

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

**N.D. Admin. Code Chapters)
75-03-07.1, 75-03-08,)
75-03-09, 75-03-10, 75-03-11,)
and 75-03-11.1)
Early Childhood Services)
(Pages 203-293))**

**REPORT OF THE
DEPT. OF HUMAN SERVICES
December 12, 2012**

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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapters 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1 are not related to statutory changes made by the Legislative Assembly.
2. These rules are not related to changes in a federal statute or regulation.
3. The Department of Human Services (Department) uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state

where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

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

4. A public hearing on the proposed rules was held in Bismarck on September 24, 2012. The record was held open until 5:00 p.m. on October 4, 2012, to allow written comments to be submitted. Many comments were received. The "Summary of Comments" is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,277.30.
6. The proposed rules amend chapters 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. The following specific changes were made:
Section 75-03-7.1-02. Section 75-03-7.1-02 is amended to require department-approved basic child care training.
Section 75-03-07.1-04. Section 75-03-07.1-04 is amended to include license and in-home registration in limitation of one provider or operator per residence and to require the emergency designee for a self-declarant to be at least 18 years of age and approved by the Department.

Section 75-03-07.1-06. Section 75-03-07.1-06 is amended to restructure the section and to correct a word usage error.

Section 75-03-08-05.1. Section 75-03-08-05.1 is repealed.

Section 75-03-08-09. Section 75-03-08-09 is amended to remove language that is redundant of statutory language.

Section 75-03-10-08. Section 75-03-10-08 is amended to clarify language.

Section 75-03-10-11.1. Section 75-03-10-11.1 is amended to address minimum qualifications for child care center supervisors.

Section 75-03-10-18. Section 75-03-10-18 is amended to address space requirements for cots, cribs, and portable cribs, to require that pathways between cots, cribs, and portable cribs contain no obstructions, and to address requirements for toilet facilities.

Section 75-03-11-19. Section 75-03-11-19 is amended to remove specific outdoor space requirement for preschools.

Section 75-03-11-20. Section 75-03-11-20 is amended to require the curriculum for preschools to include outdoor play.

Section 75-03-11.1-18. Section 75-03-11.1-18 is amended to require a health inspection when the program prepares meals and to address requirements for toilet facilities.

Sections 75-03-08-07, 75-03-09-07, 75-03-10-07, 75-03-11-07, and 75-03-11.1-07. Sections 75-03-08-07, 75-03-09-07, 75-03-10-07, 75-03-11-07, and 75-03-11.1-07 are being amended to include self-declaration and in-home registration in limitation of one provider or operator per residence.

Sections 75-03-07.1-08, 75-03-08-24, 75-03-09-24, and 75-03-10-24. Sections 75-03-07.1-08, 75-03-08-24, 75-03-09-24, and 75-03-

10-24 are amended to require a provider to obtain written parental permission for infants to sleep with blanket, pacifier, or security item. Sections 75-03-08-08.1, 75-03-08-19, 75-03-09-08, 75-03-10-09, 75-03-11-08, 75-03-11-09, and 75-03-11.1-08. Sections 75-03-08-08.1, 75-03-08-19, 75-03-09-08, 75-03-10-09, 75-03-11-08, 75-03-11-09, and 75-03-11.1-08 are amended to reorganize written policy requirements under one rule to make it easier for operators to understand what policies are required of them, and to add a requirement to obtain written parental permission for certain children to leave the child care facility unsupervised. Sections 75-03-09-10, 75-03-10-10, 75-03-11-08.1, 75-03-11-08.2, and 75-03-11.1-08.1. Sections 75-03-09-10, 75-03-10-10, 75-03-11-08.1, 75-03-11-08.2, and 75-03-11.1-08.1 are amended to add more options to allow individuals to meet qualifications of group supervisor, center director, preschool director, preschool teacher, and school-age center director. Sections 75-03-09-14 and 75-03-11-14. Sections 75-03-09-14 and 75-03-11-14 are amended to address requirements for toilet facilities. Sections 75-03-09-24 and 75-03-10-24. Sections 75-03-09-24 and 75-03-10-24 are amended to include additional exemptions for programs which only serve drop-in children. Sections 75-03-08-28, 75-03-09-28, 75-03-10-28, 75-03-11-28, and 75-03-11.1-28. Sections 75-03-08-28, 75-03-09-28, 75-03-10-28, 75-03-11-28, and 75-03-11.1-28 are amended to restructure the sections. Sections 75-03-07.1-10, 75-03-08-29, 75-03-09-29, 75-03-10-29, 75-03-11-29, and 75-03-11.1-29. Sections 75-03-07.1-10, 75-03-08-29, 75-03-09-29, 75-03-10-29, 75-03-11-29, and 75-03-11.1-

