

Testimony
Engrossed Senate Bill No. 2104
House Human Services Committee
Representative Robin Weisz, Chairman
March 6, 2023

Chairman Weisz, members of the House Human Services Committee, I am Jonathan Alm, an attorney with the Department of Health and Human Services (Department). I appear before you in support of Engrossed Senate Bill 2104, which was introduced on behalf of the Department.

Engrossed Senate Bill 2104 offers a number of clarifications to definition of terms, and roles and responsibilities related to licensing for early childhood services, as well as language that both simplifies and clarifies delivery of resources and assistance to early childhood providers.

I will walk through each section of Century Code referenced in the Bill and describe the proposed changes.

Section 1. The proposed changes in Section 1 of this Bill amend section 50-11.1-02 of the North Dakota Century Code by adding definitions for the terms "Applicant", "Licensee", "Operator", and "Provider"; revisions to the definition of "Four-year old program", "Owner", and "Staff member"; and updates to the definitions of "School-age child care", "School-age children", and "Self-declaration" to clarify the age range intended in the reference. Most of these changes are intended to more clearly define the role of the parties who are involved in application for licensure as an early childhood services provider.

The proposed change to the definition of "Four-year old program" removes a duplicative requirement for licensed early childhood programs to also receive approval as a "four-year old program". Section 27 of this

Bill, together with this definition change, describes eligibility for the best in class program in a way that is inclusive of all intended provider types.

Section 2. The proposed changes in Section 2 of this Bill amend Section 50-11.1-02.1 of the North Dakota Century Code by adding clarifying language related to the ages of school age children who are to be included or excluded when determining the number of children receiving early childhood services.

Section 3. The proposed changes in Section 3 of this Bill amend section 50-11.1-02.3 of the North Dakota Century Code by replacing “sudden infant death syndrome” with “safe sleep” when describing the required training course for early childhood provider staff members.

Section 4. The proposed changes to Section 4 of this Bill amend section 50-11.1-03 of the North Dakota Century Code by aligning the age ranges described in subsection 1 with definitions in 50-11.1-02, section 1 of this Bill, and by removing the reference to “the department’s authorized agent” in subsections 5, 9 and 10, which acknowledges the transfer of licensing responsibility from Human Service Zones to the Department by the 67th Legislative Assembly. Additionally, subsections 7 and 9 replace “operator” with “owner” in describing the person responsible for licensing fees and penalties.

Section 5. The proposed changes in Section 5 of this Bill amend section 50-11.1-04 of the North Dakota Century Code. In subsection 1 “finding of services required” is replaced with “confirmed decision” to align to current practices in child protective services, as defined in NDCC chapter 50-25.1. Subdivisions d, e and f of subsection 1 clarify that the Department, when looking at past history for purposes of an early childhood license, will consider the applicant and “anyone who is listed on the application”, and removes references to “owner” and “operator”.

Subdivision g of subsection 1 is updated to reflect the proposed definition of "Staff member".

Subdivision h of subsection 1 is removed because it is redundant to the requirements outlined in subdivision g of subsection 1.

Subsections 2, 4 and 5 removes or replaces references to "owner" or "operator" with "applicant" or "licensee" as appropriate.

Sections 6. The proposed changes in Section 6 of this Bill amend section 50-11.1-06 of the North Dakota Century Code, removing reference to Human Service Zones as "the department's authorized agent" and again replaces "finding of services required" with "confirmed decision" to align to child protective services practice.

Section 7. The proposed changes in Section 7 of this Bill amend section 50-11.1-06.2 of the North Dakota Century Code, clarifying that the Department is responsible for criminal background checks by removing references to "division of children and family services" and "the department's authorized agent". The proposed changes replace "determination of services required" with "confirmed decision" to align to child protection services practice and to update language.

Section 8. The proposed changes in Section 8 of this Bill amend section 50-11.1-07 of the North Dakota Century Code by removing references to the Department's "authorized agent" from subsections 1, 2 and 3. Subsection 4 updates parameters for disclosure of information to include both "a provider or applicant who provides or provided care for the child" and "a department approved data sharing agreement". Subsections 1, 5 and 6 remove reference to "of a provider of early childhood services" and "early childhood services" because the updated definitions of "provider", "licensee" and "staff member" render the phrase redundant.

Section 9. The proposed changes in Section 9 of this Bill amend

section 50-11.1-07.1 of the North Dakota Century Code to mail or electronically mail inspection notices to the owner and operator.

