

Testimony
Senate Bill Number 2162 – Department Of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 3, 2009

Chairman Weisz, members of the House Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services. I am here today in support of Senate Bill 2162.

The bill is designed to accomplish several goals. First, it updates, clarifies, and includes additional definitions used in licensing and providing early childhood services. Second, it modifies how the Department would count the number of children to determine what type of licensing is required. Third, it increases the civil penalty for providing early childhood services without a license. Fourth, it amends the prerequisites for issuance of a license and in-home provider approval. Fifth, it establishes a statutory provision to address self-declaration as one of the options early childhood service providers have and applies other statutory provisions to self-declarations and in-home providers. Sixth, it establishes a fingerprint-based criminal history record investigation for early childhood services providers, their employees and some family members at no cost in accordance with the Executive Budget recommendation.

1. Definitions

Section 1 of this bill provides a change to the definition of an early childhood “facility” to an early childhood “program”; this change is reflected throughout the bill. While the safety of a “facility” is part of the Department’s review and is relevant to the Department’s determination to grant, deny, or revoke a license, self-declaration, or in-home provider

registration, the change to “program” helps to clarify that the Department licenses the entire program and doesn’t just consider the facility or building out of which services are offered. The bill includes a definition of “household member”, “owner” or “operator”, and “staff member” as used in the proposed provision requiring all owners, operators, household members, and staff members to have a mandatory FBI fingerprint-based criminal history record investigation as set forth in section 9 of this bill. A definition for “self-declaration” also is added to reflect another level of child care “licensure” the Department currently calls a standard compliance certification document.

2. Number of Children

Section 2 of this bill does not modify or change the number of children for which licensure is required. The engrossed bill reflects an amendment that was adopted by the Senate on page 5, line 15. This amendment is consistent with the current language of section 11-11.1-03 and with the current rules of the Department. This bill clarifies how the Department will count the number of children receiving early childhood services by requiring all children present on the premises and under the age of twelve years to be counted when identifying the number of children for whom the licensee, registrant, or certificate holder may provide care. This bill does not change the current law that allows the Department to count the children of an operator or an employee to determine the number of children receiving care or services in an early childhood program.

3. Civil Penalties

Section 3 of this bill increases the civil penalty from fifty dollars to two hundred dollars per day for each day of operation during which an operator operates an early childhood program without a license. This

increase in penalty identified in subsection 7 of section 3 of this Act is effective through July 31, 2011. This change is being made in the hope that it will deter individuals from providing early childhood services to six or more children without a license. An individual usually does not have to be licensed to provide early childhood services if that individual cares for five or fewer children. A license is required if an individual is providing early childhood services to four or more children under the age of twenty-four months or six or more children which includes no more than three children under twenty-four months of age. The sunset clause is added to ensure the Department assesses the impact of the increased fine during the course of the 2009-2011 biennium. Section 14 also increases the fiscal sanctions resulting from noncompliance with a correction order from twenty-five dollars to an amount not to exceed one hundred dollars.

4. Prerequisites for Issuance of License

Section 4 of this bill limits an owner, operator, or applicant from obtaining a license to provide early childhood services if they had a previous license or self-declaration denied or revoked within the twelve months prior to the date of the current application or if they have had three or more licenses or self-declaration certificates denied or revoked. This same standard applies to self-declarations as set forth in section 7. Currently, the Department only considers denials or revocations within the past six months. A requirement is also being added for family child care owners or operators to receive training in cardiopulmonary resuscitation and first aid to ensure children's safety while in the owners' or operators' care.

The bill also allows the Department to consider an individual's child abuse and neglect history, criminal background history, prior early childhood

services history prior to approval, denial, or revocation of a license, self-declaration, or in-home provider as outlined in sections 4, 5, 7, 9, and 10.

5. Self-Declaration and In-Home Providers

The Department currently issues standard compliance certification documents that would be named self-declarations under this bill. The changes in this bill to sections 5 through 20 and 23 will ensure consistency among providers, regardless of their level of licensure, certification, or registration. The changes are in regards to approval, denial, revocation, injunctions, and criminal penalties based upon the health and safety of the children, including criminal background and child abuse and neglect investigations, prior early childhood services history, and number of children receiving services.

Section 7 adds a new provision to the statute that the Department may only approve a self-declaration a maximum of three times. After three years the self-declaration holder would either be required to become a licensed provider or he or she can continue to provide care to up to five children without a license or self-declaration.

The engrossed bill reflects two additional amendments that were adopted by the Senate beginning on page 10, line 28. The amendments allow for a provisional self-declaration document to be granted for up to six months while an applicant becomes certified in cardiopulmonary resuscitation and first aid. In addition, a self-declaration holder who is also an approved relative provider for the purpose of child care assistance is exempt from the three-year limitation if the self-declaration holder does not provide early childhood services to children other than approved relatives.

Section 12 of the bill amends the correction order provision to allow the Department to issue a correction order against a holder of a self-declaration or an in-home provider registrant. In addition, a self-declaration document or an in-home provider registration may be suspended during an investigation of a report of suspected child abuse or neglect in accordance with section 17.

6. Investigations

Section 9 establishes a mandatory fingerprint-based criminal history record investigation for applicants, staff members, and certain household members before an application is approved. The Department currently reviews the criminal history of applicants, employees, and certain household members by using the search tool provided by the North Dakota Supreme Court through its website. While the North Dakota Supreme Court website is a useful tool for the Department, it does not disclose offenses committed in other states. This provision will ensure that all criminal activity of an applicant, including any that occurred outside the jurisdiction of this state, will be reviewed before the Department approves an application. This bill also clarifies that the Department has a right to investigate and inspect an early childhood program, or a holder of a self-declaration or a registration document.

The [proposed amendment](#) to this bill would allow the Department to conduct fingerprint-based criminal history record investigations on current providers as well as applicants. This amendment will allow a provider or an applicant to provide early childhood services while the Department is waiting to receive the results of the background investigation. This amendment does not affect the fiscal note.

7. Fiscal Impact

The fiscal impact of Section 9 of this bill was included in the Executive Budget for the Department. The Executive Budget recommendation included funding for the Office of the Attorney General to include 5.5 FTE positions to process the fingerprint-based criminal history record investigations, \$310,500 to cover the \$17.25 FBI fees, and \$145,454 in operating costs.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.