29 are amended to add North Dakota Century Code chapter 50-11.1 to the provisions requiring corrections of violations and to make minor changes to ensure these sections are consistent with each other.

Sections 75-03-07.1-11, 75-03-08-30, 75-03-09-30, 75-03-10-30, 75-03-11-30, and 75-03-11.1-30. Sections 75-03-07.1-11, 75-03-08-30, 75-03-09-30, 75-03-10-30, 75-03-11-30, and 75-03-11.1-30 are amended to add North Dakota Century Code chapter 50-11.1 to the provisions regarding fiscal sanctions and to make minor changes to ensure these sections are consistent with each other.

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

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
December 12, 2012

**SUMMARY OF COMMENTS RECEIVED
REGARDING PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CHAPTERS 75-03-07.1, 75-03-08, 75-03-09, 75-03-10,
75-03-11, AND 75-03-11.1
EARLY CHILDHOOD SERVICES**

The North Dakota Department of Human Services (the Department) held a public hearing on September 24, 2012, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapters 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, Early Childhood Services.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Thursday, October 4, 2012.

One individual attended the public hearing. Eighteen written comments and one comment with 35 signatures were received within the comment period. The commentors were:

1. Earleen Friez, PO Box 1101, Hettinger, ND 58639
2. Sarah Myers, Child Care Resource & Referral, 715 11th St N, Ste 402, Moorhead, MN
3. Rebekah Schmitz, 4607 10th Street North, Fargo, ND 58102
4. Eileen Sweeten, 725 10 ½ Ave W., West Fargo, ND
5. Peggy Motschenbacher, 1412 4th Ave N., Fargo, ND 58102
6. Linda Jones, 1224 N. Broadway, Fargo, ND 58102
7. Michael Jones, 1224 N. Broadway, Fargo, ND 58102
8. Kelly Topp, 2163 61st Ave. S., Fargo, ND
9. Tanya Lenfeldt, 1828 Huntington Lane, West Fargo, ND
10. June Lowden, 1021 S Univ. Dr., Fargo, ND
11. Jean Ricker, 1909 S. 17th St., Fargo, ND
12. Cliff Johnson, 1901 S. 18th St., Fargo, ND
13. Shirley Johnson, 1901 S. 18th St., Fargo, ND
14. Heather Moritz, 819 Oak St, West Fargo, ND
15. Helen Montplaisir, 4427 10th St. N., Fargo, ND
16. Angie Klocke, 3510 Par St. N., Fargo, ND
17. Katherine Young, 3508 40th Ave. S., Prairie Rose, ND
18. Louise Pickford, 3202 Bohnet Blvd. N., Fargo, ND
19. Carol Fairfield, 2110 N. 8, Fargo, ND 58102
20. Abigail Mindeman, 1583 18th Ave., E., West Fargo, ND 58078
21. Karen Walker, 604 N. Sedona Drive, West Fargo, ND 58078
22. Teresa Ovellette, 1108 9th Street W., West Fargo, ND
23. Denise Randall, 808 6th Street E., West Fargo, ND
24. Jackie Ohm, 1408 4th Street N., Fargo, ND
25. Monica Ohm, 1605 Broadway N., Fargo, ND
26. Tara Rooks, 1617 1st St. N., Fargo, ND
27. Shannon Baugh, 1342 11th Street North, Fargo, ND
28. Maarja Krogh, 328 Cherry Ct., West Fargo, ND

