



North Dakota Legislative Council

Prepared for the Human Services Committee
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STUDY OF CHILD CARE PROGRAMS AND SERVICES - BACKGROUND MEMORANDUM

Section 51 of Senate Bill No. 2012 (2023) ([appendix](#)) provides for a study of early child care programs and child care services. This study is to identify major needs and systemic approaches to stabilize child care infrastructure.

PREVIOUS REPORTS AND STUDIES

Child Care Services Study

During the 2013-14 interim, the Economic Impact Committee conducted a study to determine the current and potential needs for child care services and the current and potential needs related to child care, and the current quality of child care services. According to the United States Census Bureau, in approximately 78 percent of the families in North Dakota with children under the age of 18, both the husband and wife are in the labor force. The 2013 Kids Count Factbook produced by the Annie E. Casey Foundation reports in 2010 over 82 percent of mothers with children under the age of 17 in this state are engaged in the labor force. The factbook also reports in 2011 there were an estimated 16,000 families in the state in which the family income was less than twice the federal poverty level, at least one parent worked 50 or more weeks during the previous year, and there was at least one child under the age of 18 in the family.

Report On The Child Care Assistance Program

Section 7 of House Bill No. 1422 (2013) provided the Department of Human Services (DHS) change the eligibility level for the child care assistance program from 50 percent of the state median income to 85 percent of the state median income. The bill provided a contingent appropriation of \$2.5 million from the general fund which may be used if the changes in the eligibility requirement requires more funding than the amounts appropriated to DHS in its appropriation bill, House Bill No. 1012, as approved by the 63rd Legislative Assembly. If the funding appropriated to DHS is sufficient, DHS may reduce copay requirements for the child care assistance program. In addition to the contingent appropriation identified above, the 2013 Legislative Assembly provided \$20.9 million, of which \$252,656 is from the general fund and the remaining amount is from the federal child care block grant, for payments for child care services for eligible recipients. The Legislative Assembly also provided \$897,336 from the temporary assistance for needy families (TANF) block grant for child care transitional assistance for working TANF families for the 2013-15 biennium.

Child Care Assistance Review

During the 2015-16 interim, the Health Services Committee conducted a study on the employment restrictions in public assistance programs. As part of the study, the committee requested DHS review child care subsidies and provide recommendations regarding gradual reductions in benefits to mitigate the "cliff effect" on participants when work hours are increased. The department made no recommendation regarding policies to mitigate the cliff effect. The committee learned that, due to the 2015-17 general fund budget reductions, effective April 1, 2016, DHS revised the child care sliding fee schedule from 85 percent of state median income to 60 percent of state median income and increased family's monthly copayments. Families eligible for TANF are not subject to the sliding fee schedule and were not affected by the change. The child care assistance program caseload decreased from 2,049 in April 2016 to 1,549 in June 2016.

The committee learned new provisions in the federal Child Care and Development Block Grant Act of 2014 and proposed federal regulations for the block grant include "family friendly" eligibility policies that are likely to address the cliff effect. Final federal regulations are not available, but the proposed eligibility policies include:

- Establish a 12-month eligibility redetermination period for child care assistance families, regardless of changes in income, as long as income does not exceed the federal maximum of 85 percent of state median income, or temporary changes in participation in work, training, or education activities. The Department of Human Services anticipates implementing this change in October 2016.

- Continue assistance for parents who lose employment for at least 3 months, allowing time to find employment without losing child care assistance program eligibility. The department anticipates implementing this change in October 2016.
- Provide for a graduated phase-out of assistance for families whose income has increased above 60 percent of the state median income at the time of the 12-month review but remains below the federal maximum of 85 percent of state median income. The provision allows for an additional 12 months of eligibility, thereby preventing the cliff effect. Due to the complexity of the provision, the current system cannot accommodate the programming, so the department estimates this change will not be implemented until August 2017.

NORTH DAKOTA LAW

North Dakota Century Code Chapter 50-11.1 addresses early childhood services. Section 50-11.1-02 defines early childhood services as "the care, supervision, education, or guidance of a child or children, which is provided in exchange for money, goods, or other services." However, the following are excluded from the definition of early childhood services:

- Substitute parental child care provided pursuant to Chapter 50-11.
- Child care provided in any educational facility, whether public or private, in grade 1 or above.
- Child care provided in a kindergarten or a nonpublic elementary school.
- Child care, preschool, and prekindergarten services provided to children under 6 years of age in any educational facility through a program approved by the Superintendent of Public Instruction.
- Child care provided in facilities operated in connection with a church, business, or organization where children are cared for during periods of time not exceeding 4 continuous hours while the child's parent is attending church services or is engaged in other activities on the premises.
- Schools or classes for religious instruction conducted by religious orders during the summer months for not more than 2 weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- Summer resident or day camps for children which serve no children under 6 years of age for more than 2 weeks.
- Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- Head Start and early Head Start programs that are federally funded and meet federal Head Start performance standards.
- Child care provided in a medical facility by medical personnel to children who are ill.

