



Implementation Plan for 2018 Legislative Changes for Licensed Family Child Care Providers

Minnesota Department of Human Services
Office of Inspector General
Licensing Division

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Introduction

The 2018 Legislature changed several laws that impact family child care programs, 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,
- what the change means for providers, and
- instructions for family child care licensors about how and when to monitor these changes.

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.

Update on DHS Licensing's Family Child Care Units

In order to enhance partnership with licensors as well as improve consistency statewide, the Department of Human Services (DHS) Family Child Care Unit was split into two units:

- The Family Child Care Operations Unit provides oversight and technical assistance to all 87 counties regarding family child care licensing activities, including conducting investigations and recommending licensing actions to DHS. The unit reviews agency recommendations, obtains additional information when needed, and issues licensing actions based upon the nature, severity, and chronicity of violations that have occurred in a family child care program.
- The Family Child Care Outreach Unit provides regionally based training and technical assistance for family child care licensors in all 87 counties, as well as stakeholder engagement with providers, provider organizations, and other public and private entities involved in delivery and support of child care services. The unit also collaborates with other DHS divisions whose work affects child care providers, including the child care policy area and the child care assistance program.

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 their program location.

What do providers need to do?

As of August 1, 2018, providers may remove any correction orders that are posted at their family child care program. 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 for two years.

What do licensors need to do?

As of August 1, 2018, licensors no longer need to ensure that correction orders are posted on site when visiting providers. This item will be removed from the Electronic Licensing Inspection Checklist Information (ELICI) to facilitate the licensors' work.

Insurance notification requirements

Minn. Stat. 245A.152, para (b)

(a) A license holder must provide a written notice to all parents or guardians of all children to be accepted for care prior to admission stating whether the license holder has liability insurance. This notice may be incorporated into and provided on the admission form used by the license holder.

(b) If the license holder has liability insurance:

(1) the license holder shall inform parents in writing that a current certificate of coverage for insurance is available for inspection to all parents or guardians of children receiving services and to all parents seeking services from the family child care program;

(2) the notice must provide the parent or guardian with the date of expiration or next renewal of the policy; and

(3) upon the expiration ~~date of the policy or a change in coverage~~, the license holder must provide a new written notice ~~informing all parents or guardians of children receiving services of the change and indicating whether the insurance policy has lapsed or whether the license holder has renewed the policy.~~

~~If the policy was renewed, the license holder must provide the new expiration date of the policy in writing to the parents or guardians.~~

~~If a license holder has a continuous insurance policy that renews each year, the license holder may indicate the policy's renewal date in the initial written notice to parents and guardians. This initial written notice shall remain valid and no further notices are required until the insurance coverage changes or the policy lapses.~~

(c) If the license holder does not have liability insurance, the license holder must provide an annual notice, on a form developed and made available by the commissioner, to the parents or guardians of children in care indicating that the license holder does not carry liability insurance.

(d) The license holder must notify all parents and guardians in writing immediately of any change in insurance status.

(e) The license holder must make available upon request the certificate of liability insurance to the parents of children in care, to the commissioner, and to county licensing agents.

(f) The license holder must document, with the signature of the parent or guardian, that the parent or guardian received the notices required by this section.

Overview: Providers with continuous insurance coverage only need to notify parents/guardians if their insurance coverage changes, instead of sending a new notice each year.