29. Dorothy Rose, 2401 S. Demores Dr.
30. Jon Miller, 2442 165th Ave SE, Argusville, ND
31. Jennifer Puhl, 4705 10th Street N., Fargo, ND
32. Angie Bosch, 1414 11th Street N., Fargo, ND
33. Dawn Miller, 2442 165th Ave. SE, Argusville, ND 58005
34. Jake Puhl, 4705 10th Street N., Fargo, ND
35. Michelle Rietschel, 5002 35th Ave. N., Fargo, ND
36. Steve Miller, 1002 47th Ave. W., Fargo, ND
37. Michele Rader, 1429 5th Ave. S., Fargo, ND
38. Loretta Duma, 1819 N. 21st St., Bismarck, ND 58501
39. B. Miller, 809 Johns Dr., Mandan, ND 58554
40. LaVonne Goetsch, 1030 20th St. SW, Dickinson, ND 58601
41. Sandy Denis
42. Ann Leingang, 1501 Shannon Dr., Apt 1, Mandan, ND 58554
43. Rebecca N., 1242 MorningSide St., Bismarck ND 58501
44. Barbara Schulz, 325 W. Boulevard Ave., Bismarck, ND 58501
45. Kari Olson, Grand Forks County Social Services, Grand Forks, ND
46. Theresa Stevens, 120 2nd Street NE, Steele, ND 58482
47. Virginia Dolajak
48. Albert Dolajak
49. Lynne
50. Lisa Pulkrabek, 4795 Co Rd. 82, Mandan, ND 58554
51. Larry Brooks, 105 Simroll Blvd., Bottineau, ND 58318
52. Lindseth Dolajak
53. "Parents with great concern for our centers"

SUMMARY OF COMMENTS

Comment: Addition of a requirement of basic child care course for self-declared providers - Admittedly this will be criticized by some as a burden for this group of providers. Course is already a requirement for group, family and center operations including all of their staff members, and I think it is time that course requirement is added for self-declared providers. Self-declared providers could still operate according to ND law which doesn't require licensure for those caring for 5 or fewer children. However unless self-declared they would not be able to access the food program and be able to serve parents who are eligible for the child care assistance program. If they can access these two programs they should be required to take this course just as licensed facilities are. I totally support this proposed requirement for self-declared providers.

Response: The Department appreciates this comment, and agrees that some basic training for self-declared providers is a reasonable requirement. No change is made to the proposed amendments based on this comment.

Comment: Moving required policies to one section. Doing so makes total sense and is supported by me.

Response: The Department agrees that moving the required policies to one section will make it easier for providers to understand the policies that are required in writing. No change is made to the proposed amendments based on this comment.

Comment: Requirement of written parental permission regarding rules concerning sleeping infants. I totally favor this rule revision. Depriving an infant of a blanket and security item in a crib is inhumane treatment. Since the American Academy of Pediatrics sees both as a possible danger to an infant, I feel it is imperative that parents are given the option of by signature to allow these items in their child care setting during nap time. Reality is that there is no way you can totally eliminate everything which could potentially harm an infant. I realize that some philosophically do not believe parents should be required to sign to make usage possible, but the alternative of going with the AAP recommendation of not allowing a blanket [or] security item in a crib with a sleeping infant is not acceptable. AAP stand does not take into consideration the negative impact this creates emotionally for a child. It is in the best interest of infants that this rule addition is made.

Response: The Department agrees that allowing parents of infants to provide written parental permission allowing the infant to sleep with a blanket, pacifier, and security item is an appropriate response to the new recommendations for safe sleep, provided by the American Academy of Pediatrics (AAP). No change is made to the proposed amendments based on this comment.

Comment: Addition of more options to meet the qualification of Group Supervisor, Center Director, Preschool Director and Teacher and School-age Child Care Program Director. I support this because of difficulty of finding people who meet the current requirements. Doing so would not negatively impact children in care.

