

Position Statement

2020

End Delegation of Authority to Counties to Issue Variances to Family Child Care Licensing Regulations

Proposal

Issue: County Human Services is responsible for issuing variances to family child care providers. There is a perception among some family child care provider groups of inconsistent policies between counties regarding regulatory enforcement for licensed programs related to issuance of variances, especially to allow enrollment of an additional infant over age restrictions and/or total license capacity. Counties recognize the shortage of child care, especially for infants, in many regions. Additionally, the state of peacetime emergency due to COVID-19 has increased shortages of child care in many areas. While counties recognize the shortage of care, 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 lessens counties' culpability from approving variances.

Implementation Strategy: 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. MN Statute 245A.16, subd. 1 (8) would be amended by striking the last sentence, thus indicating all variance for child care age restrictions and capacity could only be provided by the Commissioner.

Systemic Priority Alignment (highlight all that apply and explain why)

- Equity
- Integrated Services
- Fiscal Framework

From the GARE Toolkit (See www.racialequityalliance.org): What are the racial equity impacts of this particular decision? Who will benefit from or be burdened by it? Are there strategies to mitigate unintended consequences?

Comments: The current process allows for local determination in development of policies on variances. This local discretion creates disparities across county lines, with one county potentially having a more liberal policy than its neighbor. Depending on the policy, there may be increased disparities in what child care providers receive variances and thus more disparities for the families the child care providers serve.

Relevant Committee (highlight all that apply and explain why)

- Children's Services
- Self-Sufficiency

Why: Child Care providers serve children across the state, including families with lower income who require child care in order to maintain employment and financial stability. Families seek basic sliding fee child care

assistance to help cover child care costs to help them toward financial self-sufficiency. Having equal access to child care resources can help maintain employment opportunities across the state.

Rationale/Background:

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. As a result, the 2020 Legislature required as of January 1, 2021 each county post their policies for issuing variances on their websites and provide to child care providers. While a standardized format for the county policies was provided, each county is still required to have their own policies and to issue variances consistent with their policies. 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.



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Approved on: