

**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Article 75-03, Early Childhood Services (Page 156-376))))))	<u>REPORT OF THE</u> <u>DEPT. OF HUMAN SERVICES</u> September 14, 2010
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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code article 75-03 are related to statutory changes made by the Legislative Assembly to North Dakota Century Code chapter 50-11.1 in 2009 Senate Bill 2162. In addition, 2009 House Bill 1472 specifically provided that "any rules the department adopts in response to legislation enacted in 2009 are exempt from the deadline for rules to implement statutory changes set forth in section 28-32-07". 2009 House Bill 1472 required new rules to implement statutory changes to take effect before January 1, 2011. 2009 House Bill 1472 also established the early childhood services advisory board to work with the Department in its review and revision of all early childhood services rules.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and

internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rulemaking. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on June 9, 2010. The record was held open until 5:00 p.m. on June 21, 2010, to allow written comments to be submitted. A summary of the comments received is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,397.82.
6. The proposed rules amend article 75-03. The following specific changes are made:
 - Chapter 75-03-07. Chapter 75-03-07 is amended to address changes to requirements for in-home child care early childhood services providers, including staffing requirements and qualifications, background check requirements, safety of children, and appeals provisions.

Chapter 75-03-07.1. Chapter 75-03-07.1 is amended to address changes to requirements for self-declaration early childhood services providers, including the issuance of provisional self-declaration documents, staffing requirements and qualifications, background check requirements, facility requirements, safety of children, correction of violations, fiscal sanctions, and appeals provisions.

Chapter 75-03-08. Chapter 75-03-08 is amended to address changes to licensure requirements for family childcare homes early childhood services providers, including the issuance of a restricted license, staffing requirements and qualifications, background check requirements, facility requirements, safety of children, correction of violations, and appeals provisions.

Chapter 75-03-09. Chapter 75-03-09 is amended to address changes to licensure requirements for group child care early childhood services providers, including the issuance of a restricted license, staffing requirements and qualifications, background check requirements, facility requirements, safety of children, correction of violations, and appeals provisions.

Chapter 75-03-10. Chapter 75-03-10 is amended to address changes to licensure requirements for child care center early childhood services providers, including the issuance of a restricted license, staffing requirements and qualifications, background check requirements, facility requirements, safety of children, correction of violations, and appeals provisions.

Chapter 75-03-11. Chapter 75-03-11 is amended to address changes to licensure requirements for preschool early childhood services providers, including the issuance of a

restricted license, staffing requirements and qualifications, background check requirements, facility requirements, safety of children, and appeals provisions.

Chapter 75-03-11.1. Chapter 75-03-11.1 is amended to address changes to licensure requirements for school-age child care program early childhood services providers, including the issuance of a restricted license, staffing requirements and qualifications, background check requirements, facility requirements, safety of children, and appeals provisions.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. A constitutional takings assessment was prepared and is attached to this report.
10. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm
Legal Advisory Unit
North Dakota Department of Human Services
September 14, 2010

John Hoeven, Governor
Carol K. Olson, Executive Director

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE ARTICLE 75-03
LICENSING OF EARLY CHILDHOOD SERVICES PROVIDERS**

The North Dakota Department of Human Services (the Department) held a public hearing on Wednesday, June 9, 2010, in Bismarck, ND, concerning the proposed amendments to N.D. Administrative Code article 75-03, Licensing of Early Childhood Services Providers.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Monday, June 21, 2010.

Nine individuals attended the public hearing. Thirty-nine sets of written comments were received within the comment period. The commentators were:

1. Christine Winter, 1514 14th St S, Fargo, ND 58103
2. Kris Albers, Early Childhood Licensing Specialist, Richland County Social Services, 413 3rd Ave N, Wahpeton, ND 58075
3. Monica Goeson, SEHSC, 2624 9th Ave SW, Fargo, ND 58103
4. Erin Still Day, 1208 N Mandan St, Bismarck, ND 58501
5. Virginia Dolajak, 1516 Portland Dr, Bismarck, ND 58504
6. Maria Regner, Director/LSW, Logan County Social Services, 301 Broadway, Napoleon, ND 58561
7. Valerie Glatt, Hugs Given Here Childcare, 309 Oxford Dr, Bismarck ND 58504
8. Joyce Kaul, 2028 N 3rd St, Bismarck, ND 58501
9. Jill Muhle, 2308 Blake Road, Minot, ND 58703
10. Renee Remmich, 1531 N 23rd St, Bismarck, ND 58501
11. Peggy Motschenbacher, 1412 4th Ave N, Fargo, ND 58102
12. Stacey Piechowski, 4793 Woodhaven St S, Fargo, ND 58104
13. Pamela Verke, 1931 Adams Lane, Bismarck, ND 58501
14. Tami Bertsch, 1024 Cottonwood St, Grand Forks, ND 58201
15. Diane Bjerke, 114 49th Ave S, Grand Forks, ND 58201
16. Lori Stallard, 1515 Walnut St, Grand Forks, ND 58201
17. Brenda Kristjanson, 2446 42nd Ave S, Grand Forks, ND 58201
18. Jennifer Davidson, 1411 9th Ave S, Grand Forks, ND 58201
19. Cindy Larson, 2607 Oak St, Grand Forks, ND 58201
20. Julie Kenneberg, 3114 S 10th St, Grand Forks, ND 58201
21. Jolene Larson, 1114 S 18th St, Grand Forks, ND 58201
22. Connie Rebsch, 1002 S 10th St, Grand Forks, ND 58201
23. Jill Melby, 431 Burdick Ct, Grand Forks, ND 58203
24. Jennifer Briske, 501 34th Ave S, Grand Forks, ND 58201
25. Dr. Myra Quanrud, President, North Dakota Chapter of the American Academy of Pediatrics, Innovis Health, 401 3rd St SE, Jamestown, ND 58401

26. Linda Lembke, Director, Lakes & Prairies CCR&R, 715 11th St N, Ste 402, Moorhead, MN 56560
27. Linda Reinicke, Director, Lutheran Social Services CCR&R, 1616 Capitol Way, Bismarck, ND 58501
28. Melissa Schoellkopf, 1305 Sunset Dr, Mandan, ND 58554
29. Sandra Jenkin, 1715 N 6th St, Bismarck, ND 58501
30. Sandra Fix, 1402 N 22nd St, Bismarck, ND 58501
31. Ebie Subart, 1602 Richmond, Bismarck, ND 58504
32. Carla Forde, 409 5th Ave NW, Mandan, ND 58554
33. Earleen Friez, PO Box 1101, Hettinger, ND 58639
34. Shelly Monson, President, Child Care Connection, 1924 Oregon Dr, Bismarck, ND 58503
35. Bobbie Fuhrman, 2007 North 4th St, Bismarck, ND 58501
36. Linda Evarts, 2022 N 3rd St, Bismarck, ND 58501
37. David Monson, 1924 Oregon Dr, Bismarck, ND 58503
38. Mary Monroe, 1706 Oakland Dr, Bismarck, ND 58504
39. Delores Kahl, 1956 Billings Dr, Bismarck, ND 58504
40. Bridgit Moszer, 3444 42nd Ave S, Fargo, ND 58104
41. Patty Wangler, 227 E Denver Ave, Bismarck, ND 58504
42. Connie Gross, 506 Weatherby Way, Bismarck, ND 58501
43. Viann Doll, 2400 Hoover Ave, Bismarck, ND 58501
44. Linda Strait, 309 Denver Ave, Bismarck, ND 58504
45. Maxine Bosch, 401 Cambridge Dr, Bismarck, ND 58504
46. Susie Heid, 2352 Rolling Dr, Bismarck, ND 58501
47. Kayla Wutzke, 2352 Rolling Dr, Bismarck, ND 58501
48. Jan Brunner, 1532 Westwood St, Bismarck, ND 58504
49. Katelynne Monson, 1924 Oregon Dr, Bismarck, ND 58503
50. Branden Monson, 101 Barston Lane, Bismarck, ND 58504
51. Alicia Monson, 101 Barston Lane, Bismarck, ND 58504
52. Deanna Pierson, 1130 S Columbia Dr, Bismarck, ND 58504
53. Ray Kaul, 2028 N 3rd St, Bismarck, ND 58501
54. Josh Landis, LSW, Child Care Licensing Specialist, Traill County Social Services, PO Box 190, Hillsboro, ND 58045
55. Lindsey Spanier, 714 49th St S, Fargo, ND 58103
56. Kathy Busche, Kathy's Kids' Daycare, Hazen, ND 58545
57. Linda Jones, 1224 N Broadway, Fargo, ND 58102
58. Tressa Torno, Licensed Daycare Provider
59. Michelle Roeszler, Little Explorers Family Daycare, 916 2nd St N, Fargo, ND 58102
60. Shannon Baugh, 1342 11th St N, Fargo, ND 58102
61. Cheryl Dix, Director, Adams County Social Services
62. Vicki Zimmerman, Director, Grant County Social Services
63. Tami Chrest, Director, Burke/Renville County Social Services
64. Kim Jacobson, Director, Traill County Social Services
65. Shawna McFarland, Director, Divide County Social Services

66. Kristina Olson
67. Debra Hatzenbeller, Group Child Care Provider, 231 6th Ave N, Casselton, ND 58012
68. Constance Eckert, 3607 Hackberry St, Bismarck, ND 58503
69. Becky Berger, Berger's Playhouse, 2732 10th Ave SE, Mandan, ND 58554
70. Morgan Anderson, 303 W Bowen Ave, Bismarck, ND 58504
71. Shanna Brady, 908 N 14th St, Bismarck, ND 58501
72. Violet Doll, 2400 Hoover Ave, Bismarck, ND 58501
73. Lisa Anhorn, 807 N 16th St, Bismarck, ND 58501
74. Sue Brady, 2641 Henry St, Bismarck, ND 58503
75. Pam Duchscherer, 400 7th St NE, Mandan, ND 58554
76. Virginia Barth, 1829 N Griffin St, Bismarck, ND 58501
77. Jan Brunner, 1532 Eastwood St, Bismarck, ND 58504
78. Connie Eberle, 1032 Bozeman Dr, Bismarck, ND 58504
79. Julie Baumiller, 2012 N Bell St, Bismarck, ND 58501
80. Jolene Bullinger, 1610 Sunset Dr, Mandan, ND 58554
81. Candy Beauclair, 127 Allen Dr, Lincoln, ND 58504
82. Kim Cain, 2110 Modesto Cir, Bismarck, ND 58504
83. Laura Ennen, 508 N Bell St, Bismarck, ND 58501
84. Cindy Coutts, 2408 Hoover Ave, Bismarck, ND 58501
85. Trisha Fines, 410 Cambridge Dr, Bismarck, ND 58504
86. Mary Bergland, 725 S 12th St Lot 5, Bismarck, ND 58504
87. Kristy Dahl, 508 S 10th St, Bismarck, ND 58504
88. Bernadette Fitterer, 821 W St Benedict Dr, Bismarck, ND 58501
89. Marcia Jean Beth, 3870 County Rd 139, New Salem, ND 58563
90. Charlene Denning, 5310 Heatherwood Ln, Bismarck, ND 58501
91. Jody Biere, 130 Countryside Ln, Mandan, ND 58554
92. Kim Deyle, 1216 Northview Ln, Bismarck, ND 58501
93. Doreen Flick, 2125 Kennedy Ave, Bismarck, ND 58501
94. Paula Bisnett, 2244 Grant Dr, Bismarck, ND 58501
95. Jan Zerr, 905 6th St NW, Mandan, ND 58554
96. Amanda Ford, 4804 37th Ave NW, Mandan, ND 58554
97. Angela Freeman, 8300 Irish Ln, Bismarck, ND 58504
98. Brenda Haaland, 1100 19th St SE, Mandan, ND 58554
99. Jenny Helm, 1803 Monte Dr, Mandan, ND 58554
100. Julie Zachmeier, 2315 Jessica Dr N, Mandan, ND 58554
101. Julissa Hanson, 4708 Boulder Ridge Rd, Bismarck, ND 58503
102. Jessica Henne, 3328C 27th St NW, Max, ND 58579
103. Mindy Garland-Sayler, 1802 Monte Dr, Mandan, ND 58554
104. Nikki Hanson, 1303 4th Ave NW, Mandan, ND 58554
105. Jodi Hennings, 705 S 16th St, Bismarck, ND 58504
106. Debra Geiger, 504 9th Ave SE, Mandan, ND 58554
107. Sylvia Hauck, 3238 River Place Dr, Mandan, ND 58554
108. Kristi Heupel, 506 Yorkshire Ln, Bismarck, ND 58504
109. Marcia Gifford, 3797 Hwy 1806, Mandan, ND 58554

N.D. Admin. Code Article 75-03
Summary of Comments
July 13, 2010

110. Holly Haugen, 635 Sunflower Dr, Bismarck, ND 58503
111. Sara Hilden, 2219 Kennedy Ave, Bismarck, ND 58501
112. Amy Haugen, 812 W Ave B, Bismarck, ND 58503
113. Dawn Hoff, 720 W Divide, Bismarck, ND 58501
114. Debbie Golgueri, 2105 St Joseph Dr, Bismarck, ND 58501
115. Linda Heil, 337 Telstar Dr, Bismarck, ND 58503
116. Melissa Hoke, 815 4th St SE, Jamestown, ND 58401
117. Krissy Gonzalez, 636 N 26th St, Bismarck, ND 58501
118. Sandi Heimbuck, 411 N 19th St, Bismarck, ND 58501
119. Marie Horning, 72 Weir Dr, Lincoln, ND 58504
120. Joyce Hein, 1018 Pleasant St, Bismarck, ND 58504
121. Lisa Hulm, 1516 Pocatello Dr, Bismarck, ND 58504
122. Deborah Gross, 520 S 10th St, Bismarck, ND 58504
123. Bonnie Heinz, 613 Dover Dr, Bismarck, ND 58504
124. Michelle Jacobson, 615 Munich Dr, Bismarck, ND 58504
125. Karen Jangula, 1701 Michigan Ave, Bismarck, ND 58504
126. Lindsey Lamontagne, 4005 19th St NE, Lot 227, Bismarck, ND 58503
127. Verna McCallum 1925 N 14th St, Bismarck, ND 58501
128. Twylah Jensen, 3607 Jericho Rd, Bismarck, ND 58503
129. Marie Landsberger, 427 High Meadows Pl, Bismarck, ND 58503
130. Michele McConnell, 62 N Stanley Dr, Lincoln, ND 58504
131. Melissa Johnson, 123 Maryland St, Bismarck, ND 58504
132. Diane Leingang, 912 16th St SE, Mandan, ND 58554
133. Jessica McKay, 4812 37th Ave NW, Mandan, ND 58554
134. Sharon Leno, 1119 University Dr, Lot 1720, Bismarck, ND 58504
135. Jean McKenzie, 2527 N Washington St, Bismarck, ND 58501
136. Colleen Lervik, 811 N 18th St, Bismarck, ND 58501
137. Wanda Mehring, 34 Eckelson Rd, Lincoln, ND 58504
138. Brenda Kendall, 415 Colt Ave, Bismarck, ND 58503
139. Leslie Ludwick, 1317 15th St S, Fargo, ND 58103
140. Bibi Mehring, 807 Tower Pl, Mandan, ND 58554
141. Jolyn Kostelecky, 2116 Kennedy Ave, Bismarck, ND 58501
142. Amanda Lund, 23 Penenah Dr, Lincoln, ND 58504
143. Greg Mehring, 807 Tower Pl, Mandan, ND 58554
144. Erica Koster, 7220 Keystone Dr, Bismarck, ND 58503
145. Lori Martin, 60 N Stanley Dr, Lincoln, ND 58504
146. Lynette Miller, 408 Yorkshire Ln, Bismarck, ND 58504
147. Jean Kraft, 516 N Bell St, Bismarck, ND 58501
148. Sandy Mattern, 2213 Kennedy Ave, Bismarck, ND 58501
149. Gloria Moch, 416 W Indiana Ave, Bismarck, ND 58504
150. Annette Laduke, 104 5th Ave E, Flasher, ND 58535
151. Sarah Mayer, 237 Boeing Ave, Bismarck, ND 58504
152. Sharon Moen, 2102 5th Ave S, Fargo, ND 58103
153. Lois Mongeon, 602 Division St NE, Mandan, ND 58554

154. Jolene Patchen, 307 Shady Ln, Bismarck, ND 58501
155. Michelle Roller, 2133 37th St, Mandan, ND 58554
156. Mary Wolf, 305 S 10th St, Bismarck, ND 58504
157. Linda Paul, 1824 Longley Ave, Bismarck, ND 58501
158. Adela Roller, 1429 N 12th St, Bismarck, ND 58501
159. Peggy Montieth, 3700 Woodbend Dr, Mandan, ND 58554
160. Nichole Peterson, 2602 10th Ave SE, Mandan, ND 58554
161. Megan Rundquist, 1022 N 1st St, Bismarck, ND 58501
162. Lana Moser, 2120 Sherman Dr, Bismarck, ND 58504
163. Angela Petron, 1518 Omaha Dr, Bismarck, ND 58504
164. Priscilla Sauer, 9120 Wentworth Dr, Bismarck, ND 58503
165. Jennifer Murray, 1998 N 20th St, Bismarck, ND 58501
166. Lisa Pfannsmith, 930 E Turnpike Ave, Bismarck, ND 58501
167. Connie Schafer, 305 14th St NE, Mandan, ND 58554
168. Angie Neigum, 239 Laredo Dr, Bismarck, ND 58504
169. Lisa Scherr, 2020 N Bell St, Bismarck, ND 58501
170. Melanie Nilles, 5735 Ridgewood Dr, Bismarck, ND 58501
171. Jeanette Quinn, 415 S 16th St, Bismarck, ND 58504
172. Sarah Schillo, 8500 Northwood Dr, Bismarck, ND 58503
173. Delena Nygaard, 2015 Marian Dr, Bismarck, ND 58501
174. Lynn Rath, 1608 Monte Dr, Mandan, ND 58554
175. Cheryl Schuck, 109 New Jersey St, Bismarck, ND 58504
176. Kara Ohlsen, 2240 Hoover Ave, Bismarck, ND 58501
177. Gina Weigel, 1709 2nd St NE, Mandan, ND 58554
178. Kathleen Schuh, 304 Hill St, Wing, ND 58494
179. Holl Overson, 822 N 17th St, Bismarck, ND 58501
180. Linda Roberts, 1301 E Ave C, Bismarck, ND 58501
181. Cindi Schumacher, 3201 Sleepy Hollow Lp, Bismarck, ND 58501
182. Lillian Schweitzer, 1308 9th Ave SE, Mandan, ND 58554
183. Debbie Wivholm, 705 8th Ave NE, Mandan, ND 58554
184. Lianne Weninger, 1532 E Omaha Dr, Bismarck, ND 58504
185. Sandy Seedorf, 8702 Sage Dr, Bismarck, ND 58503
186. Bonnie Trom, 53 Carlin Dr, Lincoln, ND 58504
187. Susan Wentz, 2313 Coolidge Ave, Bismarck, ND 58501
188. Melissa Seibel, 3438 Heartwood Dr SE, Mandan, ND 58554
189. Cindy Weekes, 1932 Thompson St, Bismarck, ND 58501
190. Barbara Wentz, 410 S Elk St, Hebron, ND 58638
191. Kimberly Sjomeling, 4312 N Arlington Dr, Bismarck, ND 58503
192. Kathleen Vollmers, 1302 N 20th St, Bismarck, ND 58501
193. Wanda Wiest, 603 14th St NW, Mandan, ND 58554
194. Shera Smith, 2205 E Ave F, Bismarck, ND 58501
195. Traci Wald, 226 Tower Ave, Bismarck, ND 58501
196. Mary Beth Wingenbach, 402 Ryan Dr, Bismarck, ND 58501
197. Terri Sneed, 222 10th Ave SE, Mandan, ND 58554

- 198. Lisa Wald, 2027 Northridge Dr, Bismarck, ND 58501
- 199. Jo Wingerter, 806 5th Ave NE, Mandan, ND 58554
- 200. Becky Sommers, 2214 Harding Ave, Bismarck, ND 58501
- 201. Ardella Stein, 1029 W Ave B, Bismarck, ND 58501
- 202. Agnes Wingerter, 806 5th Ave NE, Mandan, ND 58554
- 203. Linda Sprenger, 1119 University Dr, Lot 1313, Bismarck, ND 58504
- 204. Kristi Ware, 930 Governor Ln, Bismarck, ND 58501
- 205. Ruby Kolpack, Child Licensing Specialist, Cass County Social Services, 1010 2nd Ave S, Fargo, ND 58103

SUMMARY OF COMMENTS

Comment: Many comments on the change in the group ratio of .25 for children 0-18 months instead of 0-24 months, this would be wonderful and should have happened long ago. The developmental level is so remarkably different between 0 and 2. By 18 months, children are usually a lot more independent needing not quite so much immediate attention. Children between 18 months and 24 months are more similar to children 25 months through 36 months.

Response: This proposed change was supported by the Early Childhood Advisory Board, the Early Childhood Services Administrator and the North Dakota Child Care Providers Association.

Comment: In favor of the "and/or" licensing procedure for group child care providers, head count vs. points.

Response: This suggestion will be considered for a future revision, as DHS is committed to exploring the issue of family-group ratio and numbers further.

Comment: 75-03-09-09(2)(a) and (b), Changing the ratio of a child eighteen months to .20 acknowledges the growth of a child at that age. Will allow providers to place siblings together?

Response: This proposed change was supported by the Early Childhood Advisory Board, the Early Childhood Services Administrator and the North Dakota Child Care Providers Association.

Comment: The new proposal for center and group rules would allow providers to have up to four children under 18 months of age with one staff member, versus the current 4 children under 24 months of age; thus allowing the provider to have a larger number of younger

children to staff ratio. "I would like to strongly suggest the staff ratio for children under 24 months remain at .25. Low child to staff ratios are most critical for infants and young toddlers (0-24 months). Children at this age span of 18-24 months, still require hands on care, constant attention, supervision, direct provider contact. Although child staff ratios alone do not predict the quality of care, direct warm social interaction between adults and children is more common and more likely with lower child staff ratios. Low child staff ratios are most critical for infants and young toddlers, as infant development and caregiving quality improves when group size and child staff ratios are smaller. Improved verbal interactions are correlated with lower child staff ratios." "I strongly recommend, based on my licensing experiences, and being a parent with children in child care, that the State leave the staff ratio for children 0-24 months at .25 for continuation of quality child care in ND."

Response: This proposed change was supported by the Early Childhood Advisory Board, the Early Childhood Services Administrator and the North Dakota Child Care Providers Association. In offering this proposal, we recognize that low staff to child ratios are most important with young children, but feel that the quality of care will not be compromised by moving the age requirement for the ratio of .25 from twenty-four months to eighteen months.

Comment: It would be wonderful and safer if family providers followed the same staff to child ratio as the group providers.

Response: This suggestion will be considered for a future revision, as DHS is committed to exploring the issue of family-group ratio and numbers further.

Comment: 75-03-08-09(2), "A provider providing care to five or more children may provide care to no more than three children under age twenty-four months." Need to clarify staffing requirements.

Response: The Department will clarify to individuals as needed, but does not suggest a change to this provision.

Comment: 75-03-11-09(2)(a) "If all children in child care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form." With a maximum of two staff members for 12 children?

Response: The Department will make no change at this time. The Department will consider the comment for future revisions.

Comment: 75-03-11-09(2)(b), "If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form." With a maximum of two staff members for 22 children?

Response: The Department will make no change at this time. The Department will consider the comment for future revisions.

Comment: 75-03-11-09(2)(c), "If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form." With a maximum of two staff members for 26 children?

Response: The Department will make no change at this time. The Department will consider the comment for future revisions.

Comment: All the rules and regulations flow better than they currently are. There are many good changes but some still need to be clarified a little.

Response: The Department appreciates continued feedback for future revisions.

Comment: A child care provider is extremely busy and doesn't think they will have time to read both the Century Code and the Rules and Regulations book. Many providers will feel that if a rule was taken out, they will not have to follow it anymore.

Response: It is the view of the Department that all providers need to read and understand both Century Code and Administrative Code that apply to early childhood services. The Early Childhood Services Administrator will compile a summary of provisions that were taken out of rule because they already exist in statute. This summary will be a part of the letter that goes out to providers when they receive the revised rules and copy of ND Century Code 50-11.1.

Comment: The staff member definition should stay, at least in the school-age, preschool, and center rules. Once it is taken out of the rule books, they may think that the volunteers don't have to have any further training, etc., resulting in poor quality child care. If the language for the application can be in both NDCC and the rule, the definition of a staff member can also be in both.

Response: The Department made an effort to remove provisions from administrative code that were already included in statute, with the understanding that all providers would need to receive both NDCC 50-11.1 and the applicable administrative code during the application process or any time rules were requested. The "minimum qualifications for volunteers

section" (75-03-10-14, for example) will clarify for operators that volunteers must meet staff member requirements if they are providing child care.

Comment: Smoking should be prohibited at all times around children. Not to mention this is a place of business and smoking should not be allowed indoors. I realize this may be hard to enforce but it must be included.

Response: This provision was removed from administrative code because smoking is prohibited by ND Century Code 50-11.1-02.2 in any early childhood facility when children are present.

Comment: Have the rules be the same for family, group, and center, especially the little things, like having fire drills monthly.

Response: The Department and Advisory Board worked to ensure consistency among rules whenever possible. It is proposed that fire drills be performed monthly in family programs because a fire inspection is not required for family programs. Monthly fire drills are part of the fire inspection required for group and center programs.

Comment: Family providers should have a fire inspection annually just like a group provider. Group providers can have eight children, and family can have up to nine children during the school year. They should be treated the same. It's a safety factor and the state wants quality care in North Dakota and so do the child care providers; this is a factor in quality care.

Response: This is a suggestion that will be reviewed for a future revision.

Comment: 75-03-09-18(16), All extra heating devices should be approved at yearly inspections by the fire department, not having the fire inspector out for every new unit. It is common sense to have day care temperatures comfortable and shouldn't need to spell it out in the rules.

Response: This provision does not specify that new heating devices must be approved immediately, so it allows the approval to take place at the time of the annual inspection. The temperature requirement during the heating season was proposed as a means of maintaining consistency with other rules.

Comment: 75-03-09-18(16), Would like to see a specific method of measurement added if the temperature range is going to be included in the final version of the rules since the apparent temperature of a room is measured by not only the temperature but also the relative

humidity. This would create a hardship on providers as a lot of homes in our state are older and less energy efficient. One suggestion is to generalize the rules to say, providers must ensure that the temperatures during the heating season are adequate to keep the children in care comfortable. This would allow providers to take steps to make sure the children are comfortable without requiring possibly hundreds of additional dollars each year for heating costs as well as potentially more costs to install humidifier systems throughout their homes.

Response: The specified temperature range is meant to be a guide for providers as to what is an acceptable temperature for children during the heating season. The Department has expanded the acceptable temperature range to be from 65 degrees to 75 degrees, as recommended in the Caring for our Children national standards.

Comment: 75-03-09-18(16), Most if not all providers already keep their houses between these temperatures. In some older houses, it is hard to control the temperature in some areas of the house. The kids are not going to freeze, if anything they are always commenting that they are hot. Children's metabolism runs faster than adults. This should be an issue left between the client and provider, not government.

Response: The specified temperature range is meant to be a guide for providers as to what is an acceptable temperature for children during the heating season. The Department has expanded the acceptable temperature range to be from 65 degrees to 75 degrees, as recommended in the Caring for our Children national standards.

Comment: 75-03-09-17(19), If you have a new home, say built after the year 2000, or say if the fire marshal approves your home, this should be done every other year or even every third year, unless you have remodeled part of your home. "I have a new home and the Marshal thinks it's a waste of time to double check everything again and again when everything is up to code and working."

Response: A fire inspector not only approves the actual facility and heating unit but also monitors other safety requirements, such as ensuring that fire extinguishers and fire alarms are properly maintained and in good working order and that exits are not blocked.

Comment: 75-03-08-14(15), Fire inspections are only required before licensure, never again? This should be every other year or every three years.

Response: This is a suggestion that will be reviewed for a future rule revision.

Comment: Regarding emergency care for children (Center rules page 39), it would be nice to have a staff member stay with the child until the parent or emergency contact person

arrives. Perhaps they may be over ratio for that bit of time, but the injured child would benefit from having a person there that he/she knows.

Response: The Department assumes that it would not always be possible to have a staff member stay with an injured child once emergency medical personnel assume responsibility until the parent arrives; although the Department assumes that operators would have a staff member stay with the injured child as long as possible.

Comment: 75-03-09-16(1)(a), The new emergency evacuation and disaster plan are nice but 1(a) is going to cause a lot of trouble for providers. Storage is an issue here. Where would they store all this extra water for the child care? 1(b) and (c) are great.

Response: The Department will work with providers through licensers and through CCR&R to ensure that providers are able to comply with this section.

Comment: 75-03-09-16(1)(a), Would like to see clarification regarding specifically what is meant by "the availability of emergency food, water, and first aid supplies." 1(b) and (c) these would be difficult to comply with because emergency procedures vary greatly depending on the nature of the emergency.

Response: The Department will work with providers through licensers and through CCR&R to ensure that providers are able to comply with this section.

Comment: Why are the menus for family and group providers different? Family - post a daily or weekly menu, and Group - prepare menus on a weekly or daily basis and made available.

Response: The Department has revised this provision in both family and group rules to state, "The provider shall post a daily or weekly menu for meals and snacks."

Comment: Why does family have to receive proper training in administering medication when group says to obtain proper instructions from parents?

Response: The Department has removed 75-03-08-21.1(6)(d) from the proposed amendments and will consider developing a training on medication administration for providers.

Comment: Use the medicine administration training as an example under trainings, this will encourage people to think about it when seeking their hours.

Response: The Department will consider developing a training on medication administration for providers.

Comment: The new pet rules in family rules 13(a) are worded funny and difficult to understand.

Response: The Department will explain this provision or any other provision to licensers and providers as questions arise.

Comment: 75-03-07.1, Should include language similar to family, center, group, preschool, and school-aged child care relating to pets. It is critical that self-declaration providers be subject to the same requirements/limitations related to pets and animals as their licensed counterparts. This requirement impacts child safety and should be uniformly practiced and enforced.

Response: The Department has added requirements to the self-declaration rules for pets as provided in the administrative code for licensed programs.

Comment: 75-03-08-21.1(13)(a), 75-03-09-18(19)(a), 75-03-10-18(20)(a), 75-03-11-18(16)(a), and 75-03-11.1-18(26)(a), "The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children." Recommend removing this paragraph.

Response: The Department will not remove this paragraph. Numerous concerns about non-domestic and non-traditional pets that may pose a threat to children in child care have been reported. The Department recommends that only cats, dogs, and small aquarium animals be present in areas occupied by children.

Comment: The pet restrictions rule should be changed to require a litter box to be covered but not in a child-free room. Or if the no litter box rule applied only to homes with ages 0-2. "I understand the food and water restrictions, and don't like those either but at least those can be put in the providers' bedroom if there is no other space. And even the providers' room is used for daycare, then the pets can be fed before and/or after children are there. BUT, litter boxes NEED to be accessible ALL day." Not all providers have the ideal house layout and not all sections of a house can be gated off. Suggestion is to reword, "located in areas normally not occupied by children," since walking through is not "occupied."

Response: The Department expects providers to ensure that litter boxes are not accessible to children, and suggests providers who are having difficulty maintaining compliance with this provision discuss their concerns with their licenser to find an acceptable solution.

Comment: 75-03-08-21.1(13), A baby rattlesnake or tarantulas are small. The no wire cages would eliminate birds unless one has a glass aviary (expensive), it would not be permitted to place a gate limiting access while still allowing children to view birds. Limiting the animals a child can experience may limit a child's physical, cognitive, social, or emotional health. There needs to be restrictions set forth for less domesticated animals such as birds, hamsters, etc., but there needs to be clearly stated flexibility for the involvement of dogs or cats which enhance the quality of the program.

Response: The provision states, "The Department may restrict any pet or animal from the premises that may pose a risk to children." Baby rattlesnakes and tarantulas, even in an approved container would be restricted. The Department will require, by this provision, that birds, unless in a glass aviary, be kept in an area not occupied by children.

Comment: 75-03-08-21.1(13)(f), in some homes, the responsibilities (privileges) of feeding the pets have helped behavior problems of some children. If the childcare is open for 12 hours a day, the animals would be getting abused by not being able to eat or drink for 12 hours.

Response: The proposed amendment does not restrict a provider from feeding or watering a pet during childcare hours; it restricts the pet dishes from being present in areas occupied by children.

Comment: 75-03-08-21.1, in response to providers who have children help them feed their pets and would like to continue to do so, would ask them to rethink because you never know when even a very docile pet might feel threatened and fear a child is taking their food away from them.

Response: No change is necessary.

Comment: 75-03-08-21.1(13), Like the more defined rules for animals and pets in the home.

Response: The Department agrees with this comment.

Comment: 75-03-08-21.1(13)(e), "closely" needs to be defined. The enforcement of this requirement would be difficult.

Response: The Department expects providers and licensers to use good judgment in interpreting what close supervision means.

Comment: Specify what pet immunizations include, "rabies and any other immunizations necessary for client's safety...", "as required by a veterinarian." "Rabies and any veterinarian-required care necessary to protect human safety." Also require a bill of health or statement from the vet to verify the pet has what it needs, instead of leaving it to the provider's discretion.

Response: The Department does not recommend a change in this provision. Different pets will have different immunization requirements; requiring pets to be "appropriately immunized" allows for these differences.

Comment: The pet restrictions rule should apply only when caring for children under 2. Many of us include pet care as part of our curriculum, the children love to care for animals and it teaches a very concrete lesson of responsibility, among other virtues. I'm sure nearly all providers will tell you the children over two learn to leave the dishes alone, just as they do any personal off-limit items around the house.

Response: Pet feeding dishes have been the source of many concerns reported in child care in the past. Accordingly, this provision remains as proposed.

Comment: Like the new rules for pets, this is a huge safety issue for children and glad it's finally addressed with more clarity.

Response: The Department agrees with this comment.

