

**2017 SENATE JUDICIARY**

**SB 2060**

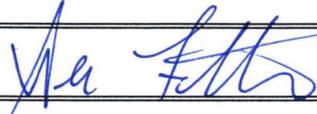
# 2017 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2060  
1/4/2017  
26521

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental notification of early childhood services investigations.

**Minutes:**

**Testimony attached #**

1, 2

Chairman Armstrong called the committee to order. All committee members were present.

Senator Poolman, State Senator of District 7 – Testified in support of the bill (see attachment 1)

Senator Luick: “What will that bill do for us?”

Senator Poolman: “The bill changes the word of “may” to “shall.”

Erica Cermak – Testified in support of the bill (see attachment 2)

Senator Luick: “Did you suspect anything when taking the child there” Referring to Erica Cermak’s child being molested by the day care center.

Erica Cermak - says she had no considerations, she knew some of the people for years.

Senator Larson - expresses grievances as well, “Do you think by having listed with the Department of Human Resources that most parents would check that first before they put their children in someone’s care?”

Erica Cermak: “I have checked and I believe others will check as well and this bill will incentivize them to check.”

Mandy Ferguson, Mother of Victim(s)– Testified in support of the bill (No written testimony.) Elaborated about her kids and the abuse they suffered while attending that same day-care. She described the age of her kids when it first started happening, 2 and 3, respectively. Her kids are currently in therapy to help with the stress from the abuse. She finished by saying she believes if parents were notified about Erica’s case (see attachment 2) that they may be more suspicious and could better deduce if their kids were suffering abuse.

Chairman Armstrong closed the hearing on SB2060.

Chairman Armstrong – Asks if committee is ready to action on this bill.

Senator Larson motioned for Do Pass.

Senator Nelson seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.

The motion passed.

Senator Luick carried the bill.

11/17  
1

Date:  
Roll Call Vote #:

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2060

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By V-chair Larson Seconded By Sen Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson					
Senator Luick					
Senator Myrdal					
Senator Nelson					

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Luick

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

**REPORT OF STANDING COMMITTEE**

**SB 2060: Judiciary Committee (Sen. Armstrong, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2060 was placed on the  
Eleventh order on the calendar.

**2017 HOUSE HUMAN SERVICES**

**SB 2060**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

SB 2060  
3/14/2017  
29166

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental notification of early childhood services investigations.

## Minutes:

1, 2, 3,

**Chairman Weisz:** Opened the hearing on SB 2060.

**Nicole Poolman:** from District 7 (Attachment 1) SB takes away the discretion of the Department of Human Services in notifying parents abuse investigations, suspending licenses, or serving prohibition orders. (2:55)

**Chairman Weisz:** Are there any questions from the committee? Any testimony in support?

**Erica Cermak:** I am testifying as a private citizen and in support of SB 2060. (Attachment 2) (9:40) I believe that aside from death sexual abuse of a child is arguably the worst possible thing that can happen to a child.

**Chairman Weisz:** Are there any questions? any further testimony in support of SB 2060? Is there anyone here in opposition?

**Shawna McFarland:** Director of Mountrail County Social Services and a member of the North Dakota Directors Association; I am here in opposition of SB 2060. (Attachment 3) 92% of suspected child abuse/neglect reports received in North Dakota are substantiated reports. (14:44)

**Chairman Weisz:** Are there any questions from the committee?

**Representative McWilliams:** Do you know how many allegations there were toward childcare providers in 2016?

**Shawna McFarland:** I don't have that data. Daycare reports were minimal, about 2% of all the reports received in our office.

**Representative McWilliams:** How many of those were substantiated claims?

**Shawna McFarland:** Only one in the last 13 years.

**Representative Skroch:** In cases of mortification how explicit do you have to be when you put out a notice of about possible abuse?

**Shawna McFarland:** We don't put out a notice during the investigation. If this is a serious offense, we have criminal things going on so we don't want any reports to law enforcement. It is a crime for us to let out any information within the process of CFS investigation.

**Representative Skroch:** In cases where there is no proof is there a way that the daycare can give some information that there might be a situation? Maybe they should have a conversation with their child.

**Shawna McFarland:** It depends on what you are looking at. In a school situation there was I understand what they want, but I am not sure how to do it without destroying the accused person. If we send out a letter and then send out a letter later that it was found to not be substantiated the second letter is not usually shared. How can you say to someone there could have been some sexual abuse in this daycare and not scare all the parents?

**Representative Skroch:** With all of that information, could you provides some amendments that would address some of these problems with the abuse that is going on?

**Shawna McFarland:** I don't think there is a fix in this bill to do what those people need to do. I don't know what amendments we could offer for that. We do our best.

**Representative Skroch:** So I have your assurance that if there is proof of abuse that other children are protected and parents are notified?

**Shawna McFarland:** The department can give notification to the parents cannot and enroll them to the daycare at that time.

**Representative Schneider:** Would section 2 provide for the notification of the parents if it is not substantiated. I am looking for something that would address the issue we heard about and yet not destroy the daycare. How would you feel about notifying parents if it was substantiated or if it is still questions?

**Shawna McFarland:** If it was unsubstantiated that would not qualify for us to inform them.

**Representative Schneider:** I think you could, but of course it is a balancing act of protecting the child and not destroying the person. I think the parents should have the right to make a decision whether to pull the child out of that daycare at the very least.

**Shawna McFarland:** If it is substantiated then they would be notified. If it is unsubstantiated then we can't notify people and say that maybe.

**Representative Schneider:** If you don't have proof, but you can't say it is wrong either shouldn't you be able to let parents know so they can make a decision about what they want to do.

**Shawna McFarland:** We can't make something up. We can't say that he did do it.

**Representative McWilliams:** Is there a way that the department would have to make an annual report to disclose how many allocations are made and how many were proven?

**Shawna McFarland:** That is derogatory I would have to see that language of that. How long do we continue to reference that?

**Chairman Weisz:** You seem to be a little contradictory you are saying you wouldn't have a problem with reporting an allocations and then when we ask about a report to show them at the end of the year that would show the allocations. You were talking about naming names.

**Shawna McFarland:** The differences are that the rules are that we would have to name daycare A

**Chairman Weisz:** You have to identify daycare A with the number of allocations.

**Representative McWilliams:** If I was a parent looking for a place to place my child for daycare a report that said "in the last 24 months there were 6 allocations 3 were proven to be unsubstantiated one was proven to be substantiated and that way it would give me some kind of a notice of their history.

**Shawna McFarland:** What I would envision is that report there was 2 abuse cases that were supervision concerns one was substantiated.

