

2011 HOUSE HUMAN SERVICES

HB 1085

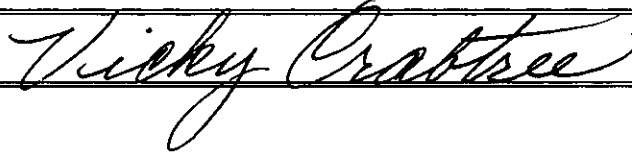
2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1085
January 5, 2011
12583

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman Weisz: We will open the hearing on HB 1085.

Jennifer Barry: Early Childhood Services Administrator with the Department of Human Services (DHS), gave support and overview of the bill. (Testimony attached.)

Representative Porter: Can you go into a little more detail of what kind of things that would be a direct bearing offense.

Jennifer Barry: I do have the list of direct bearing offenses, would you like me to read or pass around.

Representative Porter: If we could just have a copy of it.

Jennifer Barry: I'll have copies made and brought to you.

Chairman Weisz: Your example talks about continuing a suspension after an investigation, but I read the language in Section 1 as the suspension could start before an investigation. Is that correct?

Jennifer Barry: Once the report is made, the investigation begins.

Chairman Weisz: They could be suspended before the investigation determined anything. Correct?

Jennifer Barry: It's the view of the department that we need to have a strong belief that the health and safety of the children in care were at eminent risk. A random report being made maybe a parent who is angry or any unsubstantiated report would not result in an immediate suspension.

Rep. Hofstad: Give me an idea of the timeline of this process from the reporting process through your investigation through the resolution.

Jennifer Barry: The timeline very much varies. Not completely familiar with the protection investigation process. I've seen the investigations take from 1-2 weeks to months. Depending on the number of children, parents and outsiders being interviewed. The department's process for the revocation will make a decision pending on getting information from that child abuse and neglect report on whether or not the department is going to issue a revocation. Once we issue the revocation, if an appeal is filed that may take several months. Once they have appealed, they can continue to provide care for probably 3-6 months depending upon when that appeal hearing is scheduled. If strong evidence of harm to children during that appeal process, then the department would like to suspend the license during that time.

Rep. Porter: After the appeal process and the individual business is found to be innocent or ok to continue to provide services, then you have proven them guilty, suspended them and then given back their license without any real due process to defend themselves. So they are found guilty before having the ability to prove their innocence.

Jennifer Barry: The department understands our Early Childhood Services Program depends on having available providers. We believe removing the child from their current care and forcing families to find alternative care should only be done in severe instances or when an operator won't come into compliance. Sixteen revocations were issued from 2009-2010. Three with suspension. We have over 220 licensed and registered providers in our state. The percentage of programs that are revoked or suspended by the department is quite small. We try and make the revocations or suspensions a last resort. Since I've worked in this office, there has never been an appeal where a provider got their license back.

Rep. Porter: The innocent before proven guilty; the whole due process of everybody having the opportunity to prove their innocence and giving the department the ability to skirt that. By taking that first and then letting the system work, goes in the face of what we were founded on as a country. I understand the whole health and safety issue and understand what you are trying to do. The problem I'm having is by using one isolated incident to change it to affect everybody and it is a difficult decision for me to make and take away that due process that the whole country has been founded on.

Jennifer Barry: I understand your concern. I just want to reiterate that in the past 2 years, there have only been three suspensions issued even though we have had the authority to suspend licenses. We don't always suspend during a child abuse and neglect investigation. We look at each case closely.

Chairman Weisz: On the example you have cited here, I assume the parents are aware of the investigation process. So they have the ability to decide if they feel their children should be in that environment, correct?

Jennifer Barry: Parents are made aware whenever revocation or suspension is issued. When child protection services is involved, they are privy to all the information surrounding the assessment.

Rep. Holman: The whole concept is about protecting children and bringing up due process is important too. What other recourse might there be to protect the children. Is there another legal recourse other than giving this department the authority?

Jennifer Barry: I'll defer to Jonathan Alm.

Jonathan Alm: I'm not aware of any legal recourse when drafting this bill. Only solution we could see. We don't do suspensions in a light manner.

Rep. Porter: Inside the department's authority going back to Chairman Weisz's question, what is the policy about the department's requirement to notify parents that an investigation is taking place at the provider they hired whether their child is involved or not? Are we under as a state an obligation to notify the other parents so that they can make a proper decision on the health and safety of their child?

Jonathan Alm: If we receive an investigation notice, we look to determine if it should be suspended. When we do issue a suspension, the parents will be notified of the reason of the suspension and won't know specifics.

Rep. Porter: So we are notifying upon a report or an investigation of sexual or physical abuse anyone else who has that provider?

Jonathan Alm: If it occurred on the child, the parent would be notified. The other parents will not be notified. That is a state law.

Rep. Porter: Can you get me a copy of that?

Jonathan Alm: You betcha.

Chairman Weisz: The parents know there is a suspension, but don't know that sexual abuse is involved? What information will you tell the parents in this particular example? What were they told when their license was suspended?

Jonathan Alm: Refer to Jennifer Barry.

Jennifer Barry: In this particular instance, the parents were told that the license had been suspended and a revocation was issued. The offender was a minor, so that brought more confidentiality laws into place.

Chairman Weisz: They weren't automatically informed that sexual abuse occurred? Just that the health and safety was at risk.

Jennifer Barry: (Shakes her head yes)

Chairman Weisz: Anyone else in support of HB 1085? Any opposition of HB 1085? If not, we will close the hearing on HB 1085.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1085
January 11, 2011
12740

☐ Conference Committee

Committee Clerk Signature

May Mair

Explanation or reason for introduction of bill/resolution:

To amend and reenact section 50-11.1-07.8 of the North Dakota Century Code, relating to suspension of license, self-declaration, or registration document involving a child abuse and neglect investigation.

Minutes:

Rep. Porter: In working with the dept on this issue, we got to the point with the staff of getting the amendments put together and in subsection one, we came to the conclusion that it should be a committee discussion and the will of the committee in which direction is taken on how that process would work. I asked the dept to come up with two different sets of amendments to show two different ways it could work in subsection one and that's what we have in front of us. We can turn it over to the dept and they can explain. The only difference is in subsection one.

Chairman Weisz: We'll have the dept explain each amendment, highlighting the differences between version one and version two with discussion to follow.

Rep. Paur: Can these be identified so we know which one is being referred to?

Julie Leer, Attorney with the Dept of Human Services: the only difference between the two sets of amendments are if you look at the first pg, line ten, you can where one set stops after the insertion of the long paragraph of text; the other one contains additional amendment to overstrike report of child abuse/neglect and insert immediately thereafter. So, the shorter version of pg one, line ten, can be labeled A and label the other one B. One of the concerns we received is with subsection two on pg one on lines 14-21 and the other request is rather than limit the licensing of an early childhood services program is to limit the presence of people who might be harmful of children. The way that the statue currently reads is that we can suspend a license upon a report of child abuse/neglect. The way that the amendment reads is that we could suspend the presence of the person against who a report of child abuse/neglect has been made, to be around children receiving care.

Chairman Weisz: The way I read the original law is that upon during investigation, not upon a report.

Julie Leer: Correct, I'm sorry. What both sets of the amendments do is they remove the language that says a dept may suspend a license, self-declaration or registration document and changes it to may suspend the presence of owner, operator or holder of a self-declaration, in home provider, staff member, and household member of any of the programs upon a report. Amendment A leads us upon a report of child abuse/neglect. Amendment B takes out report of child abuse/neglect and changes it to upon a services required termination under 50-25.1. That means the investigation has been completed and there's been a determination that the offense occurred and additional work needs to be done with that person and remediation.

Chairman Weisz: I have to admit it doesn't make any sense. In reading the document, it says the dept may suspend, during an investigation, the presence of an owner...you're leaving in during an investigation?

Julie Leer: No, that's already over struck.

Chairman Weisz: Why would I suspend the presence of an owner?

Julie Leer: We're suspending those who are the subject of the report. The program could continue to operate but the owner couldn't be around children.

Rep. Porter: they may still be the owner of the business, but they can't be present or on the premises.

Rep. Porter explained the language and its intent to Chairman Weisz.

Julie Leer: the request we received was not to suspend the license, but to suspend the person, so that's why we'd have a laundry list of these individuals when the children are in care.

Chairman Weisz: the language says you are suspending the presence of the owner. Should it at least have an if?

Julie Leer: it does say from the early childhood premises when the children are in care.

Chairman Weisz: shouldn't there be a comma prior to the presence? You don't suspend presence.

Rep. Holman: would you read the whole thing as part A would read, word by word, as engrossed.

Julie Leer: Subsection one (amendment A): the Dept may suspend the presence of an owner, operator, holder of a self-declaration, in home provider, staff member, or household member of the early childhood program, self-declaration or in home provider from the early childhood premises when children are in care, upon a report of child abuse/neglect at the premises of licensed program holder of self-declaration, registration.

Chairman Weisz: don't you prohibit the presence?

Rep. Porter: it still would be in the process of the dept's authority to suspend the presence of that person. They could still own and operate the business, but would have to hire someone else to do the duties that the person did that was in the presence of children.

Chairman Weisz: I understand exactly what it is doing. My issue is with the language. It should be prohibit their presence as I don't know what it means to suspend their presence.

Rep. Porter: Amendment A, that's upon a report. The process of determining if it's a legitimate report still hasn't happened yet.

Chairman Weisz: You prohibit a presence and you suspend a license.

Julie Leer: We're not married to that particular word so if restrict or something would work better, we can do that. The point is we capture the intent which is to not allow an individual who has a child abuse/neglect report on them to be in the presence of children.

Rep Paur: Can't we just change that suspend to prohibit?

Chairman Weisz: Is there a reason they wanted it to say suspend? It's just illogical.

Rep. Porter: In looking at A and B, we can start that sentence with prohibit, on both of them. The committee discussion is on at what point you prohibit that person from being present. In A, it's at the time of report; in B, it's at the completion of the investigation; but the action is the same, just at two different times in the process.

Chairman Weisz: both amendments will allow the facility to operate under appeal (contrary to the current bill), but both will prohibit an individual whether he/she be an owner, employee, etc. from being present around child while in care, at the time a child abuse/neglect report has been filed against him/her (A) or at the completion of the investigation of child abuse/neglect (B). So, the bill saying we'll let you operate if the reported abuser is not the premises.

Rep. Porter: there was one of piece of the amendment on pg three that should be explained before we decide what version we like better. This piece is key to how the first piece kicks in because there is the ability now for the dept to notify other parents of what is going on and what has been reported so they can make a conscious decision of whether they want to continue sending their children to the facility. Ms. Leer, can you explain this?

Julie Leer: the rest of the amendments (true for both of them), starting on pg two, after line five, are adding a section after the bill. 50-25.1-11 is the section being added and that's our confidentiality section, dealing with reports of child abuse/neglect. The change that we are making is to re structure to address the concern that Rep. Porter made. Currently the reports are confidential as to parents of children in childcare regardless of who the report has been made against. Thus parents are only able to get information on child abuse/neglect reports from the daycare that their children are being served at, and cannot obtain such reports from other daycares. It also says that we'll make a good faith effort to provide written notice of the results of the assessments to parents or legally appointed guardians.

Rep. Kilichowski: would it be a good idea to get this information out before the investigation is taken care of? Would it hinder that at all?

Julie Leer: we currently have a provision that allows us with some limitation to inform the parents of children in care that there are some concerns. This gives us more specificity and is more expansive. Part of the concern is it's a delicate balance between the rights of the person being investigated but also the rights of the people who have children in care. It's a policy decision that we can live with either way because we understand the concerns on each side.

Rep. Porter: The way that, that subsection is worded, is really after the assessment and investigation have been complete, it's not right at the report. It wouldn't be at the allegation level which is why I asked for two different sets of amendments. Amendment A prohibits presence around children of individuals who are alleged abusers (report has been made), however release of that information cannot occur until investigation is complete and amendment B releases information at this time as well (completion of investigation). Aren't they notified that a report was filed thought?

Julie Leer: 50-11.1-07.8 does allow the dept to notify the parent of a child receiving services when the program's license, self-declaration, or registration document is suspended. With the other changes taking place, that would reduce our ability to make those reports. The change to 50-25.1-11 would be after the assessment is completed because it does say the name of the subject to summary the facts of the assessment and at the end it does say the dept shall provide written notice of the results of an assessment, however we do have a right to notify the parents if the license has been suspended.

Chairman Weisz: Based on earlier testimony, if someone filed a report, they could be notified that a report was filed, but none of the information details.

Julie Leer confirmed Chairman Weisz in stating that if there's a report, there will be an investigation. Julie Leer asked Jonathan Alm, Attorney for the Department of Human Services, to clarify Chairman Weisz's question regarding earlier testimony.

Jonathan Alm: If there was a statement made towards that, I apologize. The only time that we can notify an individual when a CPS report is made is when we suspend an individual's license, then we can notify the parents, but not to the specific details.

Chairman Weisz: Currently any parent would have no info that there was an ongoing investigation or anything else in that facility up until the license has been suspended, right?

Jonathan Alm: The only circumstance would be that the parents would be notified if the offense took place on that parents' child, even if license wasn't suspended, and investigation was occurring.

Rep. Porter: The way that, that was described really only dealt with the parents of the children of the complaint; the other families aren't notified under the current situation and that's what subsection two does, is allow it to go to other parents of that business?

Jonathan Alm: You are correct.

Rep. Damschen: If you had a complaint against a staff member and the owner wanted to suspend that employee, is there anything in this language that would confuse or complicate or make that hard to do?

Jonathan Alm: The amendments do not prohibit an owner to suspend or fire an individual based on any CPS investigation or criminal activity.

Rep. Hofstad: In the case of a provider that providing services within his own home and they have children and there's a complaint filed against them, does this give us the authority to remove that parent from the home?

Jonathan Alm: If a CPS investigated was filed on the caregiver who owns the business, whether we would remove her from the home, the situation would be is she would not be able to be in the home during childcare hours and come back to the home outside of those hours.

Rep. Porter: That was one of the whole concerns we had was the fact that the whole business would be shut down and basically out of business. This gives the business owner the ability to hire someone and continue the operation if they are a sole provider of services in that business, and this applies to if the business is run from their own home. So they could still maintain their business, until A or B would be completed.

Chairman Weisz: Jonathan, you indicated you had problems with confidentiality; you're not concerned with the language of subsection two on confidentiality?

Jonathan Alm: Yes, when Rep. Porter discussed his concerns, I looked at the confidentiality at 50-25.1 was the blocking source of us being able to disclose to family members that an individual in the facility has harmed a child. So, the Dept, at times, wishes they could describe more to the families, but we're always blocked by that state law. I think how the law is proposed and written would allow us to determine as to how much of the facts; we wouldn't disclose statements made by witnesses and children, but more so a summary of facts to give the parents a brief overview of what the situation is.

Rep. Anderson: When there's a report of an abuse, how quick does the investigation start, on average? Immediately?

Jonathan Alm: Depends on what the allegation is and how fast it starts, but there is deadline. Referred question to Tara Mulhausser, Director of the Child and Family Services Division.

Tara Mulhausser: Depending on the facts given in the report, we start investigating anywhere from 24 hours to up to 3-4 days to assess. If the child has a physical injury, a head injury, that's a 24 hour kind of start; if it's a child has a bump and a bruise it might be a 3-4 day start. We like the workers to complete their work in 30 days, sometimes they can't reach all of the collateral sources or they don't have a chance to interview all of the people that need to be interviewed within the 30 days so they might go to 45, 60 at the outset. We want those timelines, pretty closely, for CPS assessments, so that if they're beyond 60, we ask for some explanations. Again, typically the explanation are things like somebody moved out of state and I'm trying to get a hold of them to get information, somebody's ill, unavailable, etc.

Rep. Porter: The language, the way it's in here, is that they may suspend and I'm personally leaning towards amendment A because it gives the Dept the ability to implement the prohibition based on what the report is and I'm waiting to hear more back from the Dept. So if the report is that the kid comes home and the mom sees a handprint on the butt and they say boy, they spanked my kid pretty hard and they turn it in, would that mean that the Dept. would go right to a suspension or just an investigation? To the other extreme of that where medical care was required because of something that happened at the facility that appears to be an abusive situation whether it be like shaken baby syndrome, that would kick into my mind that it would be an immediate suspension of that individual from the premise.

Jonathan Alm: The Dept has only suspended three individuals over the two years, although during the time we have had several other CPS investigations in childcare centers and in home facilities. We look at the underlying facts to make the determination. Is it necessary to really go head on and suspend that person? For instance we would look at if the individual is harming her own child solely or the other children in the daycare and of course immediate suspension would occur in the latter. We received a report from Grand Forks in which we worked with the facility versus suspending, due to the impact suspending the facility would have on families and the kids who went there, such as removing the perpetrator from the facility.

Rep. Holman: Ms. Mulhausser, how might this change what you do within the Dept?

Tara Mulhausser: Jennifer Barry, the child care administrator, is also here and I think it is more appropriate for her to answer this because she has better day to day knowledge.

Jennifer Barry: I am the Early Childhood Services Administrator with the Dept. of Human Services. This would allow us what we try to do already. When we have had an instance of a child abuse / neglect allegation and we're quite certain that somebody has injured a child, what we have tried to do, either through a restricted license or entering into an agreement with a MOU with the program facility, is remove that person. This would be the basis of that authority. It may not change the actual process – just clarify for those of us who are involved in the actual investigation.

Representative Holman: We're talking many times about the licensed facilities but there are also unlicensed facilities. Does this affect them differently or how does that all mesh?

Jennifer Barry: This particular bill would apply to only licensed programs, holders of self declarations and in home registered providers. Under our state law, a license is not needed unless a provider cares for more than 5 children so there are a good number of those kinds of informal care relationships that we don't regulate in any way and this bill would not apply to those types of programs.

Chairman Weisz: Further questions from the committee?

Representative Louser: I was inclined more to proposal B as opposed to proposal A until I heard the thirty to sixty days. It seems to me that this would not suspend the license. In the instance of the other parents - it gives them the opportunity to look for alternatives. If the license is suspended and the investigation is completed and the findings are that that provider gets their license back, what happens in the mean time? It seems like this proposal would

allow for that facility to continue without the person on sight and gives the parents the opportunity to look for alternatives. In that case, I think option A is a better option as opposed to option B. Could you comment to that Representative Porter.

Representative Porter: I think that both amendments offer that kind of flexibility to the business. They can choose to hire and remain open or if it's a multi employee type situation, as right to work state, they can terminate that person's employment if it's not terminating themselves in their own home. It does give them the option to stay in business and continue to provide the service. The reason I'm leaning towards number A is that in those severe instances where someone has required medical care or there's been an acute injury or death, the department can step in immediately and prohibit the presence of that person. The notification process falls back on completion of the investigation because you couldn't expect the department to put forth unsubstantiated claims of abuse or neglect without doing the investigation. That's kind of why I'm leaning towards number A because that flexibility still exists. For that simple 'hand print on the face' kind of thing, the department is still going to step in and investigate and they'll be able to make a determination in the first portions of that investigation if other kids are at risk. If they feel they're at risk, then they have the ability to suspend or prohibit that person while the investigation goes on. That's why my feeling is to lean towards number A.

Chairman Weisz: Committee, do we have any more questions for those that are here? We'll have our discussion on the amendments. We do have two versions of amendments in front of us.

Representative Damschen: I would move the adoption of proposal A with the additional amendment to change 'suspend' to 'prohibit'.

Representative Devlin: Second.

Chairman Weisz: Discussion on the motion. Amendment A does allow them to move in on a report. OK. Further discussion? Take a voice vote. All those in favor say I. Opposed? We have a bill in front of us.

Voice Vote carried: 13 yeas 0 nays 0 absent

Representative Devlin: I move a do pass as amended on HB 1085.

Chairman Weisz: We have a motion. Is there a second?

Representative Schmidt: Second

Chairman Weisz: Discussion on the bill as amended? No further discussion, the clerk will call the roll on a do pass as amended. We have a 12-1 pass. Who would like to carry this?
Representative Porter

12 Yes 1 No 0 Absent

Do Pass as Amended

Carrier: Representative Porter

January 11, 2011

V12
1/12/11
102

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1085

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "50-11.1-07.8" insert "and 50-25.1-11"

Page 1, line 3, after "investigation" insert "and to the confidentiality of child abuse and neglect records and information"

Page 1, line 7, overstrike "**of license, self-declaration, or registration document**"

Page 1, line 9, overstrike "suspend a license, self-declaration, or registration document"

Page 1, line 10, after "of" insert "prohibit the presence of an owner, operator, holder of a self-declaration, in-home provider, staff member, or household member of the early childhood program, self-declaration, or in-home provider from the early childhood premises when children are in child care,"

Page 1, line 14, remove "The department may suspend a license, self-declaration, or registration document if"

Page 1, remove lines 15 through 21

Page 1, line 22, remove "3."

Page 2, line 1, remove the overstrike over "3." and remove "4."

Page 2, line 4, replace "5." with "4."

Page 2, after line 5, insert:

"SECTION 2. AMENDMENT. Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures.

1. A report made under this chapter, as well as any other information obtained, is confidential and must be made available to:
 - 1.a. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
 - 2.b. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information to determine whether to place the child in protective custody.
 - 3.c. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
 - 4.d. Any person who is the subject of the report; provided, however, that the identity of persons reporting or supplying information under this

2/20

chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.

- 5.e. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.
- 6.f. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
- 7.g. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
- 8.h. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
- 9.i. A parent or a legally appointed guardian of the child identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.

- 2. The parent or legally appointed guardian of a child receiving early childhood services under chapter 50-11.1 may receive the name of the subject, a summary of the facts, and the results of an assessment conducted under this chapter if the report made under this chapter involves the owner, operator, staff member, or household member of the early childhood program, the holder of a self-declaration or a household member of the holder of a self-declaration, or the in-home provider or a household member of the in-home provider, who is providing care to the child. The department shall make a good-faith effort to provide written notice of the results of an assessment conducted under this chapter to parents or legally appointed guardians identified in this subsection."

Renumber accordingly

Date: 1-11-11
Roll Call Vote # 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1085

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Damschen Seconded By Devlin

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) 13 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*ADOPT Amend "A" and
Change word "suspend" to "prohibit"
voice vote*

Date: 1-11-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1085

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Devlin Seconded By Schmidt

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ		<input checked="" type="checkbox"/>	REP. CONKLIN	<input checked="" type="checkbox"/>	
VICE-CHAIR PIETSCH	<input checked="" type="checkbox"/>		REP. HOLMAN	<input checked="" type="checkbox"/>	
REP. ANDERSON	<input checked="" type="checkbox"/>		REP. KILICHOWSKI	<input checked="" type="checkbox"/>	
REP. DAMSCHEN	<input checked="" type="checkbox"/>				
REP. DEVLIN	<input checked="" type="checkbox"/>				
REP. HOFSTAD	<input checked="" type="checkbox"/>				
REP. LOUSER	<input checked="" type="checkbox"/>				
REP. PAUR	<input checked="" type="checkbox"/>				
REP. PORTER	<input checked="" type="checkbox"/>				
REP. SCHMIDT	<input checked="" type="checkbox"/>				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Porter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1085: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1085 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "50-11.1-07.8" insert "and 50-25.1-11"

Page 1, line 3, after "investigation" insert "and to the confidentiality of child abuse and neglect records and information"

Page 1, line 7, overstrike "of license, self-declaration, or registration document"

Page 1, line 9, overstrike "suspend a license, self-declaration, or registration document"

Page 1, line 10, after "of" insert "prohibit the presence of an owner, operator, holder of a self-declaration, in-home provider, staff member, or household member of the early childhood program, self-declaration, or in-home provider from the early childhood premises when children are in child care."

Page 1, line 14, remove "The department may suspend a license, self-declaration, or registration document if"

Page 1, remove lines 15 through 21

Page 1, line 22, remove "3."

Page 2, line 1, remove the overstrike over "3." and remove "4."

Page 2, line 4, replace "5." with "4."

Page 2, after line 5, insert:

"SECTION 2. AMENDMENT. Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures.

1. A report made under this chapter, as well as any other information obtained, is confidential and must be made available to:
 - 4-a. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
 - 2-b. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information to determine whether to place the child in protective custody.
 - 3-c. Authorized staff of the department and its authorized agents, children's advocacy centers, and appropriate state and local child protection team members, and citizen review committee members.
 - 4-d. Any person who is the subject of the report; provided, however, that the identity of persons reporting or supplying information under this chapter is protected until the information is needed for use in an administrative proceeding arising out of the report.

- 6.e. Public officials and their authorized agents who require the information in connection with the discharge of their official duties.
 - 6.f. A court, including an administrative hearing office, whenever the court determines that the information is necessary for the determination of an issue before the court.
 - 7.g. A person engaged in a bona fide research purpose approved by the department's institutional review board; provided, however, that no individually identifiable information as defined in section 50-06-15 is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
 - 8.h. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
 - 9.i. A parent or a legally appointed guardian of the child identified in the report as suspected of being, or having been, abused or neglected, provided the identity of persons making the report or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.
2. The parent or legally appointed guardian of a child receiving early childhood services under chapter 50-11.1 may receive the name of the subject, a summary of the facts, and the results of an assessment conducted under this chapter if the report made under this chapter involves the owner, operator, staff member, or household member of the early childhood program, the holder of a self-declaration or a household member of the holder of a self-declaration, or the in-home provider or a household member of the in-home provider, who is providing care to the child. The department shall make a good-faith effort to provide written notice of the results of an assessment conducted under this chapter to parents or legally appointed guardians identified in this subsection."