Section 50-11.1-06 allows an in-home provider to apply for a voluntary annual registration document from the Department of Health and Human Services (DHHS). An in-home provider is defined under Section 50-11.1-01 as "any person who provides early childhood services to children in the children's home." Except for onsite child care services for fewer than 10 children per location and which are located in the actual building in which the child's parent is employed, a person may not operate a family child care, group child care, preschool, school-age child care, or child care center unless licensed by DHHS. A family child care is defined as "a private residence licensed to provide early childhood services for no more than seven children at any one time, except that the term includes a residence licensed to provide early childhood services to two additional school-age children." A group child care is defined as "a child care program licensed to provide early childhood services for thirty or fewer children." A preschool is "a program licensed to offer early childhood services, which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day." A school-age child care program is "a child care program licensed to provide early childhood services on a regular basis for children aged at least five years through eleven years." A child care center is "an early childhood program licensed to provide early childhood services to nineteen or more children."

To obtain a license to operate an early childhood program, an applicant must submit an application and a license fee to DHHS. In addition, Section 50-11.1-04 requires the department or an authorized agent of the department to investigate the applicant's activities and proposed standards of care and the applicant's premises. The applicant for a license and the staff members, and, if the application is for a program that will be located in a private residence, every individual living in that residence must be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Section 50-11.1-06.2 requires upon a determination by the department that a criminal history record check is appropriate, a provider holding or an applicant for early childhood services licensure,

self-declaration, or in-home provider, as well as new staff members of early childhood services programs and new household members of a residence out of which early childhood services are provided, must obtain two sets of the individual's fingerprints from a law enforcement agency or other local agency authorized to take fingerprints. The individual is required to request the agency to submit the fingerprints and a completed fingerprint card for each set to the Division of Children and Family Services of DHHS or to the department's authorized agent. If the division has no record of a determination of services required for child abuse or neglect, the division is required to submit the fingerprints to the Bureau of Criminal Investigation to determine if there is any criminal history record information regarding the applicant, household members, or staff members. The results of the investigations must be forwarded to the division or to the department's authorized agent.

In addition to the licensed early childhood programs, Chapter 50-11.1 provides for a voluntary self-declaration for documentation of an individual providing early childhood services in a private residence for up to three children below the age of 24 months or for no more than five children through the age of 11. An individual may apply to DHHS for a self-declaration, and the department is responsible for determining if the individual meets the standards determined by rule by the department for a self-declaration.

Section 50-11.1-07 authorizes DHHS to investigate and inspect an early childhood program, or a holder of a self-declaration or registration document and the conditions of their premises, the qualifications of a provider of early childhood services, of current and prospective staff members, of any in-home provider or applicant seeking or holding a license, self-declaration, or registration document. In addition, Chapter 50-11.1 provides procedures under which the department may issue correction orders, fiscal sanctions, or suspension or revocation of a license, self-declaration, or registration document.

Section 50-11.1-08 authorizes DHHS to adopt reasonable minimum standards for early childhood programs and adopt rules for the regulation of early childhood services. Section 50-11.1-14 authorizes DHHS to establish a statewide system to build systematic early childhood workforce voluntary training which may include distance learning formats, a professional registry, certificates, and specializations.

Section 50-11.1-14.1 also addresses early childhood care and education workforce issues. Under that section, the department is required to provide voluntary, progressive training opportunities leading to credentials, provide supports for the early childhood care and education workforce, and implement a registry to track workforce participation. In addition, that section requires the department to implement a voluntary quality improvement process for licensed early childhood facilities. The department is authorized to provide a quality incentive payment and a higher reimbursement rate for child care assistance program payments to a participating early childhood facility, provide technical assistance and support to an early childhood facility that applies for quality improvement, and provide financial incentives to an early childhood facility that sustains and increases program quality. The department may contract with a private, nonprofit agency to provide the technical assistance.

Section 50-11.1-18 authorizes DHHS to establish an early childhood inclusion support services program and hire early childhood services specialists for providing direct payments and technical assistance to providers serving children with disabilities, special needs, or developmental delays.

Chapter 50-33 provides for a child care assistance program. Under that chapter, DHHS is responsible for paying child care costs required as a result of participation in allowable activities by the eligible caretaker in a TANF household or diversion assistance household. Subject to the availability of funding, the department is authorized to expand child care assistance to include an eligible caretaker who is attending a postsecondary education program in pursuit of a 1-year, 2-year, or 4-year degree or certificate. The chapter provides application requirements and requires the department to adopt rules for administration of the program.