**Representative P. Anderson:** Did you testify in front of the senate committee?

**Shawna McFarland?** No I did not have a presentation.

**Representative P. Anderson:** It passed the senate you know.

**Shawna McFarland:** Yes.

**Vice Chairman Rohr:** If you were the parent, would you want to know?

**Shawna McFarland:** I would want to make sure that I did my research and also I would want to know if something was proven.

**Representative Schneider:** I think we are trying to get to the same place. Due diligence would not have helped in either of the cases we heard about. There was nothing that would have put up red flags.

**Shawna McFarland:** I think it would take people sitting around a table to discuss that I don't think we have it here.

**Representative Skroch:** If my child is in a daycare and I believe that my child was abused and I shared this information with other parents would I be liable.

**Shawna McFarland:** If you go out tell everyone else I don't know I would have to talk to an attorney on that.

**Marlys Baker:** Parents can request the information and they will get the whole story regardless of whether it is proven or not.

**Representative P. Anderson:** Have you changed anything in your department since the audit was done?

**Marlys Baker:** I can't speak to that. That is not my department.

**Chairman Weisz:** Is there any further opposition to SB 2060? Closed the hearing on SB 2060.

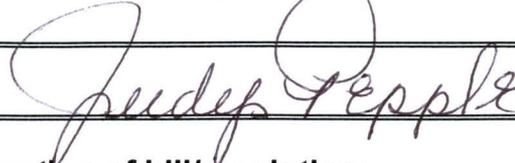
# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

SB 2060  
3/21/2017  
29535

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental notification of early childhood services investigations.

## Minutes:

Chairman Weisz: Opened the discussion on SB 2060  
This is really just a move from a "may" to a "shall".

Representative Porter: When is it the regulators responsibility to let the parents know that there is something going on? We are looking at it from the regulators standpoint. The regulators don't want to do it because there could be some that are false claims. The parents are saying if it were my child, I would want to know. They are saying that they are smart people and they can decide if they want their child to go there the next day and not have the regulators hiding it to protect the business. This is a heavy lift on us. There is no doubt about it. I agreed to sign on the bill knowing the case that happened. If it was my child, I think I would want to know and I would want to make the conscious decision as to whether my child went there the next day. The other side of it is that daycares are hard to find and daycare is a tough gig, but they have been elevated inside of our society to a necessary point of survival because of the existence of both parents working. With that comes responsibility back to us. I understand why the regulators don't want to notify, but the parents want to be able to decide.

Representative McWilliams: In Hillsboro we have 3 daycares and I called all three of them. One didn't return my phone call, but the other two are both in home in daycares and both have had false claims in the last couple of years. One of them was from the same individual in the community. I don't support this particular legislation, but I would support some kind of claim reporting that would show how many claims have been, what the investigation showed, if there were any results. I would support that legislation, because I agree with Representative Porter, because as the parent of a young child, I would want to know, but I don't want to put that business in jeopardy if it is a false claim.

Chairman Weisz: Current law says that the department has to let the parents know the results of the investigation if there is one. So what we are really talking about is this narrow window when somebody comes in and accuses the provider or someone there of something, should

that immediately result in the notification of the parents. There is nothing substantiated at all at that time, but it is hard to disagree if it is your kid.

Vice Chairman Rohr: I would like to know too, but I think it will be in the delivery. It can't be accusatory. It has to be here are the facts. Then the parent can decide. Some of them will keep their child in the daycare, but at least they are in the know.

Chairman Weisz: By nature, it will be accusatory. They would be saying there is a claim of abuse or whatever and this is what it is. I am not sure it would be in the delivery. I am struggling with that one.

Representative Skroch: If this notice is out in whatever context you frame it in, and you have parents show up at the door are the providers able to answer questions or are they required to be quiet because it is under investigation? Are they going to not even be able to explain to their clients what has been reported and why they are being investigated?

Chairman Weisz: No, they can talk if they want to. If you read the current law, they are required to notify the parent if the license is suspended which they will do if there is anything what they consider an emergency situation where there is direct risk to the children. Then they have to notify the parents. Of course, B and C are "shall", so it is under their discretion. If they feel it is necessary, but now we are going to say they "must". If you are going to pass this I think you need to have at least some caveat of what the department's responsibility for shall is. What if the list they get is not complete? The parents have moved or they can't reach them. If nothing else, how far do they have to take it to fulfill the requirements of shall notify? You are just saying it has to happen, but they need to at least have some reasonable means or something.

Representative Porter: In regards to that, it is only those children that are still receiving services, so the business relationship is still there. So there shouldn't be any issue of who needs to be notified. If they quit 2 weeks earlier or 2 days earlier they wouldn't have to be notified. This really comes down to the job of the regulatory agency and why we are regulating these businesses. If our regulation is to protect bad actors, then I think we should leave the bill the same. If our regulations are to protect the children, then we need to be sure we are doing our job to determine what our regulations are. I know it is not an easy decision and I know it is not a decision that one should take lightly, because of the possibility of false accusations. However, in these situations I just wonder in default if it is not better to be more cautious than it is to potentially expose other kids to bad actors.

Representative D. Anderson: I think that if I was falsely accused those parents would have a lot of difficulty finding another day care to take their child. Isn't there some self-protections there? Eventually they are going to find out that no one is going to want to take their kid.

Chairman Weisz: How are they going to necessarily know?

Representative D. Anderson: If I was a daycare provider, I would say that I was falsely accused. Don't they have some rights too if they are falsely accused?

Chairman Weisz: There would be an investigation and assessment and depending on what they find the case can go to court and they can fight the charges. It wouldn't necessarily be an automatic that every other daycare provider is going to know that John Doe accused provider A of whatever.

Representative D. Anderson: In a smaller community I think it would happen.

Chairman Weisz: That could be true, but what if it was in Fargo or Grand Forks?

Representative Skroch: I was just thinking that in small towns how fast word of mouth can taint someone's reputation. I wonder if we could build into this bill a mechanism that the department would make a public notice that the daycare was cleared so that it goes out there into the public. Would that be too hard to do?

Chairman Weisz: Once you are tarnished it is hard to put the horse back in the barn. That is part of the issue here. According to the testimony that we got from the county, they said that the language allowed discretion for them to consider the nature and severity of the report before notifying parents. So it is going from discretion to must. If the committee doesn't feel that the department should have discretion in looking at the severity or if the report might be bogus. It appears to me in the case that was mentioned somebody dropped the ball, but that could happen even if we pass this.

Vice Chairman Rohr: When I talked to Shawna as a parent if she would have wanted to have been notified if it was her child, it took her a while to even answer my question. She was very emotional, so to me that meant that she would want to know.

Representative D. Anderson: I move for a do pass on SB 2060.

Representative P. Anderson: Seconded.

Chairman Weisz: There is a motion on the floor for a do pass on SB 2060. Is there any discussion?

Representative Skroch: I still think there needs to be some kind of notice if the person is cleared. I still think we have to have some mechanism to require the "all clear" to be given to clear their name.