Comment: The minimum requirements for care of children with special needs in section 1 of all the rules gives the provider permission to consult other health and professional consultants to gain an understanding of the child's individual needs. This will probably get the provider in trouble with the family. Some sort of release of information must be given by the parents. This should be discussed with open communication by the provider and family - which is already in rules under program requirement #5 & #6.

Response: No change is necessary because the provision already requires parental permission when consulting with other health and professional consultants.

Comment: In family and group, the provider must be present no less than sixty percent of the time when children are in care. It would be nice to clarify such as "alert sixty percent of the time".

Response: It is not necessary to clarify that the provider must be alert when present. For the present provider to supervise, they must be alert. Additionally, other provisions would apply if a provider was sleeping or otherwise not supervising the children appropriately, for instance 75-03-08-08.1(10) "The provider must be an adult of good physical, cognitive, social, and emotional health, and shall use good judgment when making decisions impacting the quality of childcare."

Comment: 75-03-08-08.1(4) and 75-03-09-10(5), "The provider shall have an adult staff member present in the family child care at all times to supervise staff members under the age of eighteen and children in care." Should state "present and alert".

Response: It is not necessary to clarify that the staff member must be alert when present. For the present staff member to supervise, they must be alert. Additionally, other provisions would apply if a staff member was sleeping or otherwise not supervising the children appropriately, for instance 75-03-08-08.1(10) "The provider must be an adult of good physical, cognitive, social, and emotional health, and shall use good judgment when making decisions impacting the quality of childcare."

Comment: Since the basic child care training is now required for all caregivers, it would be nice if more than one agency offered it. CCR&R does an outstanding job, but it would be nice for the providers to have a choice; especially when they start charging for the class again. It would be wonderful if the basic child care training could be a face to face training again or at least have a choice of being a face to face training. Not everyone has access to a computer, plus the libraries here are not open that late to accommodate the providers.

Response: The Department is committed to exploring other means of basic child care training so providers are offered a choice of training delivery methods.

Comment: 75-03-09-12(5), in favor of requiring staff members to complete the basic child care courses within the first three months of employment. "Staff member" should not have been removed from the definitions. I would define staff member as someone who is paid to care for children either with or without the supervision of the provider. Concerned that with staff members that only work a handful of hours each week and sometimes only for a trimester at a time and in the presence of myself as sole provider of care. Under the rules that follow this section staff within this situation would only be required to take 2 hours of training per year. Perhaps there is room for further rules regarding part time staff who could

be required to take the minimal trainings like shaken baby, SIDS, basic health, and safety training and reserve the entire course for staff working full time or near that.

Response: It is a goal of the Department to ensure that all staff members who work with children have a basic core knowledge of how to provide good care to children. Substitute staff and emergency back-up providers are exempt from this requirement. ND Century Code 50-11.1-02, defines "Staff member" to mean "operator, caregiver, provider, or any other individual, either paid or volunteer, who provides care, supervision, or guidance to children in an early childhood program and includes food preparation, transportation, and maintenance personnel." In consideration of this definition, the Department has revised the proposed amendments to clarify, where appropriate, that staff member requirements apply to staff members who work in a caregiving or teaching role.

Comment: 75-03-10-12(1)(c), "Shall certify completion of a department-approved basic child care course within the first three months of employment, with the exception of substitute staff and emergency designees;" we haven't required BCC for center staff in the past. With this new requirement, are we going to have more training available for them...not just online but face-to-face?

Response: The Department is committed to exploring other means of basic child care training so providers are offered a choice of training delivery methods.

Comment: The basic childcare course requirement - the business course at CCR&R - should be a required course, even before getting licensed. The handout lays out step-by-step exactly how to properly set up a business.

Response: The Department will consider this comment for future revisions.

Comment: If the providers are to complete a department approved basic child care course, how often would this program be offered and can the training be web based, DVD, or other options and easily accessible to providers in rural areas?

Response: Currently, the course is offered online and free of charge. The Department is committed to exploring other means of basic child care training so providers are offered a choice of training delivery methods.

Comment: 75-03-07-04(4), "Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment." Should this be in the in-home rules?

Response: In-home providers are subject to the same background check as other providers.

Comment: 75-03-07.1-06(5), "Household members over the age of twelve must complete a department-approved authorization for background check form." They sign the application thus giving us permission to complete a background check, don't think this form is necessary.

Response: The application, in the case of a self-declared applicant, can serve as the required form. No change is necessary in this provision.

Comment: 75-03-07-06(4), 75-03-10-27(5), and 75-03-11.1-27(5), "If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check." Should this be eleven years or ten years?

Response: Eleven years prior to the date of application would include a full 10 years time frame.

Comment: 75-03-08-27(5), All options should be exhausted before going backward to a statewide criminal check. I am unsure if those with rejected scanned fingerprints have tried to make a set of traditional rolled fingerprints. If they have not, I would like to see that avenue explored before giving up and using a statewide check.

Response: Typically, the scanned prints are of better quality than the ink-rolled prints. The FBI requires two sets of scanned prints before they will conduct a name based search; however, that search would still be nationwide.

Comment: Group - Back up staff should not be finger printed. They do not get paid enough to make this worthwhile. They are just drop-in "helpers".

Response: Staff members are only required to receive the full fingerprint background check if they have lived outside the state in the past ten years. They are not charged a fingerprinting fee.

Comment: 75-03-07.1-07 sections 8-12 should be placed before sections 6-7.

Response: This suggestion will be considered for future revisions, but no change is made at this time.

Comment: 75-03-08-14(1), 75-03-09-19(1), 75-03-10-19(2), 75-03-11-19(2), and 75-03-11.1-19(2), "Adequate space must include a minimum of thirty-five square feet of space per child indoors and a minimum of seventy-five square feet of play space per child outdoors." Add "play" before space describing indoor area.

Response: Adding "play" to describe the indoor area makes the provision overly restrictive. No change is necessary.

Comment: 75-03-08-14(2), "The family child care and outdoor play area must be free of clutter. . ." change family child care to indoor.

Response: No change is necessary.

Comment: 75-03-09-26(8), "Require a of a supervised temporary isolation area designated for a child who is too ill to remain in the group child care or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed. . ." language needs to be adjusted.

Response: Department has made this change.

Comment: 75-03-10-07(4), "The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling." Change "residence" to "facility". This is center rules, not family.

Response: A center could be housed in a residence. The purpose of this provision is to address more than one license in a house. The Department acknowledges that some facilities, such as churches or schools, could adequately accommodate more than one licensed child care program.

Comment: 75-03-10-18(24)(e), 75-03-11-14(3)(d), and 75-03-11.1-18(19), "The operator shall ensure that sanitary hand-drying equipment, single use cloth towels, or paper towels are available near handwashing sinks." Not in a center...just for home providers. Do we want this in preschool and school age rules?

Response: It has come to the Department's attention that many child care programs are making an effort to operate in a more environmentally friendly manner. Some operators have requested permission to use single-use cloth towels that are laundered daily. While many center and preschool operators might not find cloth towels to be practical for use, some operators might, particularly in small centers or preschools.

Comment: Requiring each child to use a clean towel for drying after every handwashing is an unnecessary expense to the provider. Germ control is important and doing our best to provide a clean environment is essential to all, however, this particular proposal should not be enforced due to the lack of valid significance. A suggestion is to revise this section to permit the usage of child specific individual cloth towels for handwashing purposes and the requirement of daily laundering of these towels. Another suggestion is to use baby wipes.

Response: The Department has replaced "single use cloth towels" with "individually designated cloth towels" in family and group rules. The Department expects that with smaller numbers of children, it is possible for a provider to maintain a sanitary environment using individually designated cloth towels.

Comment: A good clean home is vital for a child's well being; however, paper towels? The reason my parents bring their children to my home is because they want them in a "homey" setting. Common sense tells us a healthy body has to be able to be exposed to some germs in order for the immune system to become strong. Let's concentrate on the basics of what all children need, love, laughter, good meals, safety, and a "second" home.

Response: The Department has replaced "single use cloth towels" with "individually designated cloth towels" in family and group rules. The Department expects that with smaller numbers of children, it is possible for a provider to maintain a sanitary environment using individually designated cloth towels.

Comment: 75-03-08-21.1(3), in favor of requiring single use towels or paper towels since this is one very easy way to reduce the spread of germs in childcare. Using single use towels will reduce the volume of garbage leaving our property each week.

Response: The Department has replaced "single use cloth towels", as is stated in current rule, with "individually designated cloth towels" in family and group rules. The Department expects that with smaller numbers of children, it is possible for a provider to maintain a sanitary environment using individually designated cloth towels.

Comment: 75-03-11-07(3) and 75-03-11.1-07(4), "The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling." This is referring to a residence; however, it is in the preschool and school age rules.

Response: We have no rules to prohibit a preschool or school-age center from operating in a house. The purpose of this provision is to address more than one license in a house. The

Department acknowledges that some facilities, such as churches or schools, could adequately accommodate more than one licensed child care program.

Comment: 75-03-11.1-08.4(3), "The director shall document orientation of each staff member on an orientation certification form." This form should include the staff member's signature.

Response: The current form does have a place for the signature of the employee.

Comment: "keep kids in sight and hearing..." please emphasize or reiterate that this applies only during disciplinary action. Just add it to the phrase so we don't think the "and" applies any time kids are there.

Response: The Department has revised this provision to state, "The child must be in a safe, lighted, well-ventilated room within sight or hearing of a staff member."

Comment: Many comments, 75-03-08-23(3), Stating that during time out a child must be within sight and hearing range is impossible. I have six other children to watch. If I sent a child to the kitchen table for time out, then went back to care for a child that is upset and crying because of the actions for which the first child was placed in time out, I am out of sight range. To take the crying child to the kitchen to supervise the one in time out is not practical. The crying child will become more upset and the one in time out is not being separated from the situation. Rather it would be reinforcing behavior. A provider wouldn't be able to utilize the bathroom. This would interfere with every single routine in the child care. Should read "hearing or sight." This becomes a privacy issue if you have to take all the kids with you so one child can use the bathroom. This rule should be consistent with the definition of supervision which states "sight or hearing range so a staff member is capable of intervening to protect the health and safety of a child." These closely related definitions appear inconsistent and may create interpretation and application difficulties.

Response: The Department agrees with this comment and has revised this provision to state, "The child must be in a safe, lighted, well-ventilated room within sight or hearing of a staff member."

Comment: 75-03-08-23(3), other children make demands on the provider to move from room to room. Moving a child that needs a rest from the stress of others so that the provider can see and hear them would not be in the best interest of the child.

Response: The Department has revised this provision to state, "The child must be in a safe, lighted, well-ventilated room within sight or hearing of a staff member."

Comment: 75-03-09-24(9), this is impossible, unless we only have up to four children. We check on kids constantly, the state should not be interfering with private business to this extent. There are rare times when it is not possible, to visually check, and "hearing" should be sufficient.

Response: Numerous concerns from providers have been raised regarding the practicality of the proposed amendment which requires a staff member to visually check on a sleeping infant every fifteen minutes. The Department has revised this provision to state, "The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with sleeping infants."

Comment: 75-03-09-24(2), checking on sleeping infants every 15 minutes would be a disturbance to the infants' sleep pattern. If another child is in timeout due to negative behavior and this child must be within sight and hearing range, then this child must accompany the staff with checking on the sleeping infant. Is this a normal practice of families in their homes during nap or overnight sleep times? This is an unrealistic request. Child care providers will refuse to care for infants due to the time and attention required to check on a sleeping infant who is within hearing range. This will magnify the difficulty of parents looking for infant care. A few suggestions: infants must be within sight or hearing range at all times and use infant monitors in rooms where infant is sleeping. This could also be a disturbance to the other children's routine. A suggestion is to have infants within sight or hearing range up to 4 or 6 months of age or being able to roll and reposition self.