Insurance notification requirements, continued

<p>What do providers need to do?</p> <p>When a child is enrolled, providers are still required to notify parents and guardians whether or not the provider has liability insurance. This notice is part of the Family Child Care Admission and Arrangements form (see Family Child Care Admission and Arrangements form).</p> <p>For providers with continuous insurance coverage: The provider only needs to provide notice to parents and guardians if the provider's insurance coverage lapses (coverage ends) or changes. To do this, the provider must use the form developed by the commissioner (see Liability Insurance Notice to Parent/Guardians form).</p> <p>For providers who do not have liability insurance: The provider must provide an annual notice to parents and guardians that the provider does not carry liability insurance, on the form developed by the commissioner (see Liability Insurance Notice to Parent/Guardians form).</p>
<p>What do licensors need to do?</p> <p>Licitors will change how they monitor for compliance with this requirement.</p> <p>Licitors will continue to monitor that parents and guardians received initial notice from providers as part of the Family Child Care Admission and Arrangements form at enrollment. If the provider does not have an Admission and Arrangements form for each child, a correction order must be issued.</p> <p>If the insurance information is missing from a child's Admission and Arrangements form, the licensor must issue a Fix-It Ticket (if possible, at the end of the licensing visit) using the Fix-It Ticket form.</p> <p>For providers with continuous liability insurance: Licitors will monitor for proof of the insurance. If the provider is unable to show proof of the insurance at the time of the licensing visit, the licensor must issue a fix-it ticket using the Fix-It Ticket form. If the insurance has lapsed (coverage ended) or has changed, the licensor will monitor for whether notice was provided to all parents and guardians. If notice was not given as required, a correction order must be issued.</p> <p>For providers without liability insurance: Licitors will monitor that parents and guardians were provided an annual notice, on the form developed by the commissioner, that the provider does not have liability insurance. If the notice was not given as required, a correction order must be issued.</p> <p>The Electronic Licensing Inspection Checklist Information (ELICI) tool will be updated to reflect the change in the notification requirements.</p>

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 family child care providers, to use "positive support strategies" when providing services to children and adults, with developmental disabilities or related conditions. The Positive Supports Rule required providers to take additional training, complete more documentation, and follow certain procedures when interacting with children and adults with a developmental disabilities or related conditions.

During the 2018 legislative session, licensed child care providers were made exempt from many aspects of the Positive Supports Rule, including the training requirements.

Positive Supports Rule (PSR), continued

What do providers need to do?

As has long been true under Rule 2 (9502.0405, subp. 5), providers who care for a child with a disability must follow written instructions provided by a parent for any special needs. These written instructions may be informal or may come in the form of an Individual Family Support Plan (IFSP), a 504 Plan, or an Individual Education Plan (IEP).

In addition, the new law has special protections for a child with a developmental disability or related condition.* Providers cannot separate them from the group. However, providers can ask the child to “take a break” or to “cool down” and/or the child can voluntarily choose to separate themselves from the group.

As is true for all children, remember to follow the following child care licensing requirements:

- administering medication (9502.0435, subp. 16)
- behavior guidance, including the prohibition against withholding food, light, warmth, clothing and medical care as a form of punishment (9502.0395)

* 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, and
 - require treatment or services similar to those required for children with developmental disabilities.

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 at <https://www.inclusivechildcare.org/>.

What do licensors need to do?

Licensors will ask the provider whether the provider cares for a child with a developmental disability or related condition. If so, the licensor will ask whether the child’s parent provided any written instructions for any special needs. If a child in care does have instructions for handling special needs, the licensor will discuss with the provider how the provider is following the written instructions.

If a provider is struggling to care for a child with a developmental disability or a related condition, or a child with challenging behaviors, the licensor may recommend that provider consult with the Center for Inclusive Child Care.

Additional flexibility for Class D providers

Minn. Stat. 245A.14, subd. 4a

Subd. 4a. Specialized infant and toddler family child care.

A group family day care program licensed as a class D specialized infant and toddler group family day care under Minnesota Rules, part 9502.0367, may operate as a class B specialized infant and toddler family day care program on days when only one caregiver is present.

Overview: Providers with a Class D Specialized Infant and Toddler license will be allowed to flex down to one caregiver on days that six or fewer children are in care. When flexing down, the provider must follow the ratio and age restriction requirements for a Class B license.

What do providers need to do?

As of August 1, 2018, Class D licensed providers who float down to one caregiver may do so provided they maintain the following ratio and distribution limits of a Class B license:

License Class	Total Capacity	Adult Caregivers	Restrictions
B1	5	1	Maximum of 3 children under school-age Maximum of 3 infants
B2	6	1	Maximum of 4 children under school-age Maximum of 2 infants

School-age child is defined as a child aged 5 – 11 years.

Infant is defined as a child ages 6 weeks to 12 months.

For providers that float down, they must be able to indicate the “license class” that they will operate under.

What do licensors need to do?

If only one caregiver is present when a licensor visits a Class D licensed provider, the licensor will apply the ratio and distribution requirements of a Class B license to determine compliance. If proper ratios or age restrictions are not maintained, a correction order must be issued.

Process for agencies recommending licensing actions to DHS

Minn. Stat. 245A.16, subd. 8

Subd. 8. Notice of county recommendation.