Chairman Weisz: You have to realize that they are not criminal. If you are not convicted, even though that doesn't mean you aren't guilty. It could be that they can't find enough information and the person really did do something. That could leave the social worker on the hook now if they said they were not guilty.

Representative Seibel: I am going to support this, reluctantly to protect children, but I know that in a small town it would be out right away. In Shawna's testimony she said that 92% of suspected child reports in ND are unsubstantiated. I am with Representative McWilliams in a small town like I live in that word is going to get around by the next day. That person is tarnished and it might be a parent that didn't want to pay their bill. I am going to vote for it to protect children.

Representative Damschen: Maybe the people that falsely accuse should be punished too, but I don't see a place to do that. If we don't support it and another kid is abused it is awful. I will vote to pass it too, but reluctantly.

Representative P. Anderson: I think the testimony Shawna gave was referring to high schools. I don't think she gave us any information about day cares. Her's was general.

Representative Kiefert: My daughter has a daycare and she had some parents that had a mental issue so she let them go, but she immediately called all of the parents and told them what happened and there was not an issue and she did call other daycares too and let them know what was going on. There are times that it happens. She contacted her parents right away and told them all what was going on.

Representative McWilliams: I would like to see a bill that sends out a quarterly report as to the claims made. I think it would be nice to look at a report and know if there are instances or not instances.

Representative D. Anderson: Wouldn't there be a fiscal note with that?

Chairman Weisz: Yes, but there was a case in Fargo where the parents were abusing the child and the child died at the daycare, so they were charged with abuse. No matter what we do you can't fix things.

Representative Skroch: Can we specifically ask the department of health track these? Do they do that anyway and then report back to us to see if there have been any negative side effects to this?

Chairman Weisz: It would be the county that would have to do that. You wouldn't have anything to compare it to side by side.

Representative McWilliams: In the interest of time. I have to pick up some medication for my wife before 6, so can I call the question?

Chairman Weisz: No you can't call the question. Is there any further discussion?  
The clerk will call the roll for a do pass on SB 2060.

Roll call vote taken    Yes    9    No    4    Absent    1

Chairman Weisz: the motion passes. Is there a volunteer to carry this one?  
Representative D. Anderson: I will carry it.

Date: 3/21/17  
Roll Call Vote #: \_\_\_\_\_

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2060

House Human Services Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. D. Anderson Seconded By Rep. P. Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. P. Anderson	✓	
Vice Chairman Rohr	✓		Rep. Schneider	ab.	
Rep. B. Anderson		✓			
Rep. D. Anderson	✓				
Rep. Damschen	✓				
Rep. Devlin		✓			
Rep. Kiefert	✓				
Rep. McWilliams		✓			
Rep. Porter	✓				
Rep. Seibel	✓				
Rep. Skroch	✓				
Rep. Westlind	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. D. Anderson

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

**REPORT OF STANDING COMMITTEE**

**SB 2060: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2060 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**SB 2060**

1/4/17

1

SB 2060  
Senate Judiciary Committee Testimony

Chairman Armstrong and Members of the Committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln.

SB 2060 takes away the discretion of the Department of Human Services in notifying parents about child abuse investigations. Currently, the department may choose not to inform parents when conducting investigations, suspending licenses, or serving prohibition orders. Unfortunately, this has resulted in the continuation of abuse, as you will hear from some parents today. I made an open records request after hearing from concerned parents, and I found the department, despite the advice from legal counsel for DHS, decided not to inform parents of sexual abuse taking place at a day care in my district. Instead, they simply served an order prohibiting the abuser from being at the daycare when the children were present. I only requested information related to this one, specific day care, so I am concerned about the extent to which this must be happening across the state.

My constituents and I aren't the only ones who have acknowledged the problem. In a recent state audit of DHS, the report recommended many changes relating to child care licensing, including a recommendation that DHS directly notify parents of child abuse allegations. I have included in my testimony pages 29-31 of the audit, but I would recommend reading this entire section of the audit, especially in light of the next bill on your agenda. The audit is easy to find on the state auditor's website.

Sometimes in government, we try to do so much that we neglect our basic responsibilities. Parents in my district who are dropping kids off at a licensed child care facility expect that at the very least, that license means their kids are kept safe from abuse during the day. Requiring the department to notify parents of child abuse investigations is just one step to ensuring the safety of our kids.

SB 2060

1/4/17

State Audit of the Department of Human Services, pages 29-31

**Failure to Suspend Providers and Notify Parents (Finding 15-9)****Condition:**

The Department of Human Services is not properly monitoring or suspending providers and notifying parents after confirmed knowledge of activities that jeopardize the health and safety of children.

Upon confirmation of activities jeopardizing the health and safety of children, providers are allowed to continue operating under memorandum of understanding (MOU) agreements. While the Department has a policy for issuing MOU agreements, there are no state laws or administrative rules that govern the practices of these agreements. No action was taken by the Department to perform further oversight of providers operating under MOU agreements and the Department did not notify parents with enrolled children. In our review of 58 child care provider licenses, 2 MOU agreements were noted. An additional 11 MOU agreements were identified related to providers' care, reported concerns, and required corrections. Reports of child abuse and neglect are confidential pursuant to NDCC 50-25.1-11; therefore, we are not able to disclose specific details of investigations. However, our review identified lack of appropriate action by the Department to monitor providers, suspend licenses, and notify parents. Providers were allowed to continue operating under MOU agreements while the Department was aware of activities including illegal drug use by the provider, restricted persons being present at the facility, inappropriate touching from adults, inappropriate sexual play between children, and other concerns of supervision and discipline.

In addition, the Department does not consistently apply the results of child protection investigations to all programs that approve individuals to care for children. The Department approves individuals to care for children through child care provider licensing as well as other programs. Investigations of child abuse and neglect may concern an owner, staff member, or household member. Investigation results that identify sufficient evidence of child abuse or neglect may be completed during a provider's approved license period. Action based on these results is not taken by the Department within all programs to suspend licenses or prohibit the presence of individuals and notify parents.

**Criteria:**

NDCC 50-11.1-07.8 states:

1. The Department may
  - a. Suspend a license at any time after the onset of a child abuse and neglect investigation alleging the owner or operator 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 if continued operation is likely to jeopardize the health and safety of the children present.
  - c. Prohibit the presence of an accused owner, staff member, or household member of the early childhood program from the early childhood premises when children are in child care, upon a report of child abuse or neglect at the premises of the licensed program or involving a staff member or household member if continued operation or the presence of the accused individual is likely to jeopardize the health and safety of the children present.