Renumber accordingly

2011 SENATE HUMAN SERVICES

HB 1085

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

HB 1085
3-7-2011
Job Number 15052

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to suspension of license, self-declaration, or registration document involving a child abuse and neglect investigation and to the confidentiality of child abuse and neglect records and information

Minutes:

Attached testimony.

Senator Judy Lee opened the hearing on **Engrossed HB 1085**.

Jennifer Barry, Dept. of Human Services, offered an overview of HB 1085 and offered additional amendments. Attachment #1

She explained that when they first amended HB 1085 they removed the Department's ability to suspend a license and instead "prohibit the presence of a person who is under investigation". Those changes were not made all the way through the actual section of the Century Code. That's where most of these amendments are taking place. The other substantial change is on page 1 line 16 because they felt "would jeopardize" would be hard to determine.

Senator Tim Mathern asked if they are still able to take the other step of suspending a license if this bill with amendments were passed.

Ms. Barry said they would not have the authority to suspend a license completely. The actual license would still be intact but the provider under investigation could be removed from the premises. If a backup provider could be found to run the program and provide the childcare during the investigation, the department would allow for the business to remain open.

Senator Tim Mathern wondered if it would still be useful to have that authority.

Ms. Barry explained that these changes were made based on recommendations from the House Human Services Committee. There were some concerns about the due process of the provider coming into play. This is a compromise where they could remove the person who needed to be removed for the health and safety of the children but still allow that provider to keep their business open pending the revocation.

Senator Dick Dever wondered what kinds of incidents have lead to the need for this bill.

Ms. Barry gave an example.

Discussion then followed on notification of parents. Under current law specific information could not be given out about the child care assessment taking place.

Ms. Barry explained the process of revocation and appeal and that child care can still be provided during this process. Under a suspension in place no child care can take place and there is no appeal process for a suspension.

Senator Gerald Uglem asked if there had been a problem with false accusation.

Ms. Barry replied that there have been a few but thought the county workers generally have sort of a feeling if it is a sure thing.

Discussion: Under current law specific information cannot be divulged about the child care assessment unless the child has been considered a victim in the assessment. Then the parents of that child can receive specific information. This bill would expand current law so that the information could be given to all parents in the program.

Tara Muhlhauser, Dept. of Human Services, explained how the notifications would be handled and gave examples of when notifications would be given.

Senator Tim Mathern asked (1) if passage of this bill w/amendments would permit the department to specifically name a 13 year old child who is a member of the child care facility as having abused or being named as abusing children at the facility. (2) Are there other provisions of the law that would permit them to suspend a license other than this.

Ms. Muhlhauser replied to the first question. It would be the mother or parent of the 13 year old who would be held responsible for failing to supervise the 13 year old child if that child was engaging in activity with the kids in the home.

Jennifer Barry added that if the 13 year old was believed to have done something and had admitted it and was going through the juvenile court process they would prohibit him from the premises. In answer to the second question she said this is the only place in law that she was aware of that they can suspend a license.

Discussion followed on posting correction orders. This is slightly different because if they are going to suspend or in this case, under the new proposed amendments, prohibit a person it would likely be issued in conjunction with a revocation. Parents would be given notice that a license has been revoked and also notice that the person has been prohibited. Examples of cases of abuse by a 13 year old and the process of taking action of notification were discussed.

The House amended this to remove the authority of the Department to suspend a license.

Senator Judy Lee felt the department should have the option with something that is less serious of being able to say the child care can continue but that a person needs to be

removed. Taking away authority to stop something that is really egregious bothers her and hoped they could come up with something that would allow an additional option in those circumstances where it is appropriate.

Ms. Barry said they could work with the committee to draft those amendments.

Senator Gerald Uglem wondered if restricting people from being on the premises would be the same thing as a suspension.

Ms. Barry said it could serve the same purpose. The only issue is that it does put more responsibility on the Department to make sure that person who is prohibited is actually not in the presence. In a family child care home that would be difficult because the person lives there.

There was no further testimony. The hearing on HB 1085 was closed.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

HB 1085
3-8-2011
Job Number 15133

☐ Conference Committee

Committee Clerk Signature

Chadson

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments

Senator Judy Lee opened committee work on Engrossed HB 1085.

Jennifer Barry, Dept. of Human Services, provided amendments. Amendment A was the same amendment she talked about at the hearing. Attachment #2 Amendment B is the amendment that reconciles Amendment A with what the committee requested. Attachment #3 It allows the department to keep the authority to suspend a license or self declaration of registration document or prohibit the presence of a person when there is an investigation of child abuse and neglect.

Attachment #4 – Different licensing actions that the department takes and possible results.

Attachment #5 – Early Childhood Services in North Dakota.

Senator Spencer Berry asked if they generally suspend a license before they revoke it.

Ms. Barry replied that frequently they revoke without suspending. In 2008-2009 they issued 16 revocations and only three suspensions were issued. All suspensions did result in a revocation.

Attachment #5 – Early Childhood Services in ND was reviewed and explained by Ms. Barry at the request of Sen. Lee.

Senator Gerald Uglen asked if there was a difference between an in-home provider and a nanny.

Ms. Barry replied that there is not really a difference. Nannies are considered an employee of the family who is hiring them and so are in-home providers.

Senator Gerald Uglen referred to "restricted license can restrict persons" and asked if that is what they are really trying to do with 1085 or if they can do restricted license now.

Ms. Barry said they can do a restricted license now. They have never restricted a license when a person is accused of child abuse and neglect. They have restricted when the assessment is final and there is a services required finding. This would allow them to prohibit that person without changing the licensing status if they felt the presence of that person did pose a risk to the health and safety of the children.

Amendments A & B were reviewed. Amendment B clarifies how parents are notified and gives a little discretion on whether or not parents are notified if the minor child is actually restricted from the presence.

Senator Tim Mathern wondered why they didn't list in c. the different kinds of providers that were listed in b. on Amendment B.

Julie Leer, Attorney with the Dept. of Human Services, replied that the reason c. doesn't reiterate everyone in b. is because c is only applicable to a staff member or household member who is a minor.

Senator Tim Mathern moved to adopt Amendment B.

Seconded by **Senator Spencer Berry**.

Roll call vote 5-0-0. **Amendment adopted.**

Senator Gerald Uglen moved a Do Pass as Amended.

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Motion carried.**

Carrier is **Senator Dick Dever**.

AMENDMENT B: Prepared at the request of the Senate Human Services Committee to address the House amendments and to reinstate the Department's authority to suspend an early childhood services license, self-declaration, or registration document upon a report of child abuse or neglect. # 3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

Page 1, line 2, after "of" insert ", or status of an individual affiliated with, an early childhood"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~"

Page 1, line 8, after the hyphen insert "Investigation upon a report of child abuse or neglect -"

Page 1, line 10, remove the overstrike over "~~suspend a license, self-declaration, or registration document~~"

Page 1, line 11, after "of" insert "or may"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall

Page 1, after line 20, insert:

- b. Shall notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care to the child is under investigation under subsection 1.
- c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 when the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "action taken"

Renumber accordingly

Proposed amendments to 11.8072.02000

Date: 3-8-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1085

Senate **HUMAN SERVICES**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendment B

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

March 9, 2011

JB
3-9-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 3, after "document" insert "upon a report"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "- Investigation upon a report of child abuse or neglect"

Page 1, line 10, remove the overstrike over "~~suspend a license, self-declaration, or registration document~~"

Page 1, line 11, after "of" insert "or may"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

"b. Shall notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care to the child is under investigation under subsection 1.

c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

Date: 3-8-2011Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1085Senate HUMAN SERVICES

Committee

☐ Check here for Conference CommitteeLegislative Council Amendment Number 11.8072.02001 Title 03000Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Sen. Uglem Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0Absent 0Floor Assignment Sen. Dever

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1085, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1085 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 3, after "document" insert "upon a report"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "- Investigation upon a report of child abuse or neglect"

Page 1, line 10, remove the overstrike over "~~suspend a license, self-declaration, or registration document~~"

Page 1, line 11, after "of" insert "or may"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

"b. Shall notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care to the child is under investigation under subsection 1.

c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

2011 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1085

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1085
April 4, 2011
Job #16310

☒ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

You may make reference to "attached testimony."

Rep. Porter: Called the conference committee meeting to order on HB 1085. All members were present and accounted for. Asked Sen. Dever to give an over of the Senate amendments.