The county or private agency shall provide written notice to the license holder when the agency recommends a licensing action to the commissioner under subdivision 2 or subdivision 3. The written notice shall inform the license holder about the process for determining a licensing action and how the license holder will be notified of a licensing action determination. The notice shall include the following:

- (1) that the county or private agency made a recommendation to the commissioner to deny an application or suspend, revoke, or make conditional a license;
- (2) that the commissioner will review the recommendation from the county or private agency and then determine if a licensing action will be issued;
- (3) that the license holder will receive written notice from the commissioner indicating the reasons for the licensing action issued; and
- (4) instructions on how to request reconsideration or appeal, if a licensing action is issued.

County or private agency recommendations under this section are classified as confidential data under Minnesota Statutes, chapter 13, and may only be disclosed as permitted by law.

Overview: When licensors determine that a family child care provider should receive a licensing action more serious than a correction order (such as issuing a fine, or suspending, revoking, or making a license conditional), the agency makes a recommendation to DHS and DHS makes the final decision. The agency cannot tell the provider or anyone else which action they are recommending. This information is considered confidential.

Once an agency makes a recommendation to DHS, the agency sends the provider and parents or guardians of children in the program a notice that says:

1. the agency is recommending that DHS take a licensing action
2. DHS will review the recommendation and decide what to do
3. if a licensing action is issued, DHS will explain the reasons and provide instructions for how to appeal the decision.

Process for agencies recommending licensing actions to DHS, continued

<p>What do providers need to do?</p> <p>If the licensor makes a recommendation to DHS that the provider should receive a licensing action more serious than a correction order, the agency will notify the provider that a recommendation has been made and that DHS is reviewing the recommendation. Because the recommendation itself is classified as confidential under Minnesota law, the agency cannot inform the provider of the particular action that has been recommended.</p> <p>If the provider receives a licensing action from DHS, the licensing action will indicate the reasons the action was issued. It will also provide information about how the provider can appeal the licensing action.</p>
<p>What do licensors need to do?</p> <p>When a licensor makes a recommendation to DHS that a family child care provider should receive a licensing action (such as a fine, a conditional license, or that a license be suspended or revoked), the agency sends the provider and the parents and guardians of children in the program a written notice with the following information:</p> <ul style="list-style-type: none">• the agency is recommending that DHS take a licensing action• if a licensing action is issued, the action will be issued by DHS and• if a licensing action is issued, information about reconsideration or appeal rights will be provided. <p>Please note, the recommendation is confidential and legally cannot be shared with the provider or anyone else, except as authorized by law.</p> <p>An example of a written notice that agencies can send to providers and to parents and guardians is provided to licensors by DHS.</p>

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, and change which government entity conducts the background studies. In the future, studies will be conducted by DHS instead of by the licensing agency. In addition, studies will include a fingerprint-based search of the FBI criminal records. (Please note, background studies for minors may differ from those completed on adults. Most minors will have a name and date of birth-based study instead of a fingerprint-based study. Please see the next section for more information.)

Additionally, when the enhanced studies become available, there will also 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 serious crimes were previously disqualifications under state law, some of them did not permanently disqualify the person. This means that caregivers or household members may have a conviction for a crime, but it was long enough ago that they were not disqualified from providing care or having access to the children in care. However, with the new federal and state standards, this person will 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, and \$20 for minors.

Implementation of enhanced background studies, continued

What do providers need to do?

For new providers, caregivers, and household members: In October 2018, any study initiated for a licensed family child care program will include the new study elements described above. The enhanced studies will be conducted by DHS instead of by the licensing agency.

For existing providers: Starting with your next licensing renewal in or after January 2019, individuals affiliated with your licensed child care program will be required to have a new study before the licensing renewal process. Providers will be notified with plenty of advance notice when the enhanced studies are available and about the study submission process approximately 90 days before the license renewal is due.

Please note: Once the enhanced studies are available in October 2018, if you choose, you can work with your licensing agency to initiate enhanced studies on any individual associated with your program (including caregivers and household members) ahead of the proposed schedule.

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

- [Updated draft guidance on who needs a study](#)
- The types of study a minor may receive
- The different components of a background study
- Frequently asked questions, including the list of new disqualifying crimes and conducts.

Please note, draft guidance intended to help providers determine who needs a background study was recently updated to reflect changes to law made in 2018, as well as stakeholder feedback. If you would like to offer feedback about ways this updated 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.

