

# Pennington County Human Services Variance Guidelines

## WHAT IS A VARIANCE?

A variance is the written tool to be used for requesting **PRIOR** authorization to allow for a **SHORT-TERM, TEMPORARY**, deviation from a part of the licensing rule.

## HOW DO I REQUEST A VARIANCE?

The license holder must request the variance prior to the situation where it is necessary in accordance with legally required variance standards and procedures, MN Rules, part 9502.0335, subparts 8 and 8a. Contact your daycare licensor or go to the DHS provider webpage to obtain the appropriate variance request forms.

The variance form must be complete and accurate according to the variance instructions. The agency shall grant or deny the request and mail the written decision to the provider within 30 days from the date received.

## LIMITATIONS

1. The variance is only valid for the particular child listed on the variance.
2. No variance can be approved retroactive to receiving the written request.
3. Any variance must be posted (without any names) in a conspicuous place for parent/guardian to view for the entirety of the variance.
4. It may be required by the licensor that all parents have signed their approval on the Variance Request Form.
5. No variance shall ever allow an overall capacity of more than 14 children, per MN Dept. of Human Services Division of Licensing. A provider that wants to serve more than 14 children at any time will be directed to DHS to apply for a Child Care Center License.
6. No variance shall exceed 90 days of the initial variance without good cause, or past the license holder's license expiration date.
7. No variance shall be approved for more than 2 infants without consideration of the total numbers in the program and a second adult caregiver may be required.
8. A variance request for capacity shall not be given in the first year of licensing.
9. A variance may be denied to a provider who has had any previous licensing infractions.
10. It will be the agency director's decision on granting any variance to a dual license holder.

Pennington County Human Services is the delegated authority, by the Commissioner of Human Services, to issue all variances for licensed family childcare **with the exception of the following**:

- A. Dual Licensure (MN Statute 245A.16 subd. 1 (a) (1))
- B. Disqualification Factor (MN Statute 245A.16 subd. 1 (a) (5) and subd. 1 (a) (7), MN Rules 9502.0335 subp. 6, and MN Rules 9555.612 subp. 4)

Requests for variances to these Statute/Rule Parts should still be sent to the Pennington County Human Services Licensing Division. However, it will then be forwarded, by the licensor, to the Department of Human Services for approval or denial.

## WHAT IF I NO LONGER NEED THE VARIANCE?

Contact your licensor, in writing or by email, of the variance cancellation.

## **EMERGENCY VARIANCE**

In order to apply for an emergency variance, the provider will need to obtain the Variance Request Form on the DHS provider webpage and sent to the Pennington County Licensing Division. The agency shall grant or deny the request and email the written decision to the provider within 2 days. Situations for an emergency variance include snowstorms, tornados, floods, school closings, and daycare closings.

## **OTHER OPTIONS**

Another option to increase capacity would be to change the license class. Contact your daycare licenser for the procedures to change the license class.

**THE FOLLOWING GUIDELINES WILL BE UTILIZED BY PENNINGTON COUNTY HUMAN SERVICES CHILD CARE LICENSING DIVISION WHEN DETERMINING THE APPROVAL OR DENIAL OF VARIANCE REQUESTS.**

## **GUIDELINES FOR APPROVAL**

A variance request to exceed a licensee's capacity limit or to exceed the age distribution requirement of a license may be denied or a variance revoked when one or more of the following conditions apply:

- The provider's license is currently under a licensing action (i.e. probation, suspension, correction orders, supervision history, etc.);
- The provider or any household member is currently under investigation for any situation that may be a potential licensing infraction;
- The provider's number of previous variances in the last 12 months; and/or
- Pennington County Human Services reserves the right to make exceptions and additions to these policies.

## **DENIALS AND/OR REVOCATIONS**

The provider may not file an appeal with Pennington County Human Services or the MN Department of Human Services, according to the statute 245A.04 subd. 9 (3):

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

## **CONSIDERATIONS**

In general, Pennington County Human Services will review variances with the following in mind:

- How does the provider plan to provide for the health and safety of the children in their care;
- How reasonable and thorough is the provider's plan;
- Why is the provider requesting the variance;
- Qualifications of provider;
- Period of time of the request: beginning/ending dates (including days of the week and hours of the day)