Minnesota Child Care: An Overview

Child care providers are in a unique position to address the childhood obesity epidemic and tobacco-related health hazards. The Public Health Law Center has developed a series of resources designed to inform and support Minnesota efforts to cultivate child care settings that promote healthy eating, positive exercise habits, reduced screen time, and tobacco-free environments. This fact sheet outlines how child care is defined and regulated in Minnesota.

What is child care?

Under Minnesota law, child care means the care of a child, on a regular basis, by someone other than a legal guardian or eligible relative caregiver, or the spouse of a legal guardian or eligible relative caregiver. The care can take place in or outside the caregiver’s own home for any part of a 24-hour day.

What are child care programs?

In Minnesota, child care programs are established to promote the physical, intellectual, social, and emotional development of a child for the part of the day when parents are not present. A child care program requires the organization of activities, personnel, materials, and equipment within the facility.
Are there different types of child care programs?

Yes, there are several types of child care programs in Minnesota. The two main categories for children ages 0-5 that require a license are: (1) family child care homes and (2) child care centers. A licensed family child care provider is a provider that offers child care in a residential home for any part of a 24-hour day. Centers are located in non-residences and are allowed to care for a larger number of children than family child care. Centers and licensed family child care are subject to different sets of regulations.

Who is required to be licensed?

Generally, any individual, group, or organization who wants to operate a residential or a nonresidential child care program must be licensed by the Minnesota Department of Human Services (DHS). DHS oversees the licensing of the child care centers, and contracts with county agencies to license family child care providers. There are certain types of child care programs that are exempt from human services licensing. Some examples of programs that do not require licensure include:

- Programs operated by public schools for children 33 months or older;
- Programs that care for children for less than 3 hours a day while a parent is in the same building (shopping center drop-in care);
- Recreation programs operated by the park and recreation board;
- Head Start programs which operate for less than 45 days a year; and
- Certain child care provided during religious services.

While these exempt programs are not required to be licensed by DHS, most are regulated by another entity.

Some of these exempt programs chose to obtain a license, even though they are not required by law.

How is the child care setting regulated in Minnesota?

Child care is regulated by the three branches of government: legislative, executive, and judicial. The legislative branch has the power to pass, amend, or repeal laws (Figure 1). The type of law created by a legislature is called a statute. The executive branch (e.g. state agencies, such as the Department of Human Services, the Department of Education, or the Minnesota Department of Health), has the authority and responsibility to run the day-to-day operations of the state by implementing regulations and non-binding statements of policy. The judicial branch interprets statutes and regulations if needed through court cases.
**What are statutes?**

Statutes are written laws passed by a legislature. Statutes deal with specific situations and can cover many different topics; typically they command or prohibit something, or declare policy. Some statutes, called enabling statutes, grant authority to executive agencies to regulate a particular setting or take certain actions. In other words, the legislature will pass generalized laws on a topic, and then will use an enabling statute to delegate power to executive agencies to implement regulations to fill in the gaps.

**What are regulations?**

Minnesota uses regulations and rules interchangeably. Rules and regulations are any Minnesota statements adopted to implement, enforce or administer a specific law or to govern its organization or procedure. The power to create regulations is given to the agency by the legislative body through statute. Regulations, which have the force of law, fill gaps in the legislation and help agencies carry out their duties.

**How are regulations passed in Minnesota?**

The process of making a regulation or rule in Minnesota is complicated and can take a minimum of 3–18 months depending on whether the rule requires a hearing (Figure 2).

**Are there any other ways that agencies help implement and enforce the laws?**

Minnesota state agencies create other forms of written policy guidance that are not considered rules. These are often not legally enforceable, but offer guidance to key stakeholders. Some examples of written policy that do not have to go through the rule-making process include rules relating to the internal management that do not affect the rights or procedures available to the public, certain information on application forms, curriculum for training internal staff and certain procedures for intergovernmental data sharing. In addition, some statutes specifically authorize state agencies to issue non-legally binding guidelines as appropriate.

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**FIGURE 2: Rulemaking Progress Chart, 2012**

- **Governor’s Office (GOC) Preliminary Review**
- **Request for Comments**
- **Agency Develops Rules and SONAR**
- **GOV Review**
- **Notice of Intent to Adopt Rules**
- **GOV Final Review**
- **Adopt Without a Hearing**
- **Adopt with a Hearing**
- **MDH Files Order Adopting Rules with OAH**
- **OAH Approves and Files with Secretary of State**
- **GOV Veto Period**
- **Published Order Adopting Rules**

**Timelines:**
- Minimum 60-day comment period after the Request for Comments before publishing Notice of Intent to Adopt Rules.
- Minimum 30-day comment period after publishing the Notice of Intent to Adopt Rules before adopting rules.
How does the state legislature regulate child care settings in Minnesota?