Sen. Dick Dever: Deferred to the DHS for explanation.

Jennifer Berry: The early childhood services administration for the DHS. The amendment proposed in the Senate reinstates the department's authority to suspend a license or self declaration registration document. The amendment proposed by the House is still in there that would allow us to prohibit a person and not suspend a license. The Senate amendment gives the department the option to prohibit a person or suspend a license.

Rep. Porter: Asked the question if the Senate amendment says it can now suspend the license and stop operation and/or the individual.

Jennifer: Correct. When the bill left the house the department's authority to suspend the license which we can currently do, was removed and replaced with the ability for the department to suspend the person from being there. The Senate's concern was that the department had no authority to shut down the childcare in extreme circumstances. We asked that they propose an amendment to reinstate our authority.

Rep. Porter: The other language on page 1 after line 20 about the notification processes. They were also amended in the Senate.

Jennifer: Yes. (Read from 1, line 22 through page 2, line 2 of the first engrossment with Senate amendments bill.) We added a subsection 1 that we may notify the parent if a household member or staff member is a minor. The department wanted the authority to have the discretion on whether or not we would notify if the person under investigation was a minor.

Rep. Dever: Asked if House was ready to accede.

Rep. Porter: Not ready to, but willing to have further discussions. When this measure was looked at on the House side, as presented by the department, it was quite a bit different than what left the House in the first place. The concern with the House was the business model may be suspended on actions of an individual. If the individual was the owner, they could possibly have someone who could take over the business while they are being investigated. Thought it was going too far to allow the department to suspend the business model until the do process of law was complete.

Rep. Dever: Considerations from the Senate was how serious was the allegations and maybe should be suspended. On line 10 the current language is that the department may suspend a license.

Rep. Porter: That is existing law. The way the bill came to us was talked about if it continued operation it would jeopardize the health and safety of the children. It was felt we wanted to focus on the individual and not the business and keep them separate. If the owner was the individual they would be suspended from the business and it could still continue if they had competent help. This could also be a one person self-declaration business. If you had a neighbor who was mad at another neighbor and made a complaint then the department could come in and suspend that operation until the investigation was completed. The timeframe to resolve was long enough where we were concerned about the ability to stop the business model and not just the individual. Other bills out there are saying daycare is so needed in rural ND that one false accusation could run someone out of business.

Rep. Dever: Are you looking at the 03000 version?

Rep. Porter: Yes.

Rep. Berry: For clarity Rep. Berry restated what Rep. Porter stated the House's intentions were on the bill.

Rep. Porter: That is correct.

Rep. Berry: Have there been a problem where the agency use poor discretion closed someone down that was found to be innocent?

Rep. Porter: Didn't have any individuals come in and say it happened to them. When we looked at the bill, even the existing law in section 1 and then the expansion of that; it was felt there was a due process missing that most common law practices follow that you are innocent until proven guilty. (Reiterates concerns again of the committee that was stated in the previous paragraph.) As long as the individual is gone there isn't any harm to children and business should go on while the investigation is in progress.

Rep. Berry: Talked about medical board of examiners are allowed to shut something down if they feel it creates imminent danger or harm. He understood due process, but in certain situations they give the discretion to agencies if they feel there is a threat. Felt if no problem the department should have the ability to make that decision.

Rep. Dever: As I understand it, as the bill was introduced the department may suspend a license. As the house amended it (interrupted by Rep. Porter).

Rep. Porter: It use to say during an investigation, now is says upon receipt of the report. The investigation hasn't happened yet. That was a new level for the department not to even have an investigation and just suspend the license. It was a double thing that happened; the department was asking to move up on the ladder when they can do the suspension. The House felt if you are going to change the rules as far as when you can do the suspension that it is day one of the complaint, without doing any investigation; we wanted to balance that and that is how we ended up with what we did.

Rep. Dever: In version 1 the department may suspend license. In version 2 the House version, the department may not suspend the license, but may prohibit the presence of owner, operator holder and so on. The Senate version says, the department may suspend a license or prohibit the presence of any of those. So this is what we are looking at. And that is at the discretion of the department.

Rep. Porter: That is what the department came in asking for in the original version. They wanted to the ability to suspend the license upon the report of child abuse. The House said we are only going to allow you to suspend the individual and not close the business down. The department can have someone's business shut down on an accusation and not on something proven in the course of an investigation. In the course of the investigation and things are found to be true, we have protected the child because we removed the individual. At that point and time there is nothing that says that the department can't suspend the license of that business. We are only saying they can't do it without the investigation. We came up with the language with the notification process to the child's parents so they can make an informed decision whether to continue to take their child there or not.

Rep. Dever: Where else is there the authority for the department to suspend a license?

Rep. Porter: I don't know if it is in this part.

Rep. Dever: Is this the only point we have in dispute?

Rep. Porter: I can't speak for the other two, but for me personally that is the only part I had an issue on.

Rep. Dever: Stated the House and Senate both did good work on the bill.

Rep. Porter: We will reschedule and get information from the department on the other acts of suspension that they may have in relationship to the business model. My personal feeling on the business model result is that the business model suspension needs to be put at the other trigger point where it is upon completion of the investigation.

Rep. Dever: We all have the interest in the children being served first.

Rep. Porter: I totally agree. We are done.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1085
April 8, 2011
Job #16643

☒ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

See Attachments #1 - 3

Rep. Porter: Called the conference meeting to order on HB 1085. Sen. Berry and Rep. Conklin were absent at the time meeting was called to order.

Rep. Dever: Wanted to go through the amendments.

Jonathon Alm: Attorney for DHS. Went through Rep. Porter's amendments (version #1). (See attachment #1) The Senate will have to recede from its amendments, but a lot of what the Senate already passed is still included in this amendment as well.

Rep. Dever: These amendments would now apply to the 02000 version?

Alm: That is correct. Continued going through amendments.

Rep. Porter: This provision is for the business model or is this for the individual?

Alm: Both models are included in the amendment with the combination of the version 2000. On the business side if the owner/operator had services required determination finding by the department, we could issue the suspension. If an individual which could be the owner or member of household or staff member were being investigated for child abuse and neglect we could prohibit them from the premises.

Rep. Porter: The report comes in and the individual can immediately be suspended from premise and business goes through the normal due process of the investigation. If there is a services required determination then the business can also be suspended at that point and time.

Alm: Correct. Continued explanation of version 1 amendments.

Rep. Porter: Asked to explain Sen. Berry's amendments.

Alm: Explained amendments. (See attachment #2) This amendment will keep almost everything the Senate has already amended and passed.

Rep. Porter: The difference between two is the House didn't want the business model to be suspended prior to the due process of the investigation. Upon report and the individual

be removed immediately and the business suspension would come later after proof of abuse.

Alm: You are correct.

Sen. Dever: If the situation warrants it can it shut down the business at that point?

Alm: On version 1 the only way that it would cease to exist is if the owner or operator is unable to find somebody to replace their role to provide services, otherwise we won't be able to suspend upon the report that individual's license.

Sen. Dever: Was concerned because childcare has different business models. If a center and employee caused the problem, removing them would be appropriate. If a home childcare provider, that may not solve the problem. It may be required to remove the license.

Rep. Porter: On the removal of the person, they would have to find replacement for themselves that the department approves of or that business model ceases to exist. What we are saying is if they can find a replacement for themselves then they can continue to operate out of the home, but cannot be present during those hours of operation. The business model is a standalone entity.

Sen. Uglem: It is my impression that the department brought forth this recommendation that they be allowed to suspend the person instead of revoking the license which was their only choice before. They have not abused this at all in past. I don't want to restrict them too much in case of a severe problem.

Rep. Porter: Asked Mr. Alm what is the departments comfort with the different models being presented?

Alm: We would be more comfortable with Senate's version. The concern I have is the timing and ability to use our discretion. When looking at closing a business it goes from the county and they talk to regional reps at human services centers. Then they talk to Jennifer Barry and then they bring in legal. Sometimes the executive management gets involved.

Rep. Porter: Are you looking at them separately or in the case of the sole proprietor you look at it as one?

Alm: If it is center and it is an employee we can remove the individual from the premise. May issue a correction order on the license. We might issue an agreement with the owner. If a sole proprietor and it happened in the house, say the husband, and then we issue a restricted license saying the husband can't be in the house during childcare hours. If business has many violations and correction orders issued and this happens and don't believe they can restrict somebody from the house or won't cooperate with the department, and then we look at doing the suspension.

Tara Mulhauser: Walked through the overview of how department processes an abuse report. (See attachment #3)

Sen. Dever: What level are these determinations made at? The county, regional or state level?