Response: Numerous concerns from providers have been raised regarding the practicality of the proposed amendment which requires a staff member to visually check on a sleeping infant every fifteen minutes. The Department has revised this provision to state, "The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with sleeping infants."

Comment: 75-03-08-24(1)(d)(9), in favor of checking on sleeping infants every 15 minutes. While this can be difficult while caring for other children that are awake, this is the best practice for our profession and ensures that the infant is safe from harm while sleeping.

Response: Numerous concerns from providers have been raised regarding the practicality of the proposed amendment which requires a staff member to visually check on a sleeping infant every fifteen minutes. The Department has revised this provision to state, "The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with sleeping infants."

Comment: 75-03-08-24(1)(d)(5), No one wants to think of having a SIDS death in their facility, but this rule could result in an easy lawsuit because how can you prove that you checked on the infant every 15 minutes and doing a visual check on an infant who had just died could appear to be a soundly sleeping baby.

Response: Numerous concerns from providers have been raised regarding the practicality of the proposed amendment which requires a staff member to visually check on a sleeping infant every fifteen minutes. The Department has revised this provision to state, "The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with sleeping infants."

Comment: What can be done to assist in the high cost of being certified in CPR and First Aid? When you're new or it's time to renew, the courses offered through ABC, BECEP, or Custer Health at the reduced costs aren't always available. We need some more consistently offered classes that are cheaper than what the hospitals offer so readily but are so much higher priced.

Response: The Department will explore this issue. This comment does not require a change in the proposed rules.

Comment: Many comments, 75-03-08-08(1), requiring that the back-up person be certified in CPR and first aid will pose hardship on daycare providers. It is not easy to be able to call someone to come over when the appointment is something that was not planned. How are we expected to get out to have medical procedures done? We do our best to follow all the other rules you have imposed on us, this one goes too far. Why are daycare providers not consulted before this stage in the planning of new rules is done? It's good to have a backup provider that is CPR and first aid certified, if it's available to you, but it should not be a requirement. A solution would be to have the provider notify the families of who the back up provider is and informing the parents whether they are or are not CPR certified and first aid certified. This removes the responsibility from the provider and places it on the parents where it belongs. They can always remove the child from care during that time frame. A few suggestions: have CPR and first aid procedures posted and/or require the CPR and first aid training for all employees/staff who work more than 10 hours per week. Another suggestion is to add "if time permits" for example in a medical emergency. This would apply only to emergency designee not substitute staff.

Response: The Department recognizes that it may not be possible for family and group providers to find substitute staff and emergency back-up providers who have received CPR and First Aid certification. The Department will explore ways of offering these courses at a lower cost and at more frequent intervals to people working in the field of early childhood education. At this time, however, the Department agrees that the exemption of CPR and First Aid certification requirements for substitute staff and emergency back-up providers

should exist. The Department agrees that providers should be required to notify parents if a substitute or emergency back-up provider is not certified in CPR or First Aid and has made this change to family and group rules.

Comment: 75-03-09-08(1), suggest that the exception for substitute staff who work less than 32 hours per month be reinstated.

Response: The Department recognizes that it may not be possible for family and group providers to find substitute staff and emergency back-up providers who have received CPR and First Aid certification. The Department will explore ways of offering these courses at a lower cost and at more frequent intervals to people working in the field of early childhood education. At this time, however, the Department agrees that the exemption of CPR and First Aid certification requirements for substitute staff and emergency back-up providers should exist. The Department agrees that providers should be required to notify parents if a substitute or emergency back-up provider is not certified in CPR or First Aid and has made this change to family and group rules.

Comment: 75-03-09-08(1)(p), like this proposed change in the rules. Even though a substitute may only be with the children a few times each year, they should have this life-saving training. It is most likely when things are different, like having a substitute caregiver, that emergencies will occur.

Response: The Department recognizes that it may not be possible for family and group providers to find substitute staff and emergency back-up providers who have received CPR and First Aid certification. The Department will explore ways of offering these courses at a lower cost and at more frequent intervals to people working in the field of early childhood education. At this time, however, the Department agrees that the exemption of CPR and First Aid certification requirements for substitute staff and emergency back-up providers should exist. The Department agrees that providers should be required to notify parents if a substitute or emergency back-up provider is not certified in CPR or First Aid and has made this change to family and group rules.

Comment: Support the phasing out the grandfathering for maximum group size as being in the best interest of children in a center.

Response: The Department agrees with this comment.

Comment: 75-03-08-24, In this area, you set ideal situations. By adding detail to the infant care section, environment, interaction, feeding, diapering, sleeping, and night care, etc., there is no leeway for the provider to make choices and decisions in handling specific situations.

This area should list minimum requirements, and they need to be reasonable and enforceable. As an in-home family child care provider, I am a private business owner. I set my rules and explain my business within the standards set forth by the State of North Dakota. In the past, these rules have been minimal and generalized. It allowed leeway in my interpretation, thus making for a good child care setting. I have always operated over and above the standards, and my parents appreciate the thought and care I put into my business. When I wrote my contracts and policies, my attorney advised me of the dangers of being too specific, and recommended that I not include anything I would not be able to adhere to uniformly. If the rules are adopted as written in this section, I will need to rethink being licensed. The rules are so specific that you are setting up each and every provider in the State of North Dakota for lawsuits from any parent who becomes angry and seeks retaliation. Legislation should outline general parameters, but not be so specific that it allows no leeway in how specific task is carried out.

Response: The Department recommends keeping the provisions as stated, unless otherwise addressed in this comments summary. The Department views the infant care section as specific, but not overly restrictive, and important in ensuring the health and safety of infants.

Comment: 75-03-09-13(15), Agree with the decision to discontinue the TB requirements for all providers and staff for Early Childhood Chapters. This change is long overdue.

Response: The Department agrees with this comment.

Comment: 75-03-09-09(2), in favor of the discontinuation of the Mantoux test.

Response: The Department agrees with this comment.

Comment: 75-03-07.1-04(1), 75-03-08-07(3), 75-03-09-07(4), 75-03-10-07(4), and 75-03-11-07(3), this should be changed due to interpretation some providers might see when reading this as it is. I interpret this to mean that providers that are currently (before October 1, 2010) self declared or self certified would be able to have more than one self declaration or self certification per residence as long as they were self declared or self certified before October 1, 2010. If I read this in this way, providers may also. Suggestion would be, "The department may not authorize more than one self-declaration per residence. A residence means real property that is typically used as a single family dwelling. This applies to new self declarations issued on or after October 1, 2010. Existing residences which have more than one self declaration will be exempt from this provision until October 1, 2015, after which time all residences will be subject to the requirements of this subsection."

Response: The Department has reviewed this section and does not feel a change is necessary. A residence that currently housed one program would not be able to house a second program because the second program would be a "new" program. The Department will clarify this to providers as necessary.

Comment: 75-03-09-14(16), 75-03-08-14(14), the restriction on having your water at 120 degrees or less is absurd. Really if a child were to get burnt from water, someone must be forcing them under the water. This should fall under section 25, discipline and punishment prohibited, it has nothing to do with the water but rather how the provider should treat a child.

Response: The Consumer Product Safety Commission recommends that water temperatures be set no hotter than 120 degrees. The human threshold for pain is generally between 106-108 degrees. According to the National Safe Kids Campaign, 4000-5000 kids each year are scalded from tap water burns. A third degree burn to a child can result after a one-second exposure at 150 degrees, and even at 120 degrees, a child can receive a third degree burn after an extended amount of time.

Comment: 75-03-08-14(14), some have suggested turning off the hot water in sinks used by children, however, it stated that the family care must have hot and cold running water. Few children under the age of two can reach faucets without assistance. Children are able to sense hot before their hands are immersed in hot water. It is beneficial for older children to learn the left faucet is hot and the right faucet is cold.

Response: The Consumer Product Safety Commission recommends that water temperatures be set no hotter than 120 degrees. The human threshold for pain is generally between 106-108 degrees. According to the National Safe Kids Campaign, 4000-5000 kids each year are scalded from tap water burns. A third degree burn to a child can result after a one-second exposure at 150 degrees, and even at 120 degrees, a child can receive a third degree burn after an extended amount of time.

Comment: 75-03-09-14(3)(b), with water heaters, temperature fluctuations are constant. Would like to see "should not exceed 120 with correction orders given if it is above 130".

Response: The Consumer Product Safety Commission recommends that water temperatures be set no hotter than 120 degrees. The human threshold for pain is generally between 106-108 degrees. According to the National Safe Kids Campaign, 4000-5000 kids each year are scalded from tap water burns. A third degree burn to a child can result after a one-second exposure at 150 degrees, and even at 120 degrees, a child can receive a third degree burn after an extended amount of time. The Department understands that water temperature fluctuates somewhat, and does not intend to issue correction orders for

temperatures slightly over 120 degrees if the provider has made an effort to set the temperature at 120 degrees.

Comment: 75-03-09-22(3), 75-03-08-19(5), when the rules say verify, does the provider just need to look at it once or do they need to keep a copy in the child's file? (4)(c) refers to having a release of information form available; the department needs to create and make a form available.

Response: The provider needs to verify the identification of the child, and document verification, but does not need to keep a copy of the specific record. The Department agrees that a release of information form must be made available to providers.

Comment: 75-03-08-19(5), is there a grace period for receiving the birth certificate from the parents or is it required before providing care? In some circumstances, care must be arranged quickly and most parents don't have a certified copy of their child's birth certificate in their files. Perhaps a 30 day grace period would allow for parents to order a certified copy of their child's birth certificate and would accommodate the parents.

Response: ND Century Code section 12-60-26 allows parents forty days to submit proof of identity of a child.

Comment: What is the maximum number of children a group child care can care for at any one time? Is there no overall limit and a provider would simply use the point ratio system?

Response: The maximum number for which a group provider may be licensed is 18 children. It is important to note that not all group providers are able to be licensed for the full 18 children, as space requirements and some city ordinances would further limit the number of children for whom a group provider can care.

Comment: What is the annual fee to renew family and group child care licenses?

Response: Fees are listed in ND Century Code section 50-11.1-03. The fee for a family license is \$20 for one year or \$35 for two years. The fee for a group license is \$25 for one year or \$45 for two years.

Comment: 75-03-07, Is there a limit on the number of children a self declared provider can care for?

Response: According to ND Century Code section 50-11.1-02(23), a self-declared provider may care for up to three children below the age of twenty-four months or no more than five children through the age of eleven.

Comment: 75-03-08, is there a maximum number of children a family provider can care for? The ratio should be used, with a maximum of seven children present at one time.

Response: According to ND Century Code sections 50-11.1-02(8) and 50-11.1-03(1), a family child care provider may care for no more than four children under the age of twenty-four months or seven children at any one time, except before and after school and on school holidays, when the provider may provide care for two additional school-age children.

Comment: 75-03-07.1-01, there should be a fee, at least to cover the expense of a background check and paperwork.

Response: The Department will consider this for future revisions.

Comment: 75-03-09-24(9), This conflicts with requirements of Nutrition Food Programs.

Response: The Department considered USDA food program requirements when proposing this amendment.

Comment: 75-03-09-03(6), in favor of an infant meaning a child less than 12 months because each month makes a tremendous difference as far as development.

Response: The Department agrees with this comment.