Response: The Department agrees that creating more options for individuals to meet the qualifications of Group Supervisor, Center Director, Preschool Director and Teacher, and School-age Child Care Program Director is necessary to reflect recently developed training options and to increase the number of individuals qualified to serve in early childhood leadership positions. No change is made to the proposed amendments based on this comment.

Comment: Concerning the other proposed rule revisions. There are none which I am opposed to.

Response: The Department appreciates this comment. No change is made to the proposed amendments based on this comment.

Comment: For (e) under Sleeping: Please consider changing the rule to state that blankets and security items are not allowed to be used for sleep by those under 12 months of age.

The AAP policy statement dated October 2011 states that blankets and any soft item/toy should not be allowed for sleep for those under 12 months. Blankets and stuffed toys/items can cause suffocation or strangulation. Sleep sacks are a safer alternative to keep infants warm when sleeping.

Response: The Department is aware of and understands the American Academy of Pediatrics' recommendations regarding safe infant sleep, but also understands that sometimes infants do become emotionally attached to a blanket or security item and may rely on that item for comfort and security during nap time at childcare. The Department's proposal allows parents to make the choice for their child to sleep with an infant blanket, pacifier, and security item that does not pose a risk of suffocation in childcare. No change is made to the proposed amendments based on this comment.

Comment: For (i) under Sleeping. Please consider changing the rule to state that the provider will visually check on sleeping infants regularly **and** have a monitor in the room with sleeping infants. Infants do not make noise when they die from SIDS. Not hearing noise on a monitor does not ensure that the infants are safe and alive. It is important for providers to visually check on infants to make sure their heads are not covered; their color is pink; they are breathing, etc. This is especially crucial to change if licensing allows blankets and security items to be used during sleep.

Response: The Department appreciates this comment, but believes the importance of checking on infants regularly is something that may be best reinforced through training and professional development. No change is made to the proposed amendments based on this comment.

Comment: The department received 12 separate comments and one additional comment signed by 35 individuals in opposition to the department's proposed rule requiring written parental permission for the use of an infant blanket, pacifier, and security item during infant sleep. Many of the commenters have expressed concern about a shortage of good childcare providers and fear that this regulation will make it harder for providers to become licensed or maintain licensing. Many commenters also cite a belief that infants need blankets for warmth and security, and that infants sleep better wrapped in a blanket. Some of the commenters have made the statement that if a parent brings an infant to childcare with a blanket, pacifier, or security item, the parent has implied consent for their use, making written permission unnecessary.

Response: Currently, administrative rules for early childhood services address infant sleep. Infants are currently allowed to sleep with an infant blanket, pacifier, and security item which does not pose a risk of suffocation to the infant. In October of 2011, the American Academy of Pediatrics (AAP) issued a new policy regarding safe infant sleep, which is in conflict with the Department's current rules. This policy specifically warns that the use of an infant blanket or soft item, such as a stuffed toy, during sleep poses a risk of suffocation to the infant. The Department understands that sometimes infants do become emotionally attached to a

blanket or security item and may rely on that item for comfort and security during nap time at childcare. In response to the new recommendations by the AAP, the Department has proposed allowing infants to continue to sleep with a blanket, pacifier, and security item that does not pose a risk of suffocation with written parental permission. The Department believes that this proposal is a compromise which allows the parent of an infant to choose a blanket, pacifier and security item for the infant during sleep, by providing written permission to the provider. No change is made to the proposed amendments based on this comment.

Comment: It [has] come to many parents attention that there is a strong shortage of teachers in the Fargo area. Many centers are struggling to find teachers to make licensing regulations. It is our understanding that they are cited a violation if they are not staffed. So, as parents we have been visiting with a few of the centers about this, we have a question for the state: How can this be their fault and how is this right to do to the centers?

It seems that the state needs to make some temporary provisions for the centers right now; yes, we like the smaller ratio of teacher/child but at the same time we respect that if there is not teachers to be hired the numbes have to change.