Pursuant to NDCC 50-11.1-07.8 (2-4), the Department shall also notify the parent of a child receiving early childhood services when the license is suspended and upon the conclusion and disposition of the investigation. The Department may notify the parent of any child receiving early childhood services when an owner, operator, adult staff member, or adult household member of the program providing care of the child is under investigation of a report of abuse or neglect. Any action under this section may preclude an individual's ability to operate pending an appeal.

The Department's Suspension Policy (620-01-120-30) states that a suspension request must be made when the following are present:

- A report of suspected child abuse or neglect at a licensed, self-declared, or registered child care is reported.
- Children are found to be at imminent danger or at risk of harm.

The authorized agent shall:

- Notify the parent of any child receiving care when the license, self-declaration, or registration is suspended.
- Upon the conclusion and disposition of the assessment, notify the parent of each child receiving early childhood services of the disposition.

Confidentiality of records law (NDCC 50-25.1-11) and the Department's Notification of Parents Policy (620-01-115-10-01) require that when a provider or staff member of a licensed program is the subject of a child protection services assessment, the Department shall make a good faith effort to notify all parents of children receiving care in the child care program of the results of the assessment. DHS policy further requires that a copy of the notice will be placed in the licensing file for licensers to reference, and the licenser shall ensure that the notification is properly distributed to parents who are enrolled at the child care at the time the notice is distributed.

**Cause:**

The Department interprets the authority of NDCC to suspend licenses to be limited to very specific circumstances.

While state law allows for parents to be notified at any time after the onset of a child abuse and neglect investigation, the Department has indicated that procedures are to notify parents after the provider's appeal process.

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SB 2060

**Effect or Potential Effect:**

There are increased risks to the health and safety of children when licenses are not suspended and parents are not immediately notified of reports of suspected child abuse or neglect or other concerns. Providers are allowed to operate without proper oversight by the Department to ensure compliance with MOU requirements.

**Operational Improvement:**

**We recommend the Department of Human Services:**

- Perform further oversight of providers to ensure compliance with memorandum of understanding agreements;
- Suspend providers when children are found to be at risk of harm; and,
- Directly notify parents immediately after confirmed knowledge of activities that jeopardize the health and safety of children.

**Department of Human Services Response:**

*The Department will update policy to include further oversight of providers by the county licensors to ensure compliance with memorandum of understandings. The Department will suspend providers in accordance with North Dakota Century Code, which requires a determination that continued operation of the child care program is likely to jeopardize the health and safety of the children and also requires that child protective services and law enforcement be involved in the investigation. Department policy regarding MOUs and suspensions, including notification to parents, will be reviewed and changes will be made as needed.*

SB 2060

11/4/17

1/3/2017

North Dakota Human Services audit finds 'significant errors' with child care licensing | North Dakota News | bismarcktribune.com

[http://bismarcktribune.com/news/state-and-regional/north-dakota-human-services-audit-finds-significant-errors-with-child/article\\_d112624a-b171-5c91-b208-28e02e6c5aa6.html](http://bismarcktribune.com/news/state-and-regional/north-dakota-human-services-audit-finds-significant-errors-with-child/article_d112624a-b171-5c91-b208-28e02e6c5aa6.html)

## North Dakota Human Services audit finds 'significant errors' with child care licensing

John Hageman Forum News Service Aug 24, 2016

An audit of the North Dakota Department of Human Services found child care providers were allowed to continue operating while the state's largest agency was aware of instances of illegal drug use and "inappropriate touching from adults."

One finding included in the 49-page report, which was completed by the State Auditor's office for the biennium that ended June 30, 2015. It was presented to Gov. Jack Dalrymple, members of the North Dakota Legislature and DHS Executive Director Maggie Anderson, according to a July 13 letter signed by State Auditor Robert R. Peterson.

The report included several concerns over early childhood services licensing, for which county licensors act as the authorized agent for DHS, the audit said. County licensors make recommendations to DHS regional supervisors for issuing licenses.

The audit said the department's "monitoring procedures performed by the central and regional offices are ineffective." Its early childhood services administrator and regional supervisors review county licensor activities, it added.

"The significant errors identified in our testing of child care provider licensing indicate these reviews are clearly ineffective at identifying material weaknesses and inconsistencies," the audit states. "These situations include failure to identify incomplete application requirements, improperly licensed providers, nonperformance of unannounced inspections, backdated licenses, lack of monitoring of corrective orders, non-imposed sanctions, and lack of documented notification to parents for serious safety concerns."

The report added there is an "improper balance between ensuring safe quality of child care and supporting child care providers to become licensed or continue operating without meeting minimum requirements."

DHS said in a response included in the report it "is revising (an) administrative rule, considering policy updates, and updating state forms to ensure all work performed is properly documented and North Dakota Administrative Code and department policies are being followed."

Debra McDermott, DHS chief financial officer, said the operational audit is conducted every two years.

"The department always looks at issues that are brought forward by the auditor's office and considers all aspects, and looks into doing what we can to make sure we're in compliance with Century Code and our policies," she said.

### MOU agreements

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In one finding, the audit said DHS "is not properly monitoring or suspending providers and notifying parents after confirmed knowledge of activities that jeopardize the health and safety of children."

Providers have been allowed to continue operating under "memorandum of understanding" agreements, but there are no state laws or administrative rules governing those MOUs. The report adds "no action was taken by the department to perform further oversight of providers operating under MOU agreements and the department did not notify parents with enrolled children."

Rebecca Eberhardt, early childhood services administrator at DHS, said the department follows a section of state law that says DHS shall notify parents "upon the conclusion and disposition of the investigation." Moreover, DHS "interprets the authority of (state law) to suspend licenses to be limited to very specific circumstances," the audit states.

In its review of 58 child care provider licenses, the auditors said two MOU agreements "were noted," while an additional 11 MOUs outside of those 58 licenses "were identified related to providers' care, reported concerns, and required corrections." The report did not specify investigation details because reports of child abuse and neglect are confidential under state law.

"Providers were allowed to continue operating under MOU agreements while the department was aware of activities including illegal drug use by the provider, restricted persons being present at the facility, inappropriate touching from adults, inappropriate sexual play between children, and other concerns of supervision and discipline," the audit states.

Allison Bader, the auditor in charge of the report, said DHS records indicated "substantiated evidence."

The auditors recommended DHS further oversee providers to ensure their compliance with MOU agreements, "suspend providers when children are found to be at risk of harm," and "directly notify parents immediately after confirmed knowledge of activities that jeopardize the health and safety of children."

In a response included in the audit, DHS said it would "update policy to include further oversight of providers by the county licensors to ensure compliance with memorandum of understandings." It will also suspend providers in accordance with state law.

Department policy regarding MOUs and suspensions, including notification to parents, will be reviewed and changes will be made as needed," response adds.

Eberhardt said the department issues MOUs "with the goal of supporting good child care practices" and to "support a restricted license, to enter into an agreement on a method of correction of violation or for other assurances."