Comment: 75-03-09-08(i), would like to see an exception for, "no more children in home than license capacity at one time" that being if a family member or friend stops by with their own children, that it would not count as a violation as long as the adult family member stays with children. Also, if one provider would like to attend a picnic or such with another provider at one of their homes as long as the ratios are observed. Home day care is a very isolating profession. Being able to have another child care group over, I feel would be beneficial to both the provider as well as children.

Response: The Department will consider a statutory change to address this concern.

Comment: Individual cloth towels should still be ok. If individual towels are changed as needed or at least daily, with proper hand washing it should be all that's necessary. Providing single use towels or paper towels will become a large expense and is not "green" friendly. This takes away from the home environment for an in-home group child care. A suggestion: frequent replacement of towels as they show signs of being wet or soiled, replace towel in the morning and afternoon. After hand washing has taken place, hands are clean.

Response: The Department has replaced "single use cloth towels" with "individually designated cloth towels" in family and group rules. The Department expects that with smaller numbers of children, it is possible for a provider to maintain a sanitary environment using individually designated cloth towels.

Comment: There appears to be inconsistency related to the individuals who are directed in the proposed rule changes related to hand washing. In various sections staff members are instructed to wash hands according to a prescribed process and in other sections children and staff are instructed to do so. Also, in some sections, individuals must wash hands according to federal centers for disease control and prevention and in other sections according to Center for Disease Control recommendations. Needs to be consistent, including same definitions, authorities, and requirements.

Response: The Department has reviewed these provisions for consistency and revised as necessary to use consistent language.

Comment: 75-03-09-22(2)(g), having the parents initial and date the health assessment annually with any changes versus having the parents fill out the same information yearly should be good enough.

Response: The Department agrees that this is an acceptable alternative that may be accomplished within the existing language of the provision. No change is necessary.

Comment: 75-03-09-29(1), what is accomplished by posting the correction order for 5 days after notifying the parents and correcting it? Only embarrassment?

Response: The Department has reviewed this section. No change is necessary, as the rule ensures that parents will receive the proper notification that a correction order was issued.

Comment: 75-03-09-24(1)(b)(1)&(2), the infant formula requirements should be consistent with the USDA Food Nutrition Program requirements on infant feeding.

Response: The USDA Child Food program requirements were considered in this provision.

Comment: 75-03-09-24(1)(b)(2), this should not be a mandatory requirement. All infant formulas are essentially the same, a provider can't always afford to purchase \$24 formula when \$11 formula is available. The food program only requires providers to purchase one brand of formula for all infants in care. Parents may accept the brand offered, or decline and provide their own choice of infant formula.

Response: This provision does not require a provider to purchase the formula that parents request. The provision ensures that the provider will only feed the requested formula; but the provider may still require the parent to supply the formula.

Comment: 75-03-09-24(1)(d)(1), having the provider place an infant on their backs when sleeping disrupts an older infant's sleep routine once they are able to roll over or reposition themselves. A few suggestions: once a child is able to roll over or reposition themselves ensuring sleeping on their backs is not necessary; allow an older infant who can roll over or reposition themselves to continue sleeping as they are comfortable without the need to have them on their back to sleep - thus they will have more restful and less disruptive sleep.

Response: This provision does not require a provider to move a sleeping baby to its back if the baby has rolled over in its sleep. It requires a provider to place an infant on its back when putting the infant to sleep.

Comment: The elimination of school aged children before and after school is a concern, "I have 3 children of my own (one that is school aged). I will have to let one child go for the 2 hours that he is home after school because of this change. This is a huge revenue loss for me (\$500/month). Changing to group does not help in my situation.

Response: The ability of a family provider to care for two additional school-age children before and after school has not been eliminated. This is defined in ND Century Code section 50-11.1-02(8).

Comment: During the heating season, you must keep your house between 68 and 74 degrees, why does it matter if it is winter or summer?

Response: During the summer months, it is impossible for some providers to keep their facilities in this temperature range, but during the heating season, the Department wishes to ensure that child care facilities are warm enough to keep children safe and comfortable. All child care facilities have a heating source, but not all facilities are equipped with air conditioners.

Comment: 75-03-09-18(16), to place temperature restriction upon a home is going beyond the authority of this department. If the house becomes warm fast, it should start cool in the morning and it should be cool at nap time because children sleep better when it's cool.

Response: The Department has changed the required temperature range to 65-75 degrees, based on Caring for our Children national standards.

Comment: 75-03-09-24(b), needs clarification - wording of infant formula rule; suggestion is to use "checking with Food Nutrition programs for requirements." Minimum rules for feeding children should be followed.

Response: The Department considered USDA food program standards in developing this proposal. Not all providers participate in the USDA food program or understand those requirements.

Comment: Respect the committee's position on numerous policies and revisions regarding licensed care and on setting high standards in the best interest of the children, parents, and providers. The ideology behind sanitary standards and safety issues is good but not reasonable and realistic in various proposed and already implemented revisions and policies.

Response: It is the goal of the Department to have rules and regulations that are reasonable and practical for our providers. The Department continues to welcome feedback on specific provisions, and will offer ideas and suggestions to providers on ways to maintain compliance with these provisions.

Comment: Parents choose our homey atmosphere and like the family structure we provide. Many of the proposed and current revisions taint the in-home atmosphere of which we take pride in sharing with our daycare families. We are not a commercial facility, but a private home facility and should be treated as such.

Response: The Department appreciates the "homey" atmosphere that family providers offer, and did take this into consideration during the rule revision process. It is the goal of the Department to have rules and regulations that are reasonable and practical for our providers. The Department continues to welcome feedback on specific provisions, and will offer ideas and suggestions to providers on ways to maintain compliance with these provisions.

Comment: The proposed rules take a significant step in creating a level of consistency which in return will support more consistent administration, regulation, protections, and equality.

Response: The Department appreciates this comment.

Comment: 75-03-08-14(7), The deleted sentences have been moved to 75-03-08-24, Specialized types of care and minimum requirements; they would be more readily referenced if left in section 75-03-08, Minimum sanitation and safety.

Response: The Department maintains that the provision regarding infant sleeping should be listed in the infant care section.

Comment: 75-03-08-21(6), "Information" is not clearly defined. Food programs require a signed statement from a medical authority before excluding foods listed on the USDA CACFP, also if a child's special diet includes food not on the USDA CACFP a statement must be completed by a medical authority.

Response: No further definition is necessary. The Department maintains that providers must consider all information regarding children's allergies, special diets, etc., when planning menus.

Comment: 75-03-08-21.1(15), The requirement for a designated cleanable diapering area in the home should be left with sanitation for easier referencing and not move it to 75-03-08-24, Specialized types of care and minimum requirements.

Response: The Department maintains that this provision be included with other infant care requirements.

Comment: 75-03-08-21.1(16), Outside garbage should be covered or kept away from areas used by children, it would be redundant to demand both.

Response: The Department disagrees and will not change this provision.

Comment: 75-03-09-18(7), please reword to say "the provider shall keep indoor garbage, that is not otherwise enclosed, in covered containers." If a garbage can is enclosed in a closet, so it should not need to be covered also.

Response: The Department disagrees and will not change this provision.

Comment: 75-03-08-24, This section has added requirements that would be almost impossible to monitor and therefore enforce, when a requirement cannot be enforced it should not be in the rules. Other requirements in this section that are necessary for the protection of children would be referenced more easily in established sections of the rules. Some of the unenforceable requirements are good practices of a provider and should be covered in trainings of a provider.

Response: The lack of specificity in this comment makes it difficult to address, therefore, no change is being made. The Department, however, will consider specific feedback on any of the rules for future revisions.

Comment: 75-03-09-24(1)(a)(3), There are situations when a provider cannot promptly attend to a crying infant that is safe in a crib.

Response: The Department expects that all providers will be able to attend to a crying infant in a reasonable amount of time, and understands that "promptly" does not mean "immediately."

Comment: 75-03-08-14(12), Parents phone numbers are confidential, it should say the provider shall have emergency numbers of parents and first responders readily available.

Response: "Posted" does not mean that the parent phone numbers are openly displayed. The Department recommends placing the numbers in a folder posted by the telephone where it is noticeable to a substitute or other person who might need the numbers in a situation where the provider is not present.

Comment: One suggestion received is having a requirement for parents to participate in some sort of basic child care class/instruction of their own, prior to enrolling their children in a licensed child care program. Many times parents and child care providers face off about what is in the best interest of children. Many of these topics stem from the need of child care providers to follow government rules and the parent not having awareness of these requirements to licensing. Many also stem from parents who have limited caregiver abilities or child management skills. Parents should be held more accountable in guiding their children. Maintaining enrollment in the child care programs is becoming more difficult, usually due to issues with maintaining a routine, sleep arrangements, practicing appropriate discipline, poor diet, etc.

Response: The Department agrees that some parents may benefit from participating in a basic child care course, but that is not an appropriate licensing regulation.

Comment: 75-03-08-03(6), this should remain in the rules. If you have two children of your own in school and care for children of teachers during the school year and in the summer, your own children are able to be home because the teacher's children aren't in child care.

Response: The ability of a family provider to care for two additional school-age children before and after school has not been eliminated. This is defined in ND Century Code section 50-11.1-02(8).

Comment: 75-03-09-24(1)(a)(6), there should not be a specific time limit on how long a child can be awake in a portable crib, it's not always in the best interest of the child. As long as the child is happy. There are many situations where a child may be in one for longer than 20 minutes, for example if the older children are involved in large motor activities, the younger child would be in a pack and play for safety reasons and enjoyment. Does this also include other equipment such as high chairs, jumpers, bouncers, and strollers? A provider can't be expected to hold an infant all but 20 minutes a day not including sleeping time. Is disrupting a happy infant for no reason other than a time limit providing respectful care? A suggestion is to change the wording, "except for mealtime or when engaged in a high chair for play activities, an infant shall not be confined in one position, such as a swing or infant seat, for a period exceeding 20 minutes." Another situation that this would be a problem is allowing an infant, who is content but awake while sharing a sleeping room with others, to remain in crib/portable crib until others wake up and this could be a period exceeding 20 minutes. Even for some that are the only child in the room, getting up makes them crabby because they are enjoying their quiet alone time and not ready to get up and "face the world" quite yet. Bottom line is we do not want providers unduly confining or isolating infants but rather to provide respectful, responsive, and developmentally appropriate care.

Response: The Department added, "taking into consideration the child's emotional state" to allow a happy child to remain in a specific piece of equipment for longer than 20 minutes when appropriate.

Comment: 75-03-08-24(2)(c), 75-03-09-24(1)(a)(6), Glad this was added, but am concerned that the proposed rules don't state if the time limit is per day or at a time. The best practice is to use restrictive equipment for no more than 20 minutes at a time. I agree that restrictive equipment limits normal growth and development of a child. Open spaces allowing for the free movement of a child is the best practice but it has to be recognized that when caring for more than one child, restrictive equipment is used for both stimulation and safety while taking care of the needs of the other children in attendance. Would like to see the rule clearly stated, something similar to the National Association of Family Child Care, "Children are not left in equipment that restrains their movement for more than 20 minutes at a time and no more than half the time in care, except when eating or sleeping. Such equipment includes but is not limited to cribs, playpens, swings, baby seats, high chairs, exercisers. Back and front packs included."

Response: The Department will explain this provision to providers as necessary. No change is necessary.

Comment: Suggest all home child care providers receive an updated handbook upon completion.

Response: All providers will be provided an updated copy of the administrative code chapters and Century Code sections that apply to their programs.