Response: The Department understands that finding qualified staff can be challenging for program operators, but operators are still responsible for maintaining a proper child staff ratio. The Department, in its 2010 rule revision, changed the group requiring the highest ratio from 0-24 months to 0-18 months. Additionally, through the 2012 emergency rule process, the Department proposed an amendment which allows the Department to grant a waiver of ratio for up to .25 points per group, based on demonstration of need. None of the proposed amendments address staffing ratios, therefore, no change is made to the proposed amendments based on this comment.

Comment: Also, this Star program that the state is working on with child care seems to be just putting stress on the teachers and the parents. There are many things that do not make any sense and is just costing money for centers that could be used to increase hourly salaries.

Please fix the problems in the Fargo area and give some relief to the teachers and Directors. I know my children's teachers say they would rather have a few more children in their group if they could make a bit more in salary. They are struggling to make ends meet and will have to quit early childhood if there is not a change in salaries. They also tell many of us that Directors are just hiring bodies, so licensing will not cite them. A body is not good when it comes to working with children!

It seems the state has some serious issues with child care licensing. It seems you want to follow the "big guys", North Dakota is not in that league. Parents cannot afford higher rates that you are forcing on us and the economy is not good and teacher need to make more money to survive! Thank you and we hope that the center directors hear from you soon. Parents with great concern for our centers.

Response: The Star program referenced in this comment is a voluntary quality rating program which is being piloted in Cass County and is funded by United Way of Cass/Clay. No providers are required to participate, and those that do participate receive incentive dollars for achieving star ratings. The concerns raised in this comment cannot be addressed by the Department's rules. No change is made to the proposed amendments based on this comment.

Comment: As a parent myself, of three children, who all used pacifiers and blankets when they napped and at night, and survived, I have to wonder why they government feels this is an area that they need to police? Furthermore, why aren't daycare providers, childcare centers, etc., being brought together and this discussed before these amendments are even proposed. I know many wonderful child care providers who do amazing job of caring for our kids and I feel it's wrong to further burden them with things such as this.

Response: The Department agrees that parents should be allowed to choose a blanket, pacifier, and security item for their infant by supplying written parental permission. The Department believes the proposed amendment will result in minimal burden to the providers. The Department will assist by supplying providers with a sample permission slip to use if they wish.

Prior to proposing any new rules, the Department works with an advisory board of providers to draft the proposed amendments. For this rulemaking, providers were notified by mail of the proposed changes, and the amendments which will likely impact providers the most were highlighted in the letter to ensure providers were fully informed of what the proposed amendments are. The Early Childhood Services Administrator has frequently met with provider groups to discuss potential changes and updates and is always willing to meet with those who ask. However, with approximately 2000 licensed and self-declared providers statewide, it would be impractical to meet with all providers to discuss potential rules before they are proposed. After the proposed amendments were published, the Early Childhood Services Administrator offered again to meet with providers and provider groups to discuss the amendments so that providers could be fully informed for the purposes of submitting comments on the proposals. No change is made to the proposed amendments based on these comments.

Comment: 75-03-10-09.24. Duties of Operator

Currently requires reporting to the authorized agent within twenty-four hours:

- a. A death or serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the center;
- b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
- c. Poisonings or errors in the administering of medication;
- d. Closures or relocation of child care programs due to emergencies; and
- e. Fire that occurs or explosions that occur in or on the premises of the child care center.

I would suggest adding: An incident which occurs while a child is in the care of the child care center that has caused a child to be in an environment that would be harmful or dangerous to a child's physical, cognitive, social, or emotional health.

I would also suggest adding this to the other Early Childhood Services chapters.

Response: The Department believes that providers should be allowed an opportunity to comment on this change so it will not add this change to the rules at this time. The Department appreciates the suggestion and will consider it in future rulemaking.

Comment: I am definitely for basic training for first time child care -self declared.

Response: The Department appreciates the comment and agrees. No change is made to the proposed amendments based on this comment.

Comment: I also believe social services should visit the home unannounced at least twice a year.

Response: According to N.D. Century Code § 50-11.1-07, the Department or its authorized agent may inspect a licensed program, or holder of self-declaration or in-home registration at any time. Based on licensing resources, the standard is for licensing staff to complete an unannounced visit once per year, or more frequently if there are concerns. The Department appreciates this comment, but no rule change is necessary because inspections of child care homes are not limited in rule. No change is made to the proposed amendments based on this comment.