Providers are supposed to receive at least two visits a year, one being an announced review and the other an unannounced one, Eberhardt said. Anytime the county social service office or the department receives a complaint about a provider, the county licensor is required to investigate, she added.

For a license to be suspended, child protection services and law enforcement need to be involved and children must be in imminent danger, Eberhardt said.

"The department relies on law enforcement and child protection service professionals to help to determine if imminent danger or if abuse and neglect as defined by law occurred," she said.

There were 965 child protection cases that had a "services required" determination in fiscal 2015 in North Dakota, DHS spokeswoman Heather Steffl said. Of those cases, only three involved licensed child care providers.

Parents with a concern or complaint about a licensed child care provider should contact their county social service office child care licensor, Eberhardt said. But law enforcement should be called if a child is in imminent danger.

## Other findings

The audit also found DHS policies allow child care licenses to be effective before background checks are performed by a DHS regional supervisor. Of 58 licenses that were tested, 25 were dated effective before the regional supervisor's review occurred.

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North Dakota Human Services audit finds 'significant errors' with child care licensing | North Dakota News | bismarcktribune.com

Those policies are intended to allow for a delay in application review due to employee absences at the county and regional offices, but "the department has not sufficiently considered the risk of providers and staff operating a child care facility without proper background checks," the audit report said.

DHS said it has been working on administrative rule revisions based on recommendations from the Governor's Advisory Committee on Child Care Licensing Process.

"If approved, this rule would be effective July 2017 and will ensure the effective date of the license will not occur until all documentation is received and reviewed by the regional office," the response states. "State forms have already been updated to ensure background check procedures are properly documented."

The DHS response also said Dalrymple's budget for the current biennium included three additional full-time equivalent employees for regional supervisors due to an increased workload, as well as 1.5 FTEs "to ensure background checks were completed within the timelines required by the Child Care and Development Block Grant of 2014." Those 4.5 FTEs and associated funding were removed from the DHS appropriation during the 2015 legislative session, the department said.

Another finding said nine of the 58 tested provider licenses had been backdated to become effective before all licensing materials were received. One provider was issued a license after testing positive for illegal drugs, the audit said, and another had health and sanitation deficiencies that not corrected until after the license effective date.

A 4-year-old girl drowned last year in Velva while her child care provider's license was expired, the state Bureau of Criminal Investigation said. Charges filed against a McHenry County social worker alleged she asked that the license to be backdated to conceal the fact it was expired at the time of the drowning.

Criminal charges against the DHS director related to the Velva case were dismissed earlier this month.

Eberhardt said the nine licenses included in the audit were issued incorrectly because of incomplete and delayed documentation. DHS issues licenses based on the date paperwork is turned in to the county licensor, she added.

"Once department staff became aware of the missing documentation, they took appropriate action including issuing MOUs, correction orders, and obtaining needed documentation," Eberhardt wrote in an email.

[http://bismarcktribune.com/news/state-and-regional/governor-dhs-fire-back-at-scathing-audit-of-child-care/article\\_352cba3a-b65b-5689-9eb8-2b4ff4cd8168.html](http://bismarcktribune.com/news/state-and-regional/governor-dhs-fire-back-at-scathing-audit-of-child-care/article_352cba3a-b65b-5689-9eb8-2b4ff4cd8168.html)

## Governor, DHS fire back at scathing audit of child care licensing

Nowatzki Forum News Service Aug 30, 2016

Gov. Jack Dalrymple and Department of Human Services officials say a recent scathing audit fails to tell the whole story about how the agency deals with child care licensing, but State Auditor Robert Peterson is standing behind his staff and suggested DHS is downplaying the findings because of public outrage.

The audit released last month found that DHS didn't properly monitor or suspend providers and notify parents "after confirmed knowledge of activities that jeopardize the health and safety of children."

Auditors reviewed 58 provider licenses out of about 1,600 licensed providers that care for more than 39,000 children statewide, trying to include at least one provider from each of the state's 53 counties.

Some of the harshest criticism targeted 13 cases in which providers were allowed to operate under memorandum of understanding agreements. Two agreements were noted in the licenses, and auditors identified an additional 11 related to providers' care, reported concerns and required corrections.

"Providers were allowed to continue operating under MOU agreements while the Department was aware of activities including illegal drug use by the provider, restricted persons being present at the facility, inappropriate touching from adults, inappropriate sexual play between children, and other concerns of supervision and discipline," the report states.

But the DHS official who oversees child care licensing said the spreadsheet reviewed by auditors contained only anecdotal information on the 11 MOU agreements and didn't reflect how the concern was addressed. Confidentiality laws prevented DHS officials and auditors from providing details of the individual cases, but they spoke generally about the process.

"Generally, if an individual is a staff member at a program and there's a complaint about them, and that individual has been removed from the facility, then we would allow them to continue to operate because the threat has been removed," Early Childhood Services Administrator Rebecca Eberhardt said, adding, "They didn't look at the whole file to see what actions were taken."

Dalrymple also said it provided an incomplete picture.

"I look at it as kind of like you're seeing one side of a story, as the initial report, and then you don't see anything after that. So it's really kind of not fair," he said.

Allison Bader, the auditor in charge of the report, said evidence showed that investigations into the allegations found a "substantiated concern" that was enough to issue the MOU agreements in the first place. Auditors found that DHS took no action to more closely oversee providers operating under MOU agreements and didn't notify parents about them.

"The parents would be the ones that are there on a regular basis to know if there's somebody there who shouldn't be," she said.

Peterson - who, like Dalrymple, is a Republican not running for re-election this November - said DHS had the flexibility to notify parents but didn't do it, and the agency shouldn't get mad at auditors for pointing it out.

"They're trying to cover this as best they can," he said of DHS. "Our recommendations are valid because we're looking at the child's safety."

### Notification at issue

Kathy Hogan, D-Fargo, who chairs the Legislature's Human Services Committee and is a former director of Cass County Social Services, said removing an accused person from the setting could be enough to ensure children's safety, comparing it to a school teacher being placed on leave while allegations are investigated.

"Obviously, we keep the schools running," she said.

With due process concerns, officials walk a thin line on whether and when to notify parents, she said.

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"When you've substantiated an allegation, parents need to be told that. Parents deserve to be told that. It sounds like that wasn't going on," she said.

The law says DHS may suspend a license "any time after the onset" of an investigation alleging child abuse or neglect by the owner, operator or in-home provider if law enforcement has been involved and if "continued operation is likely to jeopardize the health and safety of the children."

The agency also can prohibit an owner, operator, provider, staff member or household member from being on the premises during child care hours after a report of child abuse or neglect.

The law says the department "shall" notify parents when a license has been suspended, and that it "may" notify parents if there's an investigation into a provider or staff member.