Section 10. The proposed changes in Section 10 of this Bill amend section 50-11.1-07.2 of the North Dakota Century Code related to correction orders. Proposed changes to subsection 1 clarify that it is the “licensee” or “holder of a” self-declaration who receives a correction order and who may be assessed a fiscal sanction. The proposed changes also removes the reference to Department’s “authorized agent”. Subsection 2 describes the timing of required notice to parents that a correction order has been received; the proposed change adjusts the timing to account for both mailing and electronic transmission.

In December 2022, North Dakota’s early childhood licensing process transitioned to the new Child Care Licensing (CCL) platform. The CCL gives child care providers the ability to more easily update information needed to support licensure. It also provides a streamlined means of communicating information between licensing specialists and providers, including communication related to corrective actions or sanctions. When child care providers establish their account in CCL they have the ability to indicate if they wish to receive communication via an email address they provide to us. CCL then provides a log of all communication that is sent via email, for easier reference by the provider and the licensing staff. The changes proposed in Senate Bill 2104 will help facilitate the use of the communication practices that are now possible with the implementation of CCL.

Sections 11 and 12. The proposed changes in Sections 11 and 12 of this Bill amend 50-11.1-07.3 and 50-11.1-07.4 of the North Dakota Century Code to remove reference to the Department’s “authorized agent” and adds an opportunity to utilize mail or “electronic mail” for notices of noncompliance with correction orders.

Section 13. The proposed changes in Section 13 of this Bill amend section 50-11.1-07.5 of the North Dakota Century Code to remove reference to “authorized agent” of the Department, replace “program” and “facility” with “licensee” or “holder of a self-declaration”, and update delivery of required notices via mail or electronic mail, including adjustments to timing of notices to account for both mail and electronic delivery.

Section 14. The changes proposed in Section 14 of this Bill amend 50-11.1-07.6 of North Dakota Century Code to adjust the timing and acceptable methods of delivery of notices of noncompliance to account for both electronic and mail, replaces “program” with “licensee”, and to remove reference to “authorized agent”.

Section 15. The proposed changes in Section 15 of this Bill amend section 50-11.1-07.8 of the North Dakota Century Code. In subsection 1 “operator” is either removed or replaced with the more inclusive term “staff”, and “services required determination” is replaced with “confirmed decision” in both subsections 1 and 3, as noted in previous sections.

In subsections 2 and 5, the proposed amendment adds “operator” to the list of people who are required to receive notice of child abuse and neglect as outlined in said subsection, and later removes reference to “operator” as the newly updated definition of “staff member” renders it redundant.

Section 16. The proposed changes in Section 16 of this Bill amend section 50-11.1-09 of the North Dakota Century Code by removing two references to “early childhood services” as its inclusion is rendered redundant by the new definition of “provider”.

Section 17. The proposed changes in Section 17 of this Bill amend section 50-11.1-11.1 of the North Dakota Century Code to align state law with the requirement outlined in the federal Child Care Development

Fund. The proposed change adds “nonprofit” as a modifier to “private entity” and makes consistent reference to “public or private nonprofit entity or the department” throughout the section.

The proposed changes to subsections 3, 4, 5, 6, and 7 would permit a public or private nonprofit entity or the Department to provide early childhood services resources and referral.

Subsections 5 and 7 remove details of the nature of service to be included in a child care resource and referral as this is defined in contract and the state Child Care Development Fund plan.

Section 18. The proposed changes in Section 18 of this Bill amend section 50-11.1-12 of the North Dakota Century Code by replacing “program” with “licensee” and removing reference to the Department’s “authorized agent”.

Section 19. The proposed changes in Section 19 of this Bill amend section 50-11.1-14 of the North Dakota Century Code replacing “distance” with “various” when describing learning formats and to remove reference to the Department’s “authorized agent”.

Section 20. The proposed changes in Section 20 of this Bill amend section 50-11.1-14.1 of the North Dakota Century Code to update language. In subsection 2 the proposed amendment replaces “facilities” with “programs” as it is a defined term. Subsection 3 is amended to add “quality” and “sustainable operations” as part of the purpose of child care capacity supports and incentives. Subdivisions b and c of subsection 3 replace “grants” with “direct payments” to allow for more streamlined delivery of assistance.

Subsection 5 exempts the programs outlined in this section from procurement to enable more streamlined delivery to early childhood providers.

Section 21. The proposed changes in Section 21 of this Bill amend section 50-11.1-15 of the North Dakota Century Code, increasing the reimbursement rate for Early Childhood Advisory Committee members, all of whom are providers of early childhood services, from one hundred dollars to two hundred dollars if they have to hire a substitute to enable their participation in meetings. The phrase “early childhood service” is removed in two locations as the updated definition of “provider” renders it redundant.