Comment: "All child care providers caring for children with special health care needs must have care plans to assist in caring for the needs of these children. The provider shall receive a written health care plan from the child's medical provider." The medical aspect of caring for children with special needs is likely to be the facet of care the caregivers are least equipped to carry out, as their training is usually in early childhood education. The preparation of a written plan provides the opportunity for caregivers to work out how to deal with routine, urgent, and emergency medical needs. The definition of "children with special healthcare needs" should include any child who might need medical intervention while at childcare.

Response: The Department has proposed that a written health care plan be required for children with special needs with information related to the child's special needs, such as a description of the special needs, definition of the diagnoses, and general information for emergency and required care such as usual medications and procedures. The Department expects this plan to be provided by the child's parent or medical provider.

Comment: "All childcare providers must provide disposable paper towels or single-use cloth towels to cut down on transmission of illness." Many communicable diseases can be prevented through appropriate hygiene and sanitation. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention. Hand soap and hand-drying equipment, single use cloth towels, or paper towels must be available at each sink. Shared cloth towels can transmit infectious disease. Disposable towels or single-use towels will greatly cut down on illness transmission in child care.

Response: The Department has replaced "single use cloth towels" with "individually designated cloth towels" in family and group rules. The Department expects that with smaller numbers of children, it is possible for a provider to maintain a sanitary environment using individually designated cloth towels.

Comment: "Water in the faucets used by children must not exceed 120 degrees Fahrenheit." Tap water burns comprise the leading cause of nonfatal burns. Children under 5 years of age are the most frequent victims. Water heated to 130 degrees takes only 30 seconds to burn the skin. If the water is heated to 120 degrees, it takes two minutes to burn the skin. Two minutes could provide enough time to remove the child from the hot water source and avoid a burn. Studies suggest that child care providers do not know the temperature of their hot water. This is a standard recommendation from the AAP.

Response: The Department agrees with this comment. No change is necessary.

Comment: 75-03-08-14(14), this rule should only apply to sinks used by the children, or allowing to turn off the hot water faucet at the supply point under a specific sink when children are in care.

Response: This provision does apply to faucets used by children.

Comment: 75-03-08-10(2) and 75-03-09-10(5), why not require the completion of basic childcare prior to receiving the license? Most of the classes that comprise the basic childcare requirements are available online through Childcare Resource and Referral so providers across the state have the courses available to them 24 hours a day.

Response: Not all providers have internet access. The Department feels that three months of time is an acceptable time for providers to participate in the basic child care course.

Comment: 75-03-08-24(2)(c), Glad this was added. This doesn't say that parents must refrain from picking up during their child's normal sleeping hours, but it does give providers something in writing to back up their policies that they don't allow for pick ups during a child's sleeping hours when care is provided late or overnight.

Response: The Department agrees with this comment. No change is necessary.

Comment: 75-03-09-24(2)(f), like that children must have a set of night clothes and a toothbrush but am confused as to why the proposed rules only state that they must have a toothbrush and not that the provider must in fact facilitate the act of brushing teeth. Would like to see the proposed rule revised to include the requirement that teeth must be brushed when children are in care at bedtime.

Response: The Department does not feel it is necessary to further specify that children must brush their teeth at bed time. No change is necessary.

Comment: 75-03-08-24(2)(e), would like to see "sleeping mats" be added to the list of appropriate night care sleeping arrangements. If the mat is laying on top of a carpeted surface and the child is using a sleeping bag or adequate amount of blankets, they are comfortable. The children I have overnight prefer sleeping on mats since it is different than sleeping at home.

Response: The Department does not believe that a sleeping mat is appropriate for children who are in ongoing night care. The Department will not make a change.

Comment: 75-03-09-18(7), like the requirement of indoor garbage being covered but I would like to see an additional option for indoor garbage being locked in a cabinet. If I have to have it locked away, it will make it even more inconvenient for me to dispose of things throughout the day. It should be sufficient to have an indoor garbage either covered or locked in a cabinet.

Response: The Department disagrees and will not make this change.

Comment: 75-03-09-18(7), like the exception allowing for open containers to collect paper waste. Would like to see clarification to clearly state what "paper waste" includes. Would like to see used tissues still allowed in the open container for paper waste but for this portion to clearly not allow food waste and diapers/pull-ups.

Response: The Department will provide clarification to providers through county licensors.

Comment: 75-03-09-18(9), like this addition, dangerous sporting equipment can be just as harmful to children as a gun.

Response: The Department agrees with this comment. No change is necessary.

Comment: 75-03-09-21(3), like that this was removed. It adds flexibility in the scheduling of the meals and snacks. Since we have such an epidemic of childhood obesity and an assortment of related issues, I have taken on the challenge of making sure each child has a quality meal in the morning which has helped with their focus and behavior throughout our morning learning time.

Response: The Department agrees with this comment. No change is necessary.

Comment: 75-03-09-05(2)&(3), 75-03-09-06(4), 75-03-09-18, make consistent with family.

Response: The Department has made some changes for consistency.

Comment: 75-03-07.1-02(3)(a)(3), add "within sight".

Response: "Within sight" does not belong in this provision.

Comment: 75-03-07.1-07(1), 75-03-08-21.1(2), 75-03-09-18(4), 75-03-10-18(4), 75-03-11-18(17), 75-03-11.1-18(19), add "children's hands", "before and after eating", "upon arrival", "after playing outside", and "before preparing and serving meals including bottles".

Response: The Department does not feel it is necessary to outline every specific instance that a provider must wash a child's hands, but expects that a child's hands will be washed frequently and as needed.

Comment: 75-03-07.1-08(1)(h), 75-03-08-24(1)(a)(8), 75-03-09-24(1)(b)(3), 75-03-10-24(7), add highchair trays and tables shall be washed and sanitized before feeding.

Response: This additional language is unnecessary. Providers are required to serve food in a sanitary manner.

Comment: 75-03-07.1-08(2)(c), 75-03-08-24(b)(3), 75-03-09-24(1)(b)(3), 75-03-10-24(3), change to "the provider shall ensure the contents of any bottles offered to infants or left unrefrigerated are discarded after one hour."

Response: The proposed language may require a provider to act in a manner that is inconsistent with parents' requests. The Department expects providers to not allow infants access to bottles if the contents are no longer safe for an infant; however, the suggested language is too broad. No change is made to this provision as a result of this comment.

Comment: 75-03-07.1-08(2)(d), 75-03-08-24(b)(3), 75-03-09-24(1)(b)(3), 75-03-10-24(3), change to breast milk shall be heated in an individual container of warm water and add microwaves shall not be used for heating of breast milk or formula.

Response: The Department recommends that this be addressed in Basic ChildCare training.

Comment: 75-03-7.1-08(4)(e), 75-03-08-24(d)(5), 75-03-09-24(1)(d)(5), 75-03-10-24(1)(d)(5), remove "or security item that does not pose a risk of suffocation to the infant", this is inconsistent with AAP's policy. Add including bumper pads, except for one thin infant blanket. This rule is excessively specific, especially for older mobile infants. As written, an infant couldn't have a pacifier or other security item. If the crib is used as a play pen for brief periods, infants enjoy having rattles, teethingers, and toys available. Licensors could use common sense and good judgment in determining safe conditions with regard to the individual infant's age and development.

Response: This provision is specific to an infant sleeping and does not apply to infants who are playing in a crib for a short period of time.

Comment: 75-03-08-24(1)(d)(5), concern over the word "or" would prefer it said "and/or" since depriving or making the child choose one or the other is not fair to the infants.

Response: "Or" has been changed to "and".

Comment: 75-03-07.1-08(4)(h), 75-03-08-24(1)(d)(8), 75-03-09-24(1)(d)(8), 75-03-10-24(1)(d)(8), change to toys or objects are prohibited from being attached, within reach, or hung over an infant crib or portable crib.

Response: The Department expects providers to use good judgment in securing a safe sleeping area for children, in addition to complying with existing provisions regarding infant care.

Comment: 75-03-07.1-08(4), 75-03-10-24(a)(d), add sides of crib must be kept in the highest position when crib is in use; mattress shall be kept in lowest position at all times.

Response: The Department expects providers to use good judgment in securing a safe sleeping area for children, in addition to complying with existing provisions regarding infant care.

Comment: 75-03-07.1-09(1), 75-03-08-25(1), 75-03-07-05(1), 75-03-09-25(1), 75-03-10-23(8), 75-03-11-25(1), 75-03-11.1-23(8), 75-03-11.1-25(1), change medical to health care providers.

Response: "Medical provider" is used consistently throughout the proposed amendments.

Comment: 75-03-08-05(2)&(3), 75-03-08-06(4), 75-03-08-21.1 make consistent with group.

Response: The Department has made some changes for consistency.

Comment: 75-03-08-06(1), 75-03-09-06(1), change although to if.

Response: The Department does not agree with this suggested change.

Comment: 75-03-08-13(2), keep "or judgment altering drugs".

Response: The Department replaced "judgment altering" with "illegal" and recommends keeping this change.

Comment: 75-03-08-14(5), 75-03-09-18(11), 75-03-10-18(11), 75-03-11-18(9), 75-03-11.1-18(11), add "decks".

Response: This provision addresses all "elevated areas." If the deck is elevated, it will need to have a railing or safety gate.

Comment: 75-03-08-14(7), 75-03-09-14(2)(a), add an individual, washable barrier such as a towel, sheet, or blanket.

Response: The Department does not feel that a change is necessary, and recommends that this be addressed in provider training.

Comment: 75-03-08-14(13), 75-03-09-15(1), add must have first aid kit, and one staff member must be CPR/first aid certified.

Response: First aid kits must be "readily accessible at all times." No change is necessary based on the second half of this comment.

Comment: 75-03-08-16, 75-03-09-16(1), 75-03-10-16(1), 75-03-11-18(1), 75-03-11.1-16(1), add "or local authorities" in addition to emergency managers to accommodate rural communities without emergency managers.

Response: The Department expects that a provider would consult the emergency manager at the county level if the provider's local rural community does not have one.

Comment: 75-03-08-21.1(4), 75-03-09-26(4), 75-03-10-26(4), add first aid kit shall be kept in a designated location and taken outside and on field trips.

Response: First aid kits must be "readily accessible at all times." No change is necessary based on the second part of the comment.

Comment: 75-03-08-21.1(6), add shall obtain written parental permission.

Response: The Department agrees and has made this change.

Comment: 75-03-08-21.1(6)(d), consider adding "approved" training - may need further clarification in policy.

Response: The Department has removed this provision and will revisit this requirement after a training for providers has been developed.

Comment: 75-03-08-21.1(7), remove "and return to the family child care home".

Response: The Department disagrees and will not make this change.

Comment: 75-03-08-21.1(12), 75-03-09-18(18), 75-03-10-20(11), 75-03-11.1-18(18), add coats and nap items should be stored separately and in a sanitary manner.

Response: This change is not necessary.

Comment: 75-03-8-21.1(14), remove wading pools shall be prohibited.

Response: The Department allows wading pools that are strictly supervised and cleaned, sanitized, and emptied daily.

Comment: 75-03-08-22(2)(b), keep "a written statement from the parents authorizing emergency medical care" - this was kept in the group rules.

Response: The Department agrees and has made this change.

Comment: 75-03-08-23(5), remove "make".

Response: The Department agrees and has made this change.

Comment: 75-03-08-23(9), add lemon juice, vinegar, and Tabasco sauce to examples.

Response: The Department suggests these examples be addressed in training for providers.

Comment: 75-03-09-07(1), define authorized agent.

Response: "Authorized agent" is defined in ND Century Code 50-11.1-02.

Comment: 75-03-09-20(7), 75-03-10-20(16), 78-03-11.1-20(16), change stress to facilitate.

