

2019 SENATE HUMAN SERVICES COMMITTEE

SB 2163

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2163
2/4/2019
JOB # 32047

- Subcommittee
 Conference Committee

Committee Clerk Signature: Justin Velez / Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to proof of liability insurance for early childhood programs

Minutes:

Attachment # 1

Chair Lee: Opened the hearing on SB 2163.

Senator Shawn Veeda, District 6: Introduced SB 2163 and gave a brief description.

(4:49) Senator Hogan: There used to be a liability requirement in licensure. It was eliminated at the request of the child care providers. I get emails saying this is an undue burden and we shouldn't be requiring this. I was curious about the history of liability coverage in child care, and is it your intent that this is all licensed providers, regardless of their status?

Senator Veeda: There is a big misunderstanding out there about liability insurance. There are issues with getting liability insurance. When it comes to this insurance it is hardly ever used, but when it is, it is usually a bigger accident. This is required for the bigger centers, but maybe not the ones for home.

Senator Hogan: Did you interact with the child care licensing policy people when you drafted this bill?

Senator Veeda: No I did not.

Senator Larsen: With liability insurance, the state insurance department doesn't really care who has coverage. It is the Blue Cross Blue Shield that reaches out to the agent and says they won't continue to cover you without it. This bill says that if the childcare facility doesn't have the insurance, the licensing person reaches out to the department to tell them they don't have the coverage? How does that work again?

(7:41) Senator Veeda: That is correct. It would be similar to if a bank requires you to have full coverage on your vehicle and it lapses, that insurance company has to tell the bank.

Chair Lee: The Department of Human Services is the one that licenses, so we're not talking about the department of insurance? We're talking about reporting it to DHS?

Senator Veeda: Correct.

Senator Hogan: What do you anticipate the consequences of not having insurance would be? What would DHS do? Is it revocation or due process?

Senator Veeda: I believe it's to let them know that their insurance has lapsed and ask them their plan.

Senator Larsen: Do you know what this coverage costs? My ENO is \$500 a year, is this comparable?

Senator Veeda: I have talked to different individuals; it ranges from \$500 up to depending on what kind of facility you have. Liability is usually least expensive of all insurance.

Senator Larsen: Currently then, if this bill passes, it won't be a revocation of the daycare license, it will just notify the business that they don't have coverage?

Senator Veeda: That is correct. It tells the department that there is an individual out there without insurance.

Chair Lee: Just a couple of quotes I had people email me.

"I spoke to staff at the Insurance Commissioner's office and was told that although numerous companies are approved to offer commercial liability insurance to child care providers, very few actually do. There is no way to find out exactly how many without calling each company approved and inquiring on coverage. I would support this bill if there were some way to insure providers would be given adequate time to secure insurance and if providers lose insurance due to no fault of their own, be given adequate time to secure new insurance."

And the other was:

"I'm concerned with the state requiring early childhood programs to carry liability insurance. Not because I don't think that having a commercial liability policy isn't helpful. But because as a small business owner and operator of a childcare in home program, I found it difficult to find an insurance company who offers such insurance coverage in our state. I care for 30 children ages 0-12 in my home. I have a commercial liability policy, but I've watched the company that I use cancel policies on programs such as mine all across the country. My concern is that due to the size of my program I will become too much of a liability for the insurance company and I will be without insurance. That will put my program out of compliance and ruin my business. My other concern is that liability policies for small businesses, such as mine, are expensive. This financial strain will force providers to increase their childcare rates in order to cover the extra expense. Again, I am not against insurance, but as a business owner I want to be trusted to make that decision on my own."

I see their point. The cost and availability is a huge factor. I don't have an answer for this, but those are the questions we might try to get a little more information on.

(13:40) Senator Veeda: I know exactly where you're coming from. That will always be a consideration with any business you have. We will all get phone calls about this from people in our districts. The question comes to why didn't this individual have liability insurance. If you have children from 0-12 in your home, I can't imagine doing business without liability insurance. You could spend the rest of your life writing out checks to an individual that got harmed. Or even declaring bankruptcy.

Senator Larsen: Do you know how many child care facilities transition to an LLC to protect their property?