Department policy requires that when a provider or staff member is investigated by the county-administered, state-supervised Child Protection Services, DHS must make a good-faith effort to notify affected parents of the results – though state law allows earlier notification.

"Because a lot of the allegations are not substantiated, we have notified (parents) after the fact, not prior to," DHS attorney Jonathan Alm said, adding that if there's an investigation by CPS and law enforcement indicating a risk to children, "the suspension would occur sooner than later" and parents would be notified.

Auditors contend there's an "improper balance" between ensuring safe quality of child care and supporting providers to become licensed or keep operating without meeting minimum requirements.

"They need to be more forceful in contacting the parents and making sure the parents know," Peterson said.

## Changes considered

The audit recommends DHS further oversee providers to ensure compliance with MOUs, suspend providers when children are at risk of harm and directly notify parents immediately after confirmed knowledge of activities that jeopardize children's health and safety.

Eberhardt said the department is looking at updating policy to see if additional visits to providers are warranted to better monitor MOU requirements. Currently, each provider is supposed to receive one announced visit and one unannounced visit per year, though auditors found that 16 of the 58 providers checked didn't have the proper unannounced inspections, and documentation was incomplete for an additional five inspections.

Dalrymple noted some of the deficiencies raised in the audit – among them the backdating of licenses and licenses becoming effective before background checks are performed – are being addressed by an advisory group he formed last spring in the wake of the summer 2015 drowning-related death of a 5-year-old girl whose child care provider in Velva was operating with a lapsed license.

"We were first and we were way ahead in wanting to follow through on some of the things that were coming out about day care licensing," he said, adding he expects the group to take up proposed rules next month. "That's a big piece of this because those rules touch on a lot of these topics."

Dalrymple said he still has confidence in DHS Executive Director Maggie Anderson, calling her an "outstanding" director and saying Eberhardt also is doing a good job. Criminal charges filed against Anderson in connection with the investigation into the Velva incident were dismissed earlier this month.

Hogan, who was "shocked" at how bad the audit was and has asked for the advisory group to meet soon, said the problems are "much more systemic than one person," and that replacing Anderson before the transition to a new governor would serve no purpose. Areas of state law may need strengthening to address some of the issues, she said.

"I think it's a system issue that we all have to own and look at," she said.

### Read more online:

A longer version of this story is available at [bismarcktribune.com](http://bismarcktribune.com)

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**Testimony**

**Senate Bill 2060 – Erica Cermak**

**Senate Judiciary Committee**

**Senator Armstrong, Chairman**

**January 4, 2017**

Chairman Armstrong and members of the Committee, my name is Erica Cermak and I am here as a private citizen representing myself. I am here to testify in support of Senate Bill 2060.

I'm here today to testify for my son, who disclosed to me at age 3 that he had been sexually abused by an adult who resided at the daycare he was attending. When my son disclosed the abuse to me, we reported the incident to police, contacted the Children's Advocacy Center and removed him from the daycare. We followed all of the procedures we were supposed to and the Children's Advocacy Center conducted a forensic interview with my son. Although my son did indicate that something did happen to him at the daycare, he wouldn't say the individual's name or tell them specifically what had been done to him (he only told my husband and myself). The Police Department interviewed the provider and the individual and felt they were both being untruthful. The individual was asked to take a lie detector test and refused. The Police Department couldn't investigate any further at that point unless something else was disclosed. We did find out at that time, that the individual my son had accused was not supposed to be alone with the children during daycare hours, because he hadn't been listed as a care provider under the provider's license-but that the individual was in fact, left alone with the children at various times during the day.

At that point, we had no choice but to move on and begin the healing process for my son, but I was worried about the other children who attended daycare. I asked the detective if the other parents would be notified or if I could talk to any of them about what my son disclosed. He indicated they would not notify the parents, that I could, but at the risk of being sued for slander or liable. I took some comfort in knowing that he would not be allowed to be alone with the children and that if anyone would inquire with the ND DHS licensing division about reports against that particular daycare, they would be told that there had been an investigation and could make their own conclusion about whether to take their children there.

About a year later, I was called by our new daycare provider indicating that my son had been engaging in what I believe was a re-enactment of the sexual abuse on another child. Once again, we were scrambling with what to do with our child and the fear for his future and how to care for him. I immediately called the CAC and began counseling with him again and started the process

of looking for a daycare that could understand my child and provide him with the supervision and guidance that he needed. I reached out to the Licensing Division at the Department of Human Services to explain what happened and to ask for recommendations of a provider that could care for my children knowing what had happened. As I was explaining the situation to the representative of DHS, she asked who the original provider was. When I told her the name of the daycare provider, she indicated she had no record of a report of abuse at the daycare and would need to look into and call me back. When she did, she indicated there had been a processing error and the report never was completely filed. *This means that for at least a year, if a parent had enquired about that provider, they would not have known anything had occurred.*

Last year, a friend I had originally confided in about the situation with my son called me frantic. She had received a call from a friend who had her children enrolled at the daycare where my son alleged he had been molested. Her 3-year-old son had disclosed to her that he had been molested by the same individual. My friend asked if she could tell the other mother about our situation and we have been in contact ever since. The mother reported her son's alleged abuse, the provider was again investigated and to my understanding, the individual who was accused was not to be at the daycare at any time during operational hours. As I understand, the individual continued to be present during operational hours. After the recent allegations, the provider voluntarily suspended her own license but to my knowledge, not one of the parents have been notified of the allegations my son had made, nor of the newest allegations.

This past summer, several local media outlets reported on some disturbing findings of the ND DHS audit, particularly with regards to situations of alleged abuse and neglect. When I read the articles about the audit, I was sick. There were particular excerpts about Memorandums of Understanding with providers in these situations and lack of notification to parents where abuse and neglect had been reported. It felt like I was reading my families' personal experience. Based on the findings of the audit, it seems there clearly needs to be a better system in place to ensure parents are notified in these situations so they can make informed decisions about the care of their children.

I believe, that aside from death, sexual abuse of a child is arguably the worst possible thing that can happen to a child. It has been four years since my son attended the daycare-the implication being many more children are/were potentially at risk. In our situation, I know of at least one family who could have been protected had ND law required the DHS to notify parents. That is too many.

Thank you, Mr. Chairman, and members of the committee for the opportunity to testify before you this morning. I strongly urge you to consider a favorable recommendation for Senate Bill 2060. I'm happy to answer any questions you may have.

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SB 2060  
House Human Services Committee Testimony

Chairman Weisz and Members of the Committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln.