Response: This suggestion is not substantive. No change is made.

Comment: 75-03-09-26(7)(c), change "to each child" to "for each child".

Response: The Department agrees and has made this change.

Comment: 75-03-09-26(7)(a), 75-03-10-26(7)(a), 75-03-11-26(7)(a), change dated to date.

Response: The Department agrees and has made this change.

Comment: 75-03-09-26, 75-03-10-26, 75-03-11-26, 75-03-11.1-26, make consistent with family, add "The provider and any staff member who administer medication to children shall receive 'approved' training in medication administration".

Response: The Department will address this after a training on medication administration is developed.

Comment: 75-03-10-03, add staff member definition, someone caring for children.

Response: The definition of staff member is included in statute; but the Department has clarified throughout the rules when a provision only applies to a staff member in a caregiving or teaching role.

Comment: 75-03-10-08(2)(b), change 18 months to 24 months.

Response: This proposed change was supported by the Early Childhood Advisory Board, the Early Childhood Services Administrator and the North Dakota Child Care Providers Association. In offering this proposal, we recognize that low staff to child ratios are most important with young children, but feel that the quality of care will not be compromised by moving the age requirement for the ratio of .25 from twenty-four months to eighteen months.

Comment: 75-03-10-09(6), 75-03-11-08(6), 75-03-11.1-08(6), add illness prevention, sanitary practices for children and staff, safety practices, and emergency procedures.

Response: The Department will provide guidance on policy development and recognizes that the suggested items could be included under the existing policy requirements.

Comment: 75-03-10-09(20), 75-03-11-08(18), 75-03-11.1-08(24), add wherever.

Response: This change is not necessary.

Comment: 75-03-10-15(2), add first aid kit and should be CPR/first aid certified.

Response: First aid kits must be "readily accessible at all times." The Department does not believe it is necessary to specify that a staff member must be CPR/first aid certified when transporting children.

Comment: 75-03-10-18, 75-03-11.1-18, add must have first aid kit accessible at all times and off-site.

Response: First aid kits must be "readily accessible at all times." The Department does not believe it is necessary to specify that a staff member must be CPR/first aid certified when transporting children.

Comment: 75-03-10-18(12), remove outdoors and add written permission.

Response: The Department agrees with adding "written" parental permission, and has made that change.

Comment: 75-03-10-18(19), add separately.

Response: This change is not necessary.

Comment: 75-03-10-18(24)(d), remove "training chairs".

Response: This change is not necessary.

Comment: 75-03-10-20(19), add under the child.

Response: This change is not necessary.

Comment: 75-03-10-24(1)(a)(1), change birth to 18 months.

Response: The Department and Advisory Board agree that the requirements set forth in the "infant care" section apply to children under the age of twelve months.

Comment: 75-03-10-24(2)(e)(2), change to sheets and pillow cases are changed at least weekly or sooner if soiled.

Response: This change is not necessary.

Comment: 75-03-10-26, add a working flashlight in each classroom.

Response: This change is not necessary.

Comment: 75-03-11-14(3)(d), add hand soap.

Response: The Department agrees and has made this change.

Comment: 75-03-11-15(1), 75-03-11.1-15(2), add first aid kit and should be CPR/first aid certified.

Response: First aid kits must be "readily accessible at all times." The Department does not believe it is necessary to specify that a staff member must be CPR/first aid certified when transporting children.

Comment: 75-03-11-18(10), 75-03-11.1-18(25), remove outdoors and add written permission.

Response: The Department has added "written".

Comment: 75-03-11-18(16)(b), remove "against".

Response: The Department has made this change.

Comment: 75-03-11.1-18(21)(c), add water not to exceed 120 degrees F.

Response: Many school-age programs are located in schools, where the operator has no control over the water temperature. School-age children are at much less risk for tap water burns.

Comment: 75-03-11.1-20(7), add must wash hands.

Response: This change is not necessary.

Comment: 75-03-09-26, define "department-approved first aid kit". Is this a specific kit to be purchased or a list of required supplies? (7)(c), take out "must be kept." (8), take out "of a".

Response: The Department will provide guidance to providers on first aid kit requirements.

Comment: 75-03-07.1-02(6), what does this mean? Because of the word "only", does it mean that you must become licensed after one year to continue to be on the food program or to allow parents to access child care assistance? This limitation would be awesome.

Response: A self-declaration holder may apply for a new self-declaration after one year.

Comment: 75-03-07.1-02(10), this should be eliminated or add to the first sentence, "both individually and as a group." You should have enough blocks for group play rather than just enough blocks for one child.

Response: The Department agrees and has made this change.

Comment: 75-03-08-14(16), this could result in an easy lawsuit if someone slipped and fell due to conditions during a storm or thaw/freezing situation during child care hours. Providers are to be inside caring for children not outside shoveling snow or removing ice/water. During a storm or spring thaw it is impossible to keep sidewalks free of water. Suggestion would be to add, "an exclusion for storm conditions occurring during child care hours".

Response: The Department expects providers to make reasonable efforts to maintain their outdoor property. The Department does not expect providers to be making these efforts during childcare hours.

Comment: 75-03-08-14(18), airtight containers are hard to find with decline in use of cloth diapers and cumbersome to open. Products such as plastic bags specifically for disposal of messy diapers reduce the odor problem. Providers often remove used diapers from their container to the garbage several times daily. Even in a medical clinic setting, used diapers are placed in a waste basket opened with a foot pedal.

Response: The Department has changed "airtight" to "covered".

Comment: Regarding photos, wording needs to be changed or else a photo of children in care can't be displayed in a public place which would eliminate news coverage or displays of children taken in a child care setting. Would suggest adding, "written permission per individual situation/even be obtained from parent." Also add, "pictures of children in care can not be seen electronically," this would eliminate pictures being shared on Facebook.

Response: The Department suggests that providers obtain written permission from parents at the time of enrollment to display photos of the children in the facility.

Comment: 75-03-08-23(10), providers are concerned about this wording because there are some times when it is best that a child be directed to quieter play not as a form of discipline but because that is simply in the best interest of the child or other children at that moment/situation. Someone walking in during the middle of this happening could construe it as a form of discipline.

Response: The Department does not recommend changing this provision, but agrees that there are times when it is appropriate for a provider to direct a child to quiet play while others are involved in active play. The Department expects that providers will use good judgment in determining when it would be appropriate to do so.

Comment: 75-03-08-24(3), some baby's nature is to briefly cry themselves to sleep - it simply is their own pattern and holding or rocking them simply does not work. There are issues with this rule with colicky babies also.

Response: This provision is meant to ensure that the needs of infants are met appropriately.

Comment: There is no definition of "drop in" in the proposed rules, in any of the chapters. Yes, it has the section that says "drop in", but it is not clear what "drop in" is. That needs to be defined better. Also, I feel it needs to be clearly stated which "drop in" programs are required to be licensed. Examples: Sunday school programs, summer camps, sports camps, after school care at someone's house for an hour or so, etc? As it states in today's regulations, any program that serves children under 4 hours, is NOT required. Dede, Coreen and I are going to have to go to many facilities in Cass and let these programs know that they will HAVE to get licensed, and we will need a little stronger regulation to bring to the table.

Response: The requirements of "drop-in" programs apply to programs which accept children on a drop-in basis only, but are not otherwise exempt from licensing under ND Century Code section 50-11.1-02(7). Programs that serve children for under 4 hours per day while the child's parent is present on the premises are exempt from licensing.

Comments received, post-marked, or e-mailed by or on June 21, 2010 were reviewed. We received two sets of comments that did not fall within these parameters. These comments were reviewed but not included in the summary of comments.

A few comments were received regarding the formatting of the proposed rules. These comments were not addressed in this summary because they are not substantive comments on the rules.

Prepared by:



Julie Leer, Director
Legal Advisory Unit
N.D. Dept. of Human Services

In Consultation with: Jennifer Barry, Children & Family Services
Jonathan Alm, Legal Advisory Unit

July 13, 2010

cc: Jennifer Barry, Children & Family Services

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Jennifer Barry, Early Childhood Services Administrator

RE: Regulatory Analysis of Proposed North Dakota Administrative Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1

DATE: May 4, 2010

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed to North Dakota Administrative Code Article 75-09.1. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The purpose of these rules is to establish a minimum standard for early childhood services and to assure that those standards are maintained.

Classes of Persons Who Will be Affected

The classes of person who will most likely be affected by these rules are:

1. Operators and employees of early childhood programs; and
2. Early childhood services licensors.

Operators and employees will benefit from clearer amended rules. New training requirements will likely positively impact the professional development of the workforce.

Licensors will need to receive training on the amended rules.

Probable Impact

The financial impact to providers is expected to be minimal. Only a few revisions will have any financial impact at all for new and existing providers, and it is expected that the

costs for compliance will be balanced between proposals that present a cost to the provider and proposals that will decrease current costs for providers.

Probable Cost of Implementation

There are no expected cost increases for enforcement of the proposed rules, and no effect on state revenues is expected. Predicted costs do include printing and dissemination of the rules and training of the regulatory staff on the revisions. These costs have been budgeted for in the current ECS budget.

Consideration of Alternative Methods

Statutory changes to N.D.C.C. §50-11.1 have resulted in a need for updates to the administrative code for early childhood services. There are no acceptable alternative methods.



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John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Jennifer Barry, Early Childhood Services Administrator, Children and Family Services

DATE: May 4, 2010

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1

The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. The proposed rules are not mandated by federal law.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The minimum standard of compliance has been established to ensure safe care for children enrolled in early childhood services programs. Less stringent standards have not been considered, but in an effort to reduce reporting requirements, it is proposed in the amended rules that one form, the Health Information Certification form, no longer be required from operators and employees of early childhood services programs.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The Department may use discretion in issuing provisional licenses and self-declarations to operators who fail to meet compliance in all areas, but are

working toward maintaining compliance. No other less stringent schedules have been considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

Yes, simplification of compliance reporting methods has been considered. The annual requirements that providers need to submit have been determined to be necessary for assuring safe care for the children enrolled in early childhood services programs.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The proposed amendments reflect a minimum standard of compliance for operators and employees.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

Exemptions of some requirements were considered, but it is generally expected that all operators and employees will need to meet a minimum standard of compliance set forth in N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1 to ensure safe care for the children enrolled in these programs.

John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Jennifer Barry, Early Childhood Services Administrator, Children and Family Services

DATE: May 4, 2010

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. The proposed rules are not mandated by federal law. The proposed rules could have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are: operators and owners of early childhood programs.

The following small entities may also be subject to the rule: county licensors

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: minimal. Only a few revisions will have any financial impact at all for new and existing providers, and it is expected that the costs for compliance will be balanced between proposals that present a cost to the provider and proposals that will decrease current costs for providers.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: minimal.

The probable benefit to private persons and consumers who are affected by the proposed rule: It is expected that certain revisions will lead to higher quality of care, benefiting children and families enrolled in the program.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: There will be no impact on state revenues. Costs for printing and dissemination of amended rules and training of regulatory staff on the amended rules has been included in the early childhood services administrative budget.

5. Alternative Methods

The Department considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. Those alternatives included: continuing to license early childhood programs with existing rule. The alternatives were not selected because statutory changes to NDCC 50-11.1 presented a need for updated administrative code. These chapters were last revised in 1999, and updates are necessary to reflect changes in statute and services available to providers.

John Hoeven, Governor
Carol K. Olson, Executive Director

TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code article 75-03.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.
2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.
3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.
4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than \$0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than \$0.
5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.
6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 5th day of May, 2010.

by: 
N.D. Dept. of Human Services