Tara: A, B, and C are done at the local level. The supervisor with the social worker will review the report and will put an A at the top and confer with social worker it is assigned to.

Sen. Berry: Regarding revocations and actions is done uniform statewide?

Tara: We do the consulting. The county and the regional supervisor get a copy of the report and the regional supervisor phone Jennifer. The discussion of how we proceed with the situation is done with Jennifer and a regional supervisor.

Rep. Porter: With an A or B and something significant has happened, how fast is suspension done?

Jennifer Barry: Two examples of the two suspensions I've been involved with. The childcare provider left her 13 year old son with a 4 and 9 year old and took her husband to work. The 13 year old boy sexually assaulted the 4 year old. The 4 year old went home and his father and the father called law enforcement. The interview happened with child advocacy. The county knew of it the next morning. The 13 year old admitted he'd done this and we issued a suspension right away. The childcare provider had already shown non-compliance by leaving the children with her son and she told children to keep the secret when told what happened. Another provider had problems with mental health and on medication. Her mother called the county licenser and told of her concern of her daughter taking care of children with her mental health issue. The licenser went out and found the provider delusional and posted things on face book that were delusional. We issued a suspension immediately and followed through with the revocation after we felt she was coherent enough to understand she could appeal the revocation. Once we have sort of that evidence that the children are really in danger, we act quickly.

Sen. Dever: Those were home care providers?

Jennifer: Yes they were.

Rep. Porter: Adjourned meeting.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1085
April 11, 2011
Job #16494

☒ Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

See Attachment #1

Rep. Porter: Called the conference committee on HB 1085 to order and stated all members were present.

Jonathan Alm: Attorney for the DHS handed out an amendment. (See attachment #1)
The difference in this amendment is that we can suspend a license at any time after the onset of a child abuse and neglect investigation if health and safety of children are in danger. Can also prohibit somebody from being inside that facility if there is an ongoing investigation with a report.

Rep. Porter: I asked Mr. Alm to do this third amendment to get a split from the business model and the individual model.

Sen. Uglem: When is an onset of an investigation?

Alm: After the department has received the report and if it is a 24 hour turn around or within the 14 day turn around that is when the investigation actually begins. When we talk to individuals that is the onset of the investigation.

Rep. Porter: If under the a or b category that is 24 hours so that suspension could happen within 24 hours for the bad situations. It could take place on day 21 or later on the c level investigations.

Alm: You are correct.

Sen. Dever: (Didn't have microphone on and inaudible.)

Rep. Porter: I plugged it into mine on section 1. When you look at 2000 version it goes, "the department may," and then broke down from the a, b, and c. The new language starts on line 11 with a, the suspension. There are three different actions listed that the department can take based upon the investigation.

Sen. Dever: (Microphone not on and inaudible.) (Read from the amendment.)

Alm: You are correct. (Read what the bill would read like with the amendments in it.)

Sen. Dever: We are allowing the department the discretion to suspend the license.

Rep. Porter: We are on all three cases, but on the third case when it gets to the c level investigation would be going on and it is also split so the department can differentiate between an individual and a business. No matter what level of allegations there can be the differentiation of an individual, with the business or with both. So this is not looked upon as one entity when looking at a suspension. This addresses the concerns the House had. The children are safe and the accused individual can be removed and the business model can continue or if need be the business model can cease to exist also.

Sen. Berry: (Reiterated what Rep. Porter said in above paragraph.)

Rep. Porter: That is correct.

Sen. Dever: How will this change the way you do things currently?

Alm: Won't change a whole lot.

Rep. Porter: Will it work then to address the original reason that the bill was introduced so that there isn't a break between suspension and the formal revocation process where a person could still be operating in those most egregious type cases?

Alm: Yes. It was to allow us to suspend and to have the suspension to continue on through that revocation process and that would cover it.

Sen. Dever: I make a motion that we adopt these amendments.

Rep. Porter: We have a motion from Sen. Dever that the Senate recede from its amendments as printed on page 980 of the House journal and pages 696-697 of the Senate journal and the engrossed HB 1085 be further amended as follows.

Rep. Conklin: Second.

Roll Call Vote: 6 y 0 n 0 absent
Motion Carried

Bill Carriers: Rep. Porter for the House and Sen. Dever for the Senate

April 11, 2011

VK
4/12/11
1082

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

That the Senate recede from its amendments as printed on page 980 of the House Journal and pages 696 and 697 of the Senate Journal and that Engrossed House Bill No. 1085 be amended as follows:

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "- Investigation upon a report of child abuse or neglect"

Page 1, line 10, after "suspend" insert ":

a. Suspend"

Page 1, line 10, remove the overstrike over "~~a license, self-declaration, or registration document~~"

Page 1, line 11, replace "prohibit" with "at any time after the onset of a child abuse and neglect investigation alleging the owner or operator, the holder of a self-declaration, or the in-home provider has committed child abuse, including child sexual abuse, or has neglected a child and law enforcement has been involved, if continued operation is likely to jeopardize the health and safety of the children.

b. Suspend upon a child abuse or neglect services required determination indicating that a child has been abused or neglected by the owner or operator, the holder of a self-declaration, or the in-home provider if continued operation is likely to jeopardize the health and safety of the children present.

c. Prohibit"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

"b. May notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care of the child is under investigation under subsection 1.

2 of 2

- c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Human Services

Bill/Resolution No. 1085 as (re) engrossed

Date: 4-11-11

Roll Call Vote #: 1

- Action Taken**
- ☐ HOUSE accede to Senate amendments
 - ☐ HOUSE accede to Senate amendments and further amend
 - ☐ SENATE recede from Senate amendments
 - ☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) HB 1085 was placed on the Seventh order of business on the calendar

Motion Made by: Sen. Dever Seconded by: Rep. Conklin

Representatives	#	Yes	No	Senators	#	Yes	No
Porter	✓	✓		Dever	✓	✓	
Louser	✓	✓		Uglen	✓	✓	
Conklin	✓	✓		Berry	✓	✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Porter Senate Carrier Sen. Dever

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1085, as engrossed: Your conference committee (Sens. Dever, Uglem, Berry and Reps. Porter, Louser, Conklin) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 980, adopt amendments as follows, and place HB 1085 on the Seventh order:

That the Senate recede from its amendments as printed on page 980 of the House Journal and pages 696 and 697 of the Senate Journal and that Engrossed House Bill No. 1085 be amended as follows:

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "- Investigation upon a report of child abuse or neglect"

Page 1, line 10, after "suspend" insert ":

a. Suspend"

Page 1, line 10, remove the overstrike over "~~a license, self-declaration, or registration document~~"

Page 1, line 11, replace "prohibit" with "at any time after the onset of a child abuse and neglect investigation alleging the owner or operator, the holder of a self-declaration, or the in-home provider has committed child abuse, including child sexual abuse, or has neglected a child and law enforcement has been involved, if continued operation is likely to jeopardize the health and safety of the children.

b. Suspend upon a child abuse or neglect services required determination indicating that a child has been abused or neglected by the owner or operator, the holder of a self-declaration, or the in-home provider if continued operation is likely to jeopardize the health and safety of the children present.

c. Prohibit"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

"b. May notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care of the child is under investigation under subsection 1.

c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

Engrossed HB 1085 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1085

Testimony
House Bill 1085-Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 5, 2011

Chairman Weisz, members of the House Human Services Committee, I am Jennifer Barry, Early Childhood Services Administrator with the Department of Human Services. I am here today to provide you with an overview of House Bill 1085. The Department supports passage of this bill.

Section 50-11.1-07.8 of the North Dakota Century Code gives the department the authority to suspend an early childhood services license, self-declaration, or registration document during an investigation of a report of child abuse or neglect at the premises of the program or of a staff member. The passage of this bill would extend the circumstances for which the department has the authority to suspend an early childhood services license, self-declaration, or registration document when continued operation would jeopardize the health and safety of the children present, specifically in incidents involving child protection investigations or direct bearing offenses.

Subsection 1 of Section 50-11.1-07.8 provides a change to the language used to refer to the suspension of a license, self-declaration, or registration document when child protective services investigates an early childhood services program or a staff member. The current language gives the department authority to suspend only during an investigation of child abuse and neglect. The department is requesting a change in language recognizing that it may be appropriate and sometimes necessary to extend a suspension past the close of the child abuse and neglect investigation, depending on the findings of the investigation, to protect the health and safety of the children

in care. If the department issues a revocation of a license, self-declaration, or registration document, that operator is allowed to continue the operation of the program during the appeal process, unless the department has issued a suspension. The current language limits the suspension period to the time that the child abuse and neglect investigation is taking place. If the investigation results in a "Services Required" finding, the department would likely determine that continuing the suspension during the appeal process of the revocation would be in the best interests of the children in care.