What do licensors need to do?

Licensors should continue processing background studies as they have been until further notice is provided from DHS. More information will be made available in advance of the new studies becoming available to providers.

Background studies for minors

Minn. Stat. 245C.05, subd. 5a

Subd. 5a. Background study requirements for minors. (a) A background study completed under this chapter on a subject who is required to be studied under section 245C.03, subdivision 1, and is 17 years of age or younger shall be completed by the commissioner for:

(1) a legal nonlicensed child care provider authorized under chapter 119B;

(2) a licensed family child care program; or

(3) a licensed foster care home.

(b) The subject shall submit to the commissioner only the information under subdivision 1, paragraph (a).

(c) A subject who is 17 years of age or younger is required to submit fingerprints and a photograph, and the commissioner shall conduct a national criminal history record check, if:

(1) the commissioner has reasonable cause to require a national criminal history record check defined in section 245C.02, subdivision 15a; or

(2) under paragraph (a), clauses (1) and (2), the subject is employed by the provider or supervises children served by the program.

Overview: Historically, children ages 13 – 17 living in the household with a family child care program were required to have a background study based on their name and date of birth. In 2017, a law change would have required these children to have a background study based upon their fingerprints. The 2017 law never went into effect because DHS had not finished updating its computer system and did not require providers to meet the enhanced requirements.

After much conversation among providers, legislators, and DHS staff, the 2017 law was changed in 2018. Under the new law, most children (ages of 13 - 17) living in the household with a family child care program will continue to be required to have a background study based on their name and date of birth. There are a number of circumstances in which a child living in the household would be required to have a fingerprint-based FBI background study, once the enhanced studies for child care programs are available.

The new law also capped the cost of enhanced background studies for children at \$20, unless a fingerprint-based FBI background study is required (in which case an additional fingerprinting fee is also required).

Background studies for minors, continued

What do providers need to do?

The 2017 law that required minors to have a background study based upon their fingerprints never went into effect.

As discussed in the section above, starting at the provider's next license renewal in or after January 2019, all individuals affiliated with the licensed family child care program, including minors, will be required to obtain new background studies through DHS. Providers will be notified with plenty of advance notice when the new studies are available and about the study submission process approximately 90 days before the license renewal is due.

Most children living in the household ages 13-17 will receive a name and date-of-birth based study. A fingerprint-based FBI check will be required for children living in the household if they meet any of these requirements:

- They supervise children, or
- They are employed by the child care provider, or
- They live outside of Minnesota, or
- They have lived outside of Minnesota at any time in the last five years, or
- They have a Minnesota criminal record, or
- There is reasonable cause to believe that they may have a criminal record in another state.

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

- [Updated draft guidance on who needs a study](#)
- The types of study a minor may receive
- The different components of a background study
- Frequently asked questions, including the list of new disqualifying crimes and conducts.

What do licensors need to do?

Licensors should continue processing background studies as they have been until further notice is provided by DHS. More information will be made available in advance of the new studies becoming available to providers.

Additional information

Plain language communications

When issuing a correction order, order of conditional license, fine, revocation, or suspension, the law now requires the licensing agency and DHS to write in plain language and provide the reasons for the correction order or licensing action. When informing family child care license holders of changes to laws or rules, the summary of the changes to the laws or rules must also be in plain language.

Inspection information posted on website

In compliance with federal law, DHS is required to post more information on the Department's Licensing Look-Up web site about inspections of child care providers, the date of the inspection, any violations found and how they are being addressed. This information began to be posted for family child care providers starting May 11, 2018.

Printed copies of website posting guidelines

DHS is required to provide each licensed child care provider with a printed copy of the *Guidelines for the Posting of Child Care Licensing Information*, which describes the type of public child care licensing information that is posted on the Department's Licensing LookUp webpage. The guidelines describe the changes and improvements being made to the way that child care licensing information is displayed and when those changes take effect. Providers should have received copies in the mail in May. Providers who need an additional copy can access the [Guidelines for the Posting of Child Care Licensing Information](#) on the DHS website.

Regional stakeholder meetings

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

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

Sign up for email updates from DHS Licensing

Family child care providers can now subscribe to the [Family Child Care email list](#) to receive periodic emails from DHS Licensing about the implementation of the legislative changes and other family 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/>