Section 22. The proposed changes in Section 22 of this Bill amend section 50-11.1-16 of the North Dakota Century Code by removing reference to the Department’s “authorized agent” and a redundant reference to “early childhood services”.

Section 23. The proposed changes in Section 23 of this Bill amend section 50-11.1-17 of the North Dakota Century Code to include several language updates as outlined in previous sections, including removal of reference to the Department’s “authorized agent”, “finding of services required”, and a replacement of “program” with “holder of a self-declaration”.

Section 24. The proposed changes in Section 24 of this Bill amend section 50-11.1-18 of the North Dakota Century Code. The proposed changes rename the program from “Early childhood services inclusion support services and grant program” to “Early childhood inclusion support services program”.

Subsection 1 removes reference to the department of commerce as that agency is no longer involved in administering early childhood programs and grants and references the updated program name. The proposed amendment also adds “special needs” to the description of children for whom provision of care is a consideration of eligibility. Throughout the rest of this section, the consistent reference is “children

with disabilities, special needs, or developmental delays”. Subsection 1 is also amended to clarify that the program offers both “direct payments and technical assistance”.

Subsections 2 and 4 remove redundant references to “early childhood services” when referring to “providers”, makes consistent the description of care provided to children, as noted in subsection 1, and replaces “business” with “premises” as a defined term. Subsection 4 also removes providers who are not yet licensed from being eligible to participate in the program until they are licensed.

Subsections 3 is proposed to be removed as it is not used in administration of this program.

Subsection 5 is proposed to be removed as it is redundant to requirements outlined in subsection 1.

Subsection 6 (re-numbered as subsection 4) defines the term “special needs”, as referenced in this section, and adds “disability-related services and supports”. Newly numbered subsection 6 exempts the program outlined in this section from procurement to enable more streamlined delivery to early childhood providers.

Section 25. The proposed changes in Section 25 of this Bill amend section 50-11.1-19 of the North Dakota Century Code by replacing “a facility licensed” with “an early childhood program” as a defined term.

Section 26. The proposed changes in Section 26 of this Bill amend section 50-11.1-22 of the North Dakota Century Code, renaming the section to “best in class program”.

Subsection 1 removes “four-year-old” as a modifier to “program”, to align to the updated definition of “four-year-old program” outlined in section 1 of this Bill and refers to an application for the “best in class program”, removing “four-year-old experiences grant” as a modifier.

To continue to enable the best in class program to serve both small and large size programs, the proposed amendment to subsection 1 removes specific reference to dollar amounts and instead references "program characteristics as established by the department". Subdivisions b and c of subsection 1 and subsection 2 replace "grant funds" with "awarded funds" and "grant agreement" with "an agreement", to better align to definitions included in state procurement law. Subsection 3 exempts the program outlined in this section from procurement to enable more streamlined delivery to early childhood providers.

Section 27. The proposed changes in Section 27 of this Bill amend section 50-11.1-23 of the North Dakota Century Code related to eligibility for the best in class program.

Subsection 1 includes updated language that assures all intended provider types are eligible to apply for a best in class program award, consistent with the updated definition of "four-year-old program" described in Section 1 of this Bill. Subdivision e of subsection 1 puts into law quality expectations for various types of providers. Subdivision h of subsection 1 clarifies that an awarded program will operate in compliance with program requirements as established by the Department.

Subsection 2 replaces "grants" with "funds" and refers to approved "applicants" in alignment with changes proposed in Section 26 of this Bill. Subsection 3 removes the word "grant" and replaces reference to "approved four-year-old program" with "an awarded program", and replaces "best in class four-year-old experiences grant program" with "best in class program". Subsection 4 exempts the program outlined in this section from procurement to enable more streamlined delivery to early childhood providers.

Section 28. The proposed changes in Section 28 of this Bill amend section 50-11.1-24 of the North Dakota Century Code by removing

reference to "grant" as a modifier to "program" and replacing "grants" with "direct payments" or "awarded funds" as appropriate. The proposed changes also clarify that awarded best in class programs must comply with both data collection and "program evaluation" requirements established by the Department.

Section 29. The proposed changes in Section 29 of this Bill amend section 50-11.1-26 of the North Dakota Century Code by removing a redundant reference to "early childhood services".

Section 30. The proposed changes in Section 30 of this Bill amend section 50-25.11-11 of the North Dakota Century Code to add consistent reference to the notification requirements outlined in the early childhood chapter (50-11.1-07.8). The proposed change adds "upon the conclusion and disposition of a child abuse and neglect assessment for which a determination of confirmed decision if found".

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