Subsection 2 of this bill gives the department the authority to suspend a license, self-declaration, or registration document if an operator, holder of a self-declaration, registrant or household member of an individual providing child care in their home has been charged with a direct bearing offense or if a minor child in the household is brought before the juvenile court because of a direct bearing offense. The department has identified a need to extend the authority of the department to issue a suspension in instances where the facts surrounding the charge of the direct bearing offense provide evidence that the health and safety of the children present are in jeopardy.

An incident occurred last year in a licensed child care program that prompted this request for legislative change. A provider left her child care children unsupervised in the care of her teenage son. During this time, her son sexually assaulted one of the child care children. After the victim reported the assault, the teenage son admitted to police that he had sexually assaulted the child in his care. A suspension and revocation of the child care license were issued. The provider appealed the revocation decision, and a hearing was set for several months later. Once the child abuse and neglect investigation was complete, the suspension was no longer in effect, allowing the provider to continue to provide care, pending the

outcome of the revocation hearing. The teenage son who assaulted the child is still residing in the home. The department has requested the changes in subsection 2 of this bill to allow the department to continue a suspension when the department determines that the facts surrounding a charge for a direct bearing offense provide evidence that the health or safety of the children in care are at risk.

Finally, the changes being made in subsection 5 of the bill provide that a suspension, including one as described above, may prohibit an early childhood program from continuing to operate pending an appeal.

Thank you for consideration of my testimony, and I ask for your support on House Bill 1085. I am available to answer any questions you have.

abused or neglected in the program. The addition of Subsection 2 of Section 2 would allow the parent or guardian of any child receiving early childhood services in the program to receive the name of the subject, a summary of the facts, and the results of the assessment if the report involves the owner, operator, staff member, or household member of the program.

This concludes my testimony. I am available to answer any questions you might have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

Page 1, line 2, replace "suspension of" with "status of an individual affiliated with an early childhood"

Page 1, line 8, overstrike "**Suspension**" and after "**document**" insert "**Investigation upon a report of child abuse or neglect**"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "with the accused individual present is likely to"

Page 1, line 19, overstrike "that program's license,"

Page 1, line 20, overstrike "self-declaration, or registration document" and insert immediately thereafter "an owner, operator, holder of a self-declaration, in-home provider, staff member, or household member of the program"

Page 1, line 20, overstrike "suspended" and insert immediately thereafter "under investigation for a report of child abuse or neglect"

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "action taken to prohibit an individual's presence"

Renumber accordingly

1

**Engrossed House Bill 1085-Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 7, 2011**

Chairman Lee, members of the Senate Human Services Committee, I am Jennifer Barry, the Early Childhood Services Administrator with the Department of Human Services. I am here today to provide you with an overview of Engrossed House Bill 1085. The Department is also offering additional amendments to clarify some of the language in Section 1 of the bill.

Section 50-11.1-07.8 of the North Dakota Century Code gives the Department the authority to suspend an early childhood services license, self-declaration, or registration document during an investigation of a report of child abuse or neglect at the premises of the program or of a staff member. The passage of this bill would give the Department the authority to prohibit an individual who is the subject of a child abuse or neglect investigation from being present in a child care program if continued operation with the individual present would jeopardize the health and safety of the children present. By prohibiting the individual subject, rather than suspending the license, self-declaration or registration document, the Department would allow for continued operation of the child care business with the subject of the investigation prohibited from the premises.

Subsection 2 of Section 2 of this bill provides an amendment to Section 50-25.1-11 of the North Dakota Century Code. Currently, when a child abuse and neglect assessment takes place in a child care program, the parents of children in the program are entitled to specific information regarding the assessment only if their child is suspected to have been

AMENDMENT A: Proposed by the Department during the committee hearing on March 7, 2011, to clarify the bill in light of the House amendments.

#2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

Page 1, line 2, replace "suspension of" with "status of an individual affiliated with an early childhood"

Page 1, line 8, overstrike "**Suspension**" and after "**document**" insert "**Investigation upon a report of child abuse or neglect**"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "with the accused individual present is likely to"

Page 1, line 19, overstrike "that program's license,"

Page 1, line 20, overstrike "self-declaration, or registration document" and insert immediately thereafter "an owner, operator, holder of a self-declaration, in-home provider, staff member, or household member of the program"

Page 1, line 20, overstrike "suspended" and insert immediately thereafter "under investigation for a report of child abuse or neglect"

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "action taken to prohibit an individual's presence"

Renumber accordingly

AMENDMENT B: Prepared at the request of the Senate Human Services Committee to address the House amendments and to reinstate the Department's authority to suspend an early childhood services license, self-declaration, or registration document upon a report of child abuse or neglect. # 3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

Page 1, line 2, after "of" insert ", or status of an individual affiliated with, an early childhood"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~"

Page 1, line 8, after the hyphen insert "Investigation upon a report of child abuse or neglect -"

Page 1, line 10, remove the overstrike over "~~suspend a license, self-declaration, or registration document~~"

Page 1, line 11, after "of" insert "or may"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

- "b. Shall notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care to the child is under investigation under subsection 1.
- c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 when the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "action taken"

Renumber accordingly

Initial action taken on a License:**Correction Order**Possible Results:

1. Provider may continue to operate under an unrestricted license if issues are addressed.
2. Provider may continue to operate under a restricted license if issues are not addressed.
3. Revocation, if violations are not corrected, from which the provider may appeal.

Initial action taken on a License:**Provisional License** (generally used for a new license)Possible Results:

1. Provider may operate under an unrestricted license if compliance with all licensing rules is achieved.
2. Provider may continue to operate under an extension of the provisional license if compliance appears imminent.
3. If the provider is unable to comply with licensing regulations, the provisional license will not be renewed and an unrestricted license will not be issued. The provider would have a right to appeal the denial or revocation of the unrestricted license.

Initial action taken on a License:**Restricted License**Possible Results:

1. Provider may operate under the restrictions imposed.
2. Unrestricted license if the provider is able to change the conditions resulting in the restriction.
3. Revocation from which the provider may appeal if the provider violates the terms of the restricted license.

Initial action taken on a License:**Suspension**Possible Results:

1. Department determines, after investigation is complete, that there are no concerns for the health and safety of the children, and reinstates the license.
2. Department determines that there are concerns, but that the concerns do not rise to the level of revocation. The Department would then issue a correction order, provisional license, or restricted license.
3. Department determines that the concerns warrant a revocation of the license. The provider may appeal this revocation, but if a suspension is in place, the provider may not provide care authorized by the Department during the appeal process.

Initial action taken on a License:

Revocation

Possible Results:

1. Provider may appeal the revocation, and may provide care during the appeal process, unless a suspension has also been issued.
2. Provider chooses not to appeal and may no longer provide care authorized by the Department.

#5

Early Childhood Services in North Dakota
March 2011

- Currently, there are approximately 2200 licensed, self-declared, and in-home early childhood programs in our state. Licensed programs have more detailed rules to comply with, and compliance is monitored by annual drop-in visits and relicensing studies. Additional unannounced visits may occur when concerns are received. Self-declared and registered in-home programs must comply with minimum standards, but are not inspected by the Department unless a concern is received.
- There are 125 licensed child care centers. Child care centers are programs licensed to provide early childhood services to 19 or more children.
- There are 71 licensed preschools. Preschools are programs licensed to offer early childhood services which follow a preschool curriculum designed primarily to enhance the educational development of the children enrolled and which serve no child for more than three hours per day.
- There are 57 programs which hold a multiple license. Most of these hold both a center and a preschool license. These programs receive an annual drop-in visit and a relicensing visit each year.
- There are 931 group licenses in our state. These providers may care for up to eighteen children and must meet a child/staff ratio. Group programs may be located in a home or another facility.
- There are 432 licensed family providers. Family providers may care for up to seven children at one time, except before and after school, when they may take an additional two children.
- There are 530 self-declared providers. Self-declared providers are not licensed, but they annually self-declare that they will meet minimum standards for child care. Self-declared providers must also have current certification in CPR and First Aid and must receive a background check. This enables the provider to receive child care assistance payments and be eligible for the USDA food program without having an early childhood services license. DHS does not regulate these providers unless a concern is received. Self-declared providers may only care for 5 or fewer children.
- There is only 1 registered in-home provider in our state. In-home providers register to provide care in the child's home.

