2024, effective date.

The DHS Sudden Unexpected Infant Death Training in Develop will be updated in the coming months to reflect the new legislative language.

## How licensors will monitor for compliance

During licensing visits, licensors will observe the infant classroom for compliance and review documentation of the monthly cradleboard safety checks, if applicable. Upon receipt of a cradleboard variance request, a licensor will work with the license holder to ensure all requirements are met.

## Additional information

### Additional staffing

The DHS Licensing Division received funding to allow us to hire additional child care center licensors to help the department meet federal requirements for annual inspections and provide technical assistance and guidance to child care center applicants and license holders.

### Department of Children, Youth, and Families

The state of Minnesota is working on a transition to create a new Department of Children, Youth, and Families (DCYF). Several programs serving children and youth that are currently the responsibility of the Minnesota Departments of Human Services, Public Safety, and Education will be included in the transfer to the new Department. A commissioner for this new cabinet-level agency will be appointed by July 1, 2024, with the complete transfer of programs completed by July 1, 2025. There are no immediate changes. A [new Implementation Office](#) within Minnesota Management and Budget will guide the transition, in consultation with the relevant departments. Licensing will share more information, as it becomes available.

### Background studies

Updates on legislative changes related to background studies are posted on the ["What's new" for background studies webpage](#).