

Testimony
Senate Bill Number 2162 – Department Of Human Services
Senate Appropriations Committee
Senator Ray Holmberg, Chairman
January 29, 2009

Chairman Holmberg, members of the Senate Appropriations 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 currently have and applies other statutory provisions to self-declarations and in-home providers. Sixth, it establishes a criminal background check.

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 the premises 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 program and not 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 level criminal background check as set forth in section 9 of this bill. A definition for "self-declaration" is added to the definition section to reflect another type of child care 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 required for certain licenses. We are requesting an amendment to this bill on page 5, line 15, remove the overstrike over "six of", line 16, remove "up to", and line 17, to replace "four" with "three." This amendment will be consistent with the current language of section 11-11.1-03 and 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 number includes the children of the provider.

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 of 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 without a license. 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 their care.

The bill 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 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.

Section 12 also 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 registrant may be suspended during an investigation of a report of child abuse and neglect in accordance with section 17.

6. Investigations

Section 9 establishes a mandatory criminal background check for applicants, staff members, and household members before an application is approved. The Department currently reviews the criminal history of applicants, employees, and household members, when applicable, by using the search tool provided by the North Dakota Supreme Court through its website. 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 holder of a self-declaration or a registration document.

The Department's fiscal impact of Section 9 of this bill was included in the Executive budget.

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