SB 2060 takes away the discretion of the Department of Human Services in notifying parents about child abuse investigations. Currently, the department may choose not to inform parents when conducting investigations, suspending licenses, or serving prohibition orders. Unfortunately, this has resulted in the continuation of abuse, as you will hear from some parents today. I made an open records request after hearing from concerned parents, and I found the department, despite the advice from legal counsel for DHS, decided not to inform parents of sexual abuse taking place at a day care in my district. Instead, they simply served an order prohibiting the abuser from being at the daycare when the children were present. I only requested information related to this one, specific day care, so I am concerned about the extent to which this must be happening across the state.

My constituents and I aren't the only ones who have acknowledged the problem. In a recent state audit of DHS, the report recommended many changes relating to child care licensing, including a recommendation that DHS directly notify parents of child abuse allegations. I have included in my testimony pages 29-31 of the audit, but I would recommend reading this entire section of the audit. The audit is easy to find on the state auditor's website.

Sometimes in government, we try to do so much that we neglect our basic responsibilities. Parents in my district who are dropping kids off at a licensed child care facility expect that at the very least, that license means their kids are kept safe from abuse during the day. Requiring the department to notify parents of child abuse investigations is just one step to ensuring the safety of our kids.

Today you will hear from parents whose children were victims of abuse at the same day care - three years apart. In addition to listening to their story, I hope you will think about all the children who were obviously abused in that three-year time period, and the parents who have no idea abuse was taking place or had been reported.

The department has expressed interest in restoring the "good faith effort" language in the bill for instances when they cannot find the parents to be able to notify them, so I would ask the committee to consider that request as you deliberate on this bill.

**Condition:**

The Department of Human Services is not properly monitoring or suspending providers and notifying parents after confirmed knowledge of activities that jeopardize the health and safety of children.

Upon confirmation of activities jeopardizing the health and safety of children, providers are allowed to continue operating under memorandum of understanding (MOU) agreements. While the Department has a policy for issuing MOU agreements, there are no state laws or administrative rules that govern the practices of these agreements. No action was taken by the Department to perform further oversight of providers operating under MOU agreements and the Department did not notify parents with enrolled children. In our review of 58 child care provider licenses, 2 MOU agreements were noted. An additional 11 MOU agreements were identified related to providers' care, reported concerns, and required corrections. Reports of child abuse and neglect are confidential pursuant to NDCC 50-25.1-11; therefore, we are not able to disclose specific details of investigations. However, our review identified lack of appropriate action by the Department to monitor providers, suspend licenses, and notify parents. Providers were allowed to continue operating under MOU agreements while the Department was aware of activities including illegal drug use by the provider, restricted persons being present at the facility, inappropriate touching from adults, inappropriate sexual play between children, and other concerns of supervision and discipline.

In addition, the Department does not consistently apply the results of child protection investigations to all programs that approve individuals to care for children. The Department approves individuals to care for children through child care provider licensing as well as other programs. Investigations of child abuse and neglect may concern an owner, staff member, or household member. Investigation results that identify sufficient evidence of child abuse or neglect may be completed during a provider's approved license period. Action based on these results is not taken by the Department within all programs to suspend licenses or prohibit the presence of individuals and notify parents.

**Criteria:**

NDCC 50-11.1-07.8 states:

1. The Department may
  - a. Suspend a license at any time after the onset of a child abuse and neglect investigation alleging the owner or operator 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 if continued operation is likely to jeopardize the health and safety of the children present.
  - c. Prohibit the presence of an accused owner, staff member, or household member of the early childhood program from the early childhood premises when children are in child care, upon a report of child abuse or neglect at the premises of the licensed program or involving a staff member or household member if continued operation or the presence of the accused individual is likely to jeopardize the health and safety of the children present.

Pursuant to NDCC 50-11.1-07.8 (2-4), the Department shall also notify the parent of a child receiving early childhood services when the license is suspended and upon the conclusion and disposition of the investigation. The Department may notify the parent of any child receiving early childhood services when an owner, operator, adult staff member, or adult household member of the program providing care of the child is under investigation of a report of abuse or neglect. Any action under this section may preclude an individual's ability to operate pending an appeal.

The Department's Suspension Policy (620-01-120-30) states that a suspension request must be made when the following are present:

- A report of suspected child abuse or neglect at a licensed, self-declared, or registered child care is reported.
- Children are found to be at imminent danger or at risk of harm.

The authorized agent shall:

- Notify the parent of any child receiving care when the license, self-declaration, or registration is suspended.
- Upon the conclusion and disposition of the assessment, notify the parent of each child receiving early childhood services of the disposition.

Confidentiality of records law (NDCC 50-25.1-11) and the Department's Notification of Parents Policy (620-01-115-10-01) require that when a provider or staff member of a licensed program is the subject of a child protection services assessment, the Department shall make a good faith effort to notify all parents of children receiving care in the child care program of the results of the assessment. DHS policy further requires that a copy of the notice will be placed in the licensing file for licensers to reference, and the licenser shall ensure that the notification is properly distributed to parents who are enrolled at the child care at the time the notice is distributed.

**Cause:**

The Department interprets the authority of NDCC to suspend licenses to be limited to very specific circumstances.

While state law allows for parents to be notified at any time after the onset of a child abuse and neglect investigation, the Department has indicated that procedures are to notify parents after the provider's appeal process.

**Effect or Potential Effect:**

There are increased risks to the health and safety of children when licenses are not suspended and parents are not immediately notified of reports of suspected child abuse or neglect or other concerns. Providers are allowed to operate without proper oversight by the Department to ensure compliance with MOU requirements.

**Operational Improvement:**

We recommend the Department of Human Services:

- Perform further oversight of providers to ensure compliance with memorandum of understanding agreements;
- Suspend providers when children are found to be at risk of harm; and,
- Directly notify parents immediately after confirmed knowledge of activities that jeopardize the health and safety of children.

**Department of Human Services Response:**

*The Department will update policy to include further oversight of providers by the county licensors to ensure compliance with memorandum of understandings. The Department will suspend providers in accordance with North Dakota Century Code, which requires a determination that continued operation of the child care program is likely to jeopardize the health and safety of the children and also requires that child protective services and law enforcement be involved in the investigation. Department policy regarding MOUs and suspensions, including notification to parents, will be reviewed and changes will be made as needed.*

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**Testimony**

**Senate Bill 2060 – Erica Cermak**  
**House Human Services Committee**  
**Representative Weisz, Chairman**  
**March 14, 2017**

Chairman Weisz and members of the committee, my name is Erica Cermak. I am here as a private citizen representing myself and my family in support of Senate Bill 2060.