EARLY CHILDHOOD PROGRAMS AND SERVICES

Child Care Assistance Program

The Child Care Assistance Program (CCAP) helps pay a portion of the cost of childcare for working families, or families in training or education programs. Payment is made directly to the provider unless the provider requests that payment be made directly to the family. Families with low income must meet certain eligibility criteria to qualify for the program. In most cases, families pay a co-payment, which is a portion of the child care cost. A co-payment is determined on a sliding fee scale based on a family's income, household size, age of the child, type of provider, and level of care. In 2022, North Dakota increased the income level for CCAP to 85 percent of the state's median income to increase the number of families eligible for the program.

Best in Class

Beginning in 2021, North Dakota's Best in Class program is a targeted state investment in programs committed to delivering the highest quality experiences to the children and families they serve, and whose actions

can demonstrate the return that is possible with intentional, research-supported investments in early childhood. The program is built on characteristics that drive results including high-quality, supported interactions between adults and children based on developmentally appropriate experiences.

Teaching staff are coached and supported in implementing developmentally appropriate environments, play-based curriculum, and authentic observation-based assessments to drive individualized experiences to support children in reaching widely held expectations in the year before kindergarten.

The work done in these programs is monitored, evaluated, and supported to ensure that the investment is making an impact.

Currently, there are over 50 classrooms in 38 sites, primarily in rural areas. This model provides educational services to 4-year-olds and parent training to all families involved.

Head Start and Early Head Start

Head Start and Early Head Start are child development programs, serving children from birth to age 5, expectant mothers and families. The overall goal of Head Start is to increase the social ability of children in low-income families and children with disabilities and improve the chances of success in school.

Head Start has been the creator in the movement to address the needs of the whole child, including the educational, vocational and material needs of the entire family. Head Start's philosophy is that parents are the primary educators of their children, and that successful child development programs must involve and empower parents in order to have a lasting impact on the lives of low-income children. This philosophy is reflected in Head Start's administrative structure which includes a parent Policy Council that has decision-making authority.

Head Start began in 1965 and has been recognized through seven presidential administrations for its effectiveness in helping children become more self-confident and successful. Though federally funded, each program is required to provide a 20 percent local funding match. This nationwide program works through several major areas, including education, health and nutrition, parent involvement and social services. There have been Head Start programs in North Dakota since 1965.

The basic elements of Head Start are regulated through federal Program Performance Standards. Grantees and parents have control over their programs, and each is designed to meet the needs of families in the local community. Broadly, the objectives of Head Start are based on the idea that children deserve the opportunity to enter school ready to learn and that children's readiness depends on their educational experience, their physical and mental health, and the involvement of their parents and families. The following are objectives of Head Start:

- The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.
- The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.
- The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.
- The establishment of patterns and expectations of success for the child, which will create a climate of confidence for present and future learning efforts and overall development.
- An increase in the ability of the child and the family to relate to each other and to others.
- The enhancement of the sense of dignity and self-worth within the child and his or her family.

Early Head Start is responding to strong evidence suggesting that early intervention through high-quality programs enhances children's physical, social, emotional, and cognitive development; enables parents to be better caregivers and teachers to their children; and helps parents meet their own goals, including economic independence. Early Head Start programs are designed to reinforce and respond to the unique strength and needs of each child and family. These services include:

- Quality early education both in and out of the home;
- Home visits, especially for families with newborns and other infants;
- Parent education, including parent-child activities;

- Comprehensive health and mental health services, including services to women before, during, and after pregnancy;
- Nutrition; and
- Ongoing support for parents through case management and peer support groups.

North Dakota Afterschool Network

The North Dakota Afterschool Network works to equip North Dakota after school, before school, and summer learning programs with the tools and support to expand program quality, build leadership capacity, and increase access to high-quality out-of-school time programs for youth across the state. Afterschool includes any program serving youth ages prekindergarten through grade 12 with organized, regularly scheduled academic or enrichment activities in a supervised environment. These programs can take place in schools, school-age licensed child care facilities, community-based organizations, libraries, summer camps, and more.

2021 BIENNIUM LEGISLATION

In House Bill Nos. 1012 and 1466 and Senate Bill No. 2018, the 2021 Legislative Assembly transferred the early childhood education grant program, also known as the prekindergarten community grant program, and \$1.5 million from the general fund, from the Department of Commerce to DHS. Funding provided to the Department of Commerce for the program for the 2017-19 and 2019-21 bienniums was \$1.5 million from the general fund each biennium.