Comment: No children should ever be outside playing without supervision.

Response: Children must be within sight or hearing of the provider so the provider is capable of intervening. The Department recommends direct supervision while children are outside playing and requires that at all times, the provider is capable of intervening to protect the health and safety of children in care. No change is made to the proposed amendments based on this comment.

Comment: Parents and children should feel they belong at the daycare, children should be included in daily activities in the daycare from setting tables for meals, picking up toys after playing, many providers will tell you children love to be involved and help. Parents should be able to come inside, visit, sit and observe.

Response: The Department agrees and believes that current rules allow that type of environment. No change is made to the proposed amendments based on this comment.

Comment: Parents and children should be asked what their best foods are and the provider should adapt and work to please.

Response: The Department agrees and believes that current rules provide for this. No change is made to the proposed amendments based on this comment.

Comment: Providers need to be loving, great listeners, and most of all patient and kind, the day will be great and both the children and provider will benefit from a fund day.

Response: The Department agrees and appreciates this comment. No change is made to the proposed amendments based on this comment.

Comment: Another item was to have us call parents when they don't show up in the morning. They all have different schedules and we are usually the last one to know they changed it. My policy says if they are not coming to my daycare they are to call me! Let the parents be parents once in awhile. This is their responsibility. I only take care of the children once they have arrived.

Response: The Department has not proposed a rule requiring providers to call parents if children do not arrive. The proposed rule requires the provider to have a policy to address accountability for when children do not arrive as expected. The Department has not suggested a mandate for a specific policy, only that providers have a policy of how to handle situations where children don't arrive as expected. This provider's current policy requiring parents to call the provider if a child is not coming to childcare would meet the requirement of the rule. No change is made to the proposed amendments based on this comment.

Comment: There is no reason we couldn't have an evening or Saturday meeting to go over these kinds of things. They just send it out and then we are told to respond by letter. How fair is that!?

Response: Prior to proposing any new rules, the Department works with an advisory board of providers to draft the proposed amendments. For this rulemaking, providers were notified by mail of the proposed changes, and the amendments which will likely impact providers the most were highlighted in the letter to ensure providers were fully informed of what the proposed amendments are. The Early Childhood Services Administrator has frequently met with provider groups to discuss potential changes and updates and is always willing to meet with providers who request an evening or Saturday meeting. However, with approximately 2000 licensed and self-declared providers statewide, it would be impractical to meet with all providers to discuss potential rules before they are proposed. After the proposed amendments were published, the Early Childhood Services Administrator offered again to meet with providers and provider groups to discuss the amendments so that providers could be fully informed for the purposes of submitting comments on the proposals. No change is made to the proposed amendments based on this comment.

Comment: Another requirement being suggested is to have the provider call the parents if they do not show up. My wife has had people wait until late in the afternoon to inform her they will not be coming! They should be more responsible than that. Stop putting the pressure on the provider!

Response: The Department has not proposed a rule requiring providers to call parents if children do not arrive. The proposed rule requires the provider to have a policy to address accountability for when children do not arrive as expected. The Department has not suggested a mandate for a specific policy, only that providers have a policy of how to handle situations where children don't arrive as expected. No change is made to the proposed amendments based on this comment.

Comment: After realigning the Caregiver Services – Child Care diploma program curriculum, Dakota College at Bottineau is planning to assist the state of North Dakota in addressing the current shortage of child care professionals by proposing the following amendments (highlighted below) to ND Administrative Codes:

- 1) **Section 18.** Section 75-03-09-10, Subsection 2c (Minimum Qualifications of Group Child Care Supervisor)
Current certification as a child development associate or a diploma program with emphasis in early childhood or child care or similar status,
- 2) **Section 28.** Section 75-03-10-10, Subsection 3f (Minimum Qualifications of Child Care Center Director)