I'm here today to testify for my son, who disclosed to me at age 3 that he had been sexually abused by an adult who resided at the daycare he was attending. When my son disclosed the abuse to me, we reported the incident to police, contacted the Children's Advocacy Center and removed him from the daycare. We followed all of the procedures we were supposed to and the Children's Advocacy Center conducted a forensic interview with my son. Although my son did indicate that something did happen to him at the daycare, he wouldn't say the individual's name or tell them specifically what had been done to him (he only told my husband and myself). The Police Department interviewed the provider and the individual and felt they were both being untruthful. The individual was asked to take a lie detector test and refused. The Police Department couldn't investigate any further at that point unless something else was disclosed. We did find out at that time, that the individual my son had accused was not supposed to be alone with the children during daycare hours, because he hadn't been listed as a care provider under the provider's license-but that the individual was in fact, left alone with the children at various times during the day.

At that point, we had no choice but to move on and begin the healing process for my son, but I was worried about the other children who attended daycare. I asked the detective if the other parents would be notified or if I could talk to any of them about what my son disclosed. He indicated they would not notify the parents, that I could, but at the risk of being sued for slander or liable. I took some comfort in knowing that he would not be allowed to be alone with the children and that if anyone would inquire with the ND DHS licensing division about reports against that particular daycare, they would be told that there had been an investigation and could make their own conclusion about whether to take their children there.

About a year later, I was called by our new daycare provider indicating that my son had been engaging in what I believe was a re-enactment of the sexual abuse on another child. Once again, we were scrambling with what to do with our child and the fear for his future and how to care for him. I immediately called the CAC and began counseling with him again and started the process

of looking for a daycare that could understand my child and provide him with the supervision and guidance that he needed. I reached out to the Licensing Division at the Department of Human Services to explain what happened and to ask for recommendations of a provider that could care for my children knowing what had happened. As I was explaining the situation to the representative of DHS, she asked who the original provider was. When I told her the name of the daycare provider, she indicated she had no record of a report of abuse at the daycare and would need to look into and call me back. When she did, she indicated there had been a processing error and the report never was completely filed. *This means that for at least a year, if a parent had enquired about that provider, they would not have known anything had occurred.*

Last year, a friend I had originally confided in about the situation with my son called me frantic. She had received a call from a friend who had her children enrolled at the daycare where my son alleged he had been molested. Her 3-year-old son had disclosed to her that he had been molested by the same individual. My friend asked if she could tell the other mother about our situation and we have been in contact ever since. The mother reported her son's alleged abuse, the provider was again investigated and to my understanding, the individual who was accused was not to be at the daycare at any time during operational hours. As I understand, the individual continued to be present during operational hours. After the recent allegations, the provider voluntarily suspended her own license but to my knowledge, not one of the parents have been notified of the allegations my son had made, nor of the newest allegations.

This past summer, several local media outlets reported on some disturbing findings of the ND DHS audit, particularly with regards to situations of alleged abuse and neglect. When I read the articles about the audit, I was sick. There were particular excerpts about Memorandums of Understanding with providers in these situations and lack of notification to parents where abuse and neglect had been reported. It felt like I was reading my families' personal experience. Based on the findings of the audit, it seems there clearly needs to be a better system in place to ensure parents are notified in these situations so they can make informed decisions about the care of their children.

I believe, that aside from death, sexual abuse of a child is arguably the worst possible thing that can happen to a child. It has been four years since my son attended the daycare-the implication being many more children are/were potentially at risk. In our situation, I know of at least one family who could have been protected had ND law required the DHS to notify parents. That is too many.

Thank you, Mr. Chairman, and members of the committee for the opportunity to testify before you this morning. I strongly urge you to consider a favorable recommendation for Senate Bill 2060. I'm happy to answer any questions you may have.

AH. 3  
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**Testimony**  
**Parental Notification of Early Childhood Services**  
**Senate Bill 2060**  
**House Human Services Committee**  
**March 14, 2017**

Chairman Weisz, members of the House Human Services Committee, I am Shawna McFarland, Director of Mountrail County Social Services and member of the North Dakota County Director's Association. I am here in opposition to Senate Bill 2060 as it is currently written. My testimony today also relays the concerns of the County Directors Association in regards to the language of this bill.

At face value the proposed changes to existing code seem reasonable. However, the change of language on page 1, line 10 and line 14 from "May" to "Shall" may have unintended consequences.

For example, under current statute if a suspected child abuse/neglect report is received regarding an early childhood services facility (child care program), notification "*may*" be made to the families enrolled in the program. This language allows discretion for considering the nature and severity of the report prior to notifying parents. It also allows for the process of an assessment to determine the validity of the allegations. Changing the word "*may*" to "*shall*" in line 10 in section 1 requires social services to notify the parents of any and all child protection reports on employees of daycares. The employee is denied any right to due process to determine if the reported allegations are legitimate.

Frequently, we receive false reports, inaccurate reports, or reports that do not meet the definition of child abuse and neglect. In fact, if you look at the 2014 data for North Dakota 12,392 Child Protection reports were received. Of those reports only 911 met the threshold for a Services Required Finding. Or to put it another way on average 92% of suspected child abuse/neglect reports received in ND are unsubstantiated reports.

I will provide an example of an unsubstantiated report and ask you to consider the consequences with the proposed changes. A report comes into social services in regards to a dad who is a backup caregiver for his wife's in-home daycare. The report is he assaulted his teenage daughter and she has a black eye. A letter would go out with the report of physical abuse. Many will not

read the letter in its entirety and will say it happened because "social services" sent them a letter. After assessment, it is determined; the daughter was hit in the face with a basketball at morning practice. The coach, which was not a teacher, provided her with an ice pack and went to his job leaving the school. The child was overheard at school stating her father had injured her. The child who overheard it reported it. The report was sent to social services. When the daughter was interviewed she reports she did say her father hit her when her best friend asked her what happened. She stated she was laughing and being sarcastic and had said "you know how my dad is". She thought it was a joke because no one would believe her father would hurt her. The injury was sustained at practice and several collaterals can confirm this. This report was made in good faith and everyone did what they were supposed to do for the protection of the child, the allegation, severe as it was, is determined to be false.

Additional concerns exist if a parent becomes angry with their child care program they may file a report of suspected child abuse and neglect. This may be done to cause harm vs. address true concerns. For example, if a child was removed from a child care program for non-payment issues, at times a parent files a report with CPS to get even.

The current statute allows the agency assessing the report to determine if the report is substantiated or meets the definition of child abuse and neglect prior to notification. This discretion would be removed under SB 2060. This could mean the names of child care programs, employees, etc. could be inappropriately disclosed or harmed.

Additionally, I am concerned about the striking of the language on page 2, lines 2-4, that notes that "*good faith effort*" before made to provide appropriate notice. Removal of this language may result in excessive administrative effort and cost requiring efforts to track down families, with outdated contacted information, that frequently move, relocate, or switch child care programs.

For these reasons, I urge a DO NOT PASS of SB 2060 and rather let existing statute remain in effect in order to protect children, families, and early child care programs in ND. I would be happy to answer any questions.