In House Bill No. 1416, the 2021 Legislative Assembly transferred 3 full-time equivalent (FTE) positions and related salaries of \$600,000 and operating expenses of \$100,000 from the Department of Public Instruction (DPI) to DHS relating to the administration of an early childhood education program for 4-year-olds. The Budget Section increased 2021-23 biennium special funds spending authority by \$1.7 million in the grants line item to accept and spend federal Elementary and Secondary School Emergency Relief (ESSER) funds from DPI for early childhood programs.

Section 61 of House Bill No. 1012 (2021) required DHS to provide a report to the Legislative Management regarding the status of 4-year old program approvals, the North Dakota Early Childhood Council, and the early childhood grant for best in class 4-year old experiences.

House Bill No. 1466 (2021) created the best in class 4-year old program grant. Four-year old programs are approved child care programs operated by a public or private educational entity or an early childhood program designed to serve 4-year-olds. A 4-year old program may apply for a grant of up to \$120,000 per group size and must provide \$20,000 of matching funds. Grant recipients must follow guidelines regarding the admission of children into the program and educational content provided. The grant program is effective through June 30, 2025. The Legislative Assembly authorized 3.7 FTE positions and appropriated \$5,458,910 of which \$1,500,000 is from the general fund for the program for the 2021-23 biennium. In June 2021, the Emergency Commission and Budget Section authorized DHS to receive and expend an additional \$1,700,000 of federal COVID-19 relief funding received by DPI for the grant program.

A representative of DHHS reported the best in class 4-year old program:

- Provides quality early childhood experiences for children in the year before kindergarten.
- Provided funding to 23 programs during the 2021-22 school year, and 38 programs had been approved through June 2022 to receive 2022-23 school year grants.

2023 BIENNIUM LEGISLATION

The Legislative Assembly passed House Bill No. 1540 (2023) which provided \$62.6 million from the general fund to DHHS for the following:

- \$22 million for investment in the child care assistance program to serve more working families;
- \$15 million for enhanced child care assistance program payments for infant and toddler care;
- \$3 million, which is considered one-time funding, for quality tiers in the child care assistance program;
- \$2.3 million for waiving a fee to a family whose income does not exceed 30 percent of the state median income for a family of the same size;
- \$500,000 for providing child care assistance program application assistance and outreach;

- \$5 million, which is considered one-time funding, for employer-led child care cost-share program;
- \$7 million, which is considered one-time funding, for grants and shared services;
- \$1.8 million for partnerships care during nontraditional hours;
- \$2 million for stipends of worker training;
- \$3 million, which is considered one-time funding, for quality infrastructure for providers; and
- \$1 million, which is considered one-time funding, for streamlining background checks project.

Pursuant to Section 4 of the bill, the committee will receive a report from DHHS regarding the status of early childhood programs managed by the department. The bill also provided \$3 million from the general fund to the Office of Management and Budget for state employee child care benefits.

The Legislative Assembly passed Senate Bill No. 2012 which provided an additional \$14.4 million from the general fund to the DHHS for the best in class program to provide a total of \$19.9 million.

FUNDING HISTORY

The following schedule provides a comparison of funding for the child care assistance program for the 2007-09 biennium through the 2023-25 biennium.

Biennium	Budget	Increase (Decrease)
2007-09	\$19,730,448	N/A
2009-11	\$22,359,834	\$2,629,386
2011-13	\$20,554,852	(\$1,804,982)
2013-15	\$23,398,665	\$2,843,813
2015-17	\$31,706,038	\$8,307,373
2017-19	\$22,274,519	(\$9,431,519)
2019-21	\$27,787,643	\$5,513,124
2021-23*	\$34,710,875	\$6,923,232
2023-25**	\$50,811,261	\$16,100,386

*Does not include carryover funds appropriated to the child care assistance program during the 2021 special legislative session or any program specific COVID carryover funding

**Does not include carryover funding or funds appropriated to the child care assistance program within House Bill No. 1540

PROPOSED ACTION PLAN

The committee may wish to proceed with this study as follows:

1. Receive testimony and information from agencies, groups, and individuals involved in regulating and providing child care services, including:
 - a. The Department of Health and Human Services;
 - b. Child care providers, including all licensed and registered types of providers; and
 - c. Child care referral services.
2. Receive testimony regarding workforce issues related to child care services from the Department of Commerce and Job Service North Dakota;
3. Receive testimony from DPI relating to the study;
4. Receive updates regarding the status of the child care incentive grant program and the funding of the early childhood services specialists;
5. Receive comments by interested persons regarding the study of inpatient mental health care for children;
6. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations; and
7. Prepare the final report for submission to the Legislative Management.

ATTACH:1