#1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

That the Senate recede from its amendments as printed on page 980 of the House Journal and pages 696-697 of the Senate Journal and that Engrossed House Bill No. 1085 be amended as follows:

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "Investigation upon a report of child abuse or neglect"

Page 1, line 10, after "suspend" insert ":

a. Suspend"

Page 1, line 10, remove the overstrike over "~~a license, self-declaration, or registration document~~"

Page 1, line 11, replace "prohibit" with "upon a child abuse or neglect services required determination on the owner or operator, the holder of a self-declaration, or the in-home provider if continued operation is likely to jeopardize the health and safety of the children present."

b. Prohibit"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

- "b. May notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care of the child is under investigation under subsection 1.
- c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

This amendment has been prepared at the request of Representative Porter.

#2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

That the Senate recede from its amendments as printed on page 980 of the House Journal and pages 696-697 of the Senate Journal and that Engrossed House Bill No. 1085 be amended as follows:

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 3, replace "involving" with "at any time after the onset of"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "Investigation upon a report of child abuse or neglect"

Page 1, line 10, remove the overstrike over "~~a license, self-declaration, or registration document~~"

Page 1, line 11, after "of" insert "or may"

Page 1, line 11, after "an" insert "accused"

Page 1, line 14, replace "upon" with "at any time after the onset of an investigation of"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

"b. May notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care of the child is under investigation under subsection 1.

- c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

This amendment has been prepared at the request of Senator Berry.

#3

Categories for Initiation of Assessment and Face-to-Face Contact Requirements for Suspected Child Victims 640-05-01-10-01

(Revised 12/3/07 ML #3122)

[View Archives](#)

There is a three-tiered category system indicating the assessed level of safety and/or risk to the child and dictating the procedure (law enforcement notification, interviews conducted, and information gathered) to be followed. The category of each report is periodically reevaluated during the assessment. As the level of risk increases, the category assignment and the depth of the assessment increases. (The reverse is also true.)

The initial category assignment is made in light of the concerns of the report, which are associated with varying levels of potential safety concerns or risk. If there is a record of a previous serious report, the Social Worker may decide to upgrade the category; however, the category rank should not be downgraded prior to beginning the assessment interviews.

"Face-to-face contact" is defined as making visual contact with the suspected victim(s) named in the Report of Suspected Child Abuse and Neglect. A county child welfare social worker can also rely on identified community partners for assistance with face-to-face contact when necessary. Face-to-face contact can be made by the professionals mentioned who have access to the legal process to insure the immediate safety of the child if immediate action is necessary (Child Welfare Social Worker, Law Enforcement, Medical Personnel, Juvenile Court staff, or Military Family Advocacy staff). If the agency relies on the face-to-face contact (s) made by these professionals, this must be documented in the Log of Contacts. If county social services staff are already in the home working with the family, these staff can make the required face-to-face contact to meet the timeline standards above as they are in a position to assess, evaluate and take action on an immediate safety concern.

"Receiving the report" is defined as the time the agency receives first notice of the alleged abuse or neglect or is made aware of the suspected abuse or neglect. A hard copy of the report in hand may be the first notice or the first point of receipt of information; however a hard copy of the report may not always be the

first notice that indicates the receipt of information.

If the required face-to-face contact timelines cannot be met, the situation must be staffed with an agency supervisor and/or regional supervisor to discuss circumstances and response. The social worker or supervisor must assess and document the reasoned assurance the suspected victim's immediate safety is not compromised. This documentation, (to include the reason for the delay and the anticipated date and time of contact) must be included in the Log of Contacts.

Face-to-face contacts with suspected victims (as previously defined), is critical to CPS assessments. Face-to-face contact is seen as related to assessment of immediate safety; however, the safety assessment is a distinct assessment requirement. Face-to-face contact is a component of this safety assessment. There will be times when assessment of initial safety and face-to-face contact with suspected victims are one-in-the-same and can take place simultaneously.

There are circumstances when face-to-face contact within the required timelines is not possible. For instance, there are situations when a child cannot be located or this contact is not the best case plan in the judgment of the assessing social worker and/or supervisor (e.g. sexual abuse assessment where law enforcement is leading the investigation). Face-to-face contact must be made as soon as possible in these situations with detailed, concise documentation in the Log of Contacts. A safety assessment is required in all circumstances.

If on-call personnel receive a report during evening or weekend hours (outside of normal business hours), on-call personnel are required to address any immediate safety concerns. On the following business day, the report must be forwarded to CPS staff for possible assignment and/or case determination. The timelines will initiate upon receipt by CPS on the first hour of the first working day after the report is made.

Face-to-face contact standards and initiation of the assessment:

Category A

For Category A cases a law enforcement agency must be contacted immediately to request assistance in the assessment process and, when necessary, to remove child(ren) in an emergency.

All cases involving a child death are considered Category A cases. The Regional Supervisor shall notify the Administrator of CPS of any child's death within 24

hours of receiving notification of the child's death.

The assessment must begin within 24 hours of the receipt of a report in a Category A case. Law enforcement official will provide direction in regard to who is interviewed and when.

- **Face-to-face contact must be made within 24 hours.**
- **A full forensic interview is not needed within this timeframe if it is not possible to secure this interview; however, face-to-face contact with the suspected victim is still required in this timeframe.**

Category B

For Category B cases, if there is a possibility of criminal charges rising out of the suspected child abuse or neglect, or if the Social Worker can get an indication from the report that the children are not safe removal appears evident, contact with law enforcement must be made. **The assessment must begin within 24 hours of the receipt of a report in Category B cases.**

- **Face-to-face contact** must be made within 3 calendar days.

Category C

In Category C cases, the Social Worker must begin an assessment within 72 hours after the receipt of the report.

- **Face-to-face contact with the victim should occur as soon as possible but must be made within 14 calendar days.**

Category Examples

The following are examples of types of suspected maltreatment and should be used as a guide to determining the category of every case (**If safety concerns are identified, earlier intervention is warranted**):

Category A	Category B	Category C
Fatal	Burns, Scalding	Psychological maltreatment

Brain damage/ skull fracture	Intentional poisoning	Inadequate shelter
Bone fracture	minor fracture	Inadequate clothing
Subdural hemorrhage or hematoma	Excessive corporal punishment	Educational neglect
Internal injuries	Minor cuts/ bruises/welts Sprains/ dislocations Twisting/shaking	Inadequate supervision Inadequate nourishment Inadequate health care
Sexual fondling	Malnutrition	Other neglect
Sexual intercourse	Abandonment	
Sexual exploitation	Failure to thrive Tying/close confinement	
Stabbing		
Gunshot wounds	Prenatal exposure to chronic and severe use of alcohol or any controlled substance	
Other major physical injury	Meth present at birth Alcohol present at birth Drug(s) present at birth Severe cuts/ lacerations/bruises and other minor injury	

[Return to DHS Policy Manuals Homepage](#)

#1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1085

That the Senate recede from its amendments as printed on page 980 of the House Journal and pages 696-697 of the Senate Journal and that Engrossed House Bill No. 1085 be amended as follows:

Page 1, line 2, replace "suspension of" with "conditions on an early childhood"

Page 1, line 8, remove the overstrike over "~~of license, self-declaration, or registration document~~" and insert immediately thereafter "**Investigation upon a report of child abuse or neglect**"

Page 1, line 10, after "~~suspend~~" insert ":

a. Suspend"

Page 1, line 10, remove the overstrike over "~~a license, self-declaration, or registration document~~"

Page 1, line 11, replace "prohibit" with "at any time after the onset of a child abuse and neglect investigation alleging the owner or operator, the holder of a self declaration, or the in-home provider has committed child abuse, including child sexual abuse, or has neglected a child and law enforcement has been involved, if continued operation is likely to jeopardize the health and safety of the children.

b. Suspend upon a child abuse or neglect services required determination indicating that a child has been abused or neglected by the owner or operator, the holder of a self-declaration, or the in-home provider if continued operation is likely to jeopardize the health and safety of the children present.

c. Prohibit"

Page 1, line 11, after "an" insert "accused"

Page 1, line 16, after "member" insert "or household member"

Page 1, line 16, replace "would" with "or the presence of the accused individual is likely to"

Page 1, line 18, overstrike "shall" and insert immediately thereafter ":

a. Shall"

Page 1, after line 20, insert:

"b. May notify the parent of any child receiving early childhood services when an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the program providing care of the child is under investigation under subsection 1.

c. May notify the parent of any child receiving early childhood services that a staff member or household member is under investigation under subsection 1 if the staff member or household member is a minor."

Page 1, line 21, overstrike "of the program"

Page 2, line 1, replace "a suspension" with "any action taken"

Renumber accordingly

This amendment has been prepared at the request of Representative Porter.