The Minnesota Legislature has enacted a series of statutes regulating the child care setting. These statutes delegate authority to the Commissioner of the DHS to implement these laws, establish a licensing structure and outline specific safety standards, such as training requirements about the risk of sudden infant death syndrome, crib safety requirements, the dangers of shaking infants and young children, and fire safety issues.

The Legislature has granted broad authority to the DHS, an executive agency, to implement child care regulations.

What does the legislature require of the executive branch to do?

The enabling statute directs DHS to adopt rules to “govern the operation, maintenance, and licensure” of child care operations. The law specifically states the DHS “shall give preference in rule to standards that describe program outcomes and the practices that have been shown to result in the desired program outcomes.” The statute also allows the DHS to use model program standards. Finally, the statute outlines the basic licensing standards that the DHS must address in the rules. These basic standards include:

- standards for adequate staffing that take into account the age distribution and severity of the disability of persons served by the program;
- safety standards that take into account the size and conditions of the physical plant and studies of fire safety including studies of the interaction between fire detection factors, fire spread factors, and evacuation factors in case of a fire;
- standards for program services that describe, when appropriate, adequate levels of shelter, nutrition, planned activities, materials, and qualifications of individuals responsible for administering and delivering program services;
- standards that describe the characteristics of the settings where program services are to be delivered; and
- health and sanitation standards.

Does state law authorize the use of other written forms of guidance beyond rules and regulations?

Yes, the statute also allows for DHS to create “interpretive guidelines” for the regulation of the child care setting. Interpretive guidelines “means a policy statement that has been published pursuant to section 245A.09, Subd. 12, and which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are allowed to be used as information and guidance by consumers, providers of service, county agencies, the DHS, and other concerned parties.”
How is the child care setting regulated in Minnesota by the judicial branch?

Minnesota courts are tasked with interpreting and enforcing state statutes and agency rules. The courts issue their interpretations and orders through case opinions, or case law. Generally, the Minnesota case law relevant to child care settings addresses issues such as: whether the DHS appropriately revoked a child care license; whether DHS has interpreted the criminal background check requirements; or whether DHS or others are liable for civil damages relating to injuries suffered while in a child care setting. In one 1987 case, the court invalidated a portion of DHS’s licensing rules based on a finding that DHS did not follow the appropriate rule making procedure.22 DHS reissued rules pursuant to the appropriate procedure shortly thereafter.

Where can I find the DHS regulations that apply to child care settings?

The Minnesota Legislature has delegated the power and responsibility to DHS for implementing and enforcing regulations that govern the day-to-day operations of child care settings in Minnesota. DHS’s child care regulations can be found in C has a series of regulations that governs the child care setting including Minnesota Rules Chapter 9502 (for family child care homes) and Chapter 9503 (for child care centers).23 It appears that DHS has not issued any interpretive guidelines the regulations contained in Chapter 9502 and Chapter 9503.
Endnotes

2 Id.
3 Minn. R. 9503.0005(7) (2010).
4 Minnesota law refers to day care homes in statute and regulation, but this fact sheets utilizes the industry used term “licensed family child care providers.” Licensed family child care is separated into two different categories, depending on size. A “family day care” provides care for no more than ten children at once, while a “group family day care” provider can have up to 14 children at one time. Minn. R. 9502.0315(11), (13) (2007).
5 Minn. R. 9502.0315(9) (2007).
6 Minn. R. 9503.0005(5) (2010).
7 Minn. Stat. § 245A.03 (2010).
8 There are many other child care settings that are exempt from licensure, including but not limited to: programs for children such as scouting, boys club, girls club, sports, and arts programs (as long as care is for less than a cumulative total of 30 days per year); camps licensed by the commissioner of health; religious instruction for school-age children; cultural or educational exchange programs for school-age children; and an accredited non-public school program that serves children 33 months or older, for no more than 4 hours per day per child, with no more than 20 children at any given time.
16 Minn. Stat. §§ 245A.1435, 245A.1444 (2010). (The statute references Sudden Infant Death Syndrome, although the recent terminology has changed to Sudden Unexpected Infant Death.)
21 Minn. Stat. § 245A.02(7b) (2010).
22 Handle With Care, Inc. v. Dept of Human Services, 393 N.W.2d 421 (Minn. Ct. App. 1986), rev'd 406 N.W.2d 518 (Minn. 1987).
23 The majority of these regulations have not been updated since 2007, although a few child care center regulations were changed in 2010.