A current certification as a child development associate or a diploma program with emphasis in early childhood or child care or a similar status, with at least one year of experience in a child care center or similar setting;
- 3) **Section 29.** Section 75-03-10-11.1, Subsection 3b (Minimum Qualifications of Child Care Center Supervisor)
Current certification as a child development associate or a diploma program with emphasis in early childhood or child care;

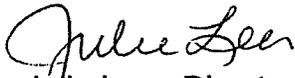
Response: The Department has reviewed the child care diploma program at Dakota College in Bottineau and supports amending the language in the proposed rules. The Department has replaced the language proposed by the commentor for sections 75-03-09-10(2)(c), 75-03-10-10(3)(f), and 75-03-10-11.1(3)(b) with:

or successful completion of a department-approved diploma program with emphasis in early childhood or child care

This language has been added to the proposed amendments.

N.D. Admin. Code Chapters 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1
Summary of Comments
October 17, 2012

Prepared by:



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

In Consultation with: Jennifer Barry, Children and Family Services

October 17, 2012

Cc: Jennifer Barry, Children and Family Services

MEMO

TO: Julie Leer, Director, Legal Advisory Unit

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

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

DATE: August 1, 2012

The purpose of this regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08. This analysis pertains to proposed amendments to North Dakota Administrative Code chapters 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. These amendments are not anticipated to have a fiscal impact on the regulated community in excess of \$50,000.

Purpose

The proposed amendments are based on a review of the rules and guidance from the Early Childhood Services Advisory Board.

Classes of Persons Who Will be Affected

Self-declared child care providers, and operators of family, group, center, preschool, and school age early childhood service programs will be affected.

Probable Impact

It is expected impacted individuals will view most of the proposed changes as positive changes.

Probable Cost of Implementation

The only proposed amendment expected to have a cost of implementation is the revision to N.D. Admin Code chapter 75-03-07.1 which would require a pre-service training for self-declared providers. This change would require a cost to

develop a training specific to this population of providers. The cost is not expected to exceed \$10,000, which is included in the Early Childhood Services training budget.

Consideration of Alternative Methods

The division has considered rules which balance the need to ensure the health and safety of children in care with the need to have fair and reasonable rules for compliance. The division suggests no alternative methods at this time.

M E M O R A N D U M

TO: Julie Leer, Director, Legal Advisory Unit

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

DATE: August 1, 2012

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

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

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

1. Establishment of Less Stringent Compliance or Reporting Requirements

The division has considered the least stringent compliance and reporting requirements, and has worked to balance fair compliance requirements with the health and safety of children in care. A proposed revision to N.D. Admin Code chapter 75-03-07.1 would require pre-service training for this population of providers. The division understands that this will increase the compliance requirements for self-declared providers, but believes this change is necessary to assure the health and safety of children in care.

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

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance or reporting requirements. For this reason, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

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

Simplification and consolidation of compliance requirements were considered where possible in all chapters, specifically in the revisions regarding the required policies of early childhood service providers.

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

The proposed amendments do not impose any design standards or operational standards.

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

There are no exemptions contained in the proposed rules.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

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

DATE: August 1, 2012

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

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

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are self-declared providers, licensed family, group, center, preschool, and school-age program operators.

There are no other small entities subject to the proposed amendments.

2. Costs For Compliance

Administrative and other costs required of these entities for compliance with the proposed amendments are expected to be zero.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rules is zero.

4. Probable Effect on State Revenue

The probable effect on state revenue is expected to be less than \$10,000, which will be needed to develop the Basic Child Care training program for self-declared providers to ensure compliance with the proposed revisions to N.D. Admin. Code chapter 75-03-07.1. This cost is included in the current Early Childhood Services training budget.

5. Alternative Methods

The division has considered rules which balance the need to ensure the health and safety of children in care with the need to have fair and reasonable rules for compliance. The division suggests no alternative methods at this time.



Jack Dalrymple, Governor
Carol K. Olson, Executive Director

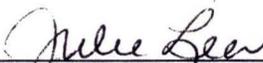
TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code chapter 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1

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

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

Dated this 1st day of August, 2012.

by: 
N.D. Dept. of Human Services