Senator Veeda: I don't believe that LLC would separate you from that. You can't personally have an LLC to create something and then not have insurance on the other end of it. Having the LLC creates more responsibility on the business owner. It might be easier to get insurance because of the LLC, but I don't think it will allow

Chair Lee: Another letter I received said "One way to avoid a closure of a program due to inability to secure a liability policy, would be to amend the bill to include a provision to opt out. Last year MN added liability insurance requirements to its childcare law that included an opt out provision. It allows programs to operate without liability insurance with written parent/guardian acknowledgment."

Senator Veeda: I think that might be a definite option. It's a fair thing to let someone opt out and let the parent make that choice.

(17:35) Chair Lee: I don't see that as being a solution. I think it's interesting that they would do that. I think there are people so desperate for child care so they can get to work, that they'll say well I really ought to check on that and then it falls to the bottom of the to do list. I'm not suggesting every parent is irresponsible, I just know how busy one gets.

Senator Hogan: The other consequence of that, would that then become a licensure issue? Would have to check to make sure all the parents had signed that and would we be creating more bureaucracy? (I agree, that was their suggestion, not mine.)
The other question is, since you have these 3 bills, have you considered introducing them all as one bill? Would you be open to us merging them?

Senator Veeda: It is certainly fine with me. This is the first time I've had bills written for myself. If that's easier for you, then we can do that.

Chair Lee: To consolidate 3 bills on the same topic, it's still your bill but we will look at the possibility of melding those together. In the meantime, our intern Alex has found the answer to the question we were asking. I will ask her to step to the podium.

Alexandra Carthew, Legislative Intern: I have a preliminary answer. ND Century Code chapter 10 32.126 states that among other provisions except as relates to the failure of a LLC to observe any formalities lending exclusively to the management of its internal affairs. The case law states the conditions and circumstances under which the corporate bail of the corporation may be pierced under ND law, also applies to LLCs.

I will look more into it. It does appear they can be held liable, just like another corporation.

(21:49) Jack McDonald, lawyer: I am a transactional lawyer. One of the common misconceptions is this idea that having the title LLC or LLM will protect you. It doesn't. If you're an established business like a hardware store, it might. But if you just form a little business on your own, you won't be protected. It provides very little protection.

Senator Hogan: In the case where you are running a true corporation and it is separate from any one person, that corporate veil may work. But for small home based businesses?

Jack McDonald: I am here to listen on behalf of the YMCA. They are one of the biggest childcare providers in ND. That would be the perfect example of a large cooperation that would be protected.

Senator Anderson: Isn't true that most of those operations also have executive and officers' protection?

Jack McDonald: Very true.

(25:26) Lynne Reiseanuer, Mother: Please see Attachment #1 for testimony.

(32:50) Chair Lee: I can't imagine a more difficult loss; we are all mourning with you. We hope to address these issues.

Senator Clemens: This happened at the pool in Velva? (That was confirmed.) Was the pool ever involved in liability or never brought into it?

Lynne Reiseanuer: They looked into the pool, but during the investigation they determined it was the sole responsibility of the daycare. That forfeited the liability on the pool, because they in themselves didn't do anything wrong. It was the pool lifeguard who pulled her out of the pool and started CPR. They were calling out in the crowd to find who she belonged to and the daycare didn't even notice. That's why this is hard. She was 5, no one was there next to her.

Senator Anderson: I am so sorry for what happened, so please don't take this the wrong way. As a parent you could have asked the child care provider if they had insurance before you placed your child with them. You could have inspected the facility. With these requirements, we are placing all of the parents under the same burden that you didn't do, because you didn't check beforehand. Could you speak to that and what you think?

Lynne Reiseanuer: Before beginning the child care, I had an interview with the daycare owner, over the course of a couple days. I wouldn't randomly put my child in the care of someone I don't know. I got a policy book from the facility with everything they said they had. They listed their license, insurance policy was at \$1M, there is a whole booklet I had to sign off after reading it. I had not been there for a year yet, but every year they handed out a new booklet that we had to sign to show the license and insurance. When I signed she did have insurance and a license. It was in December of 2014 that she lost her insurance. It was June 2nd that her license lapsed. June 8th was the accident. Insurance needs to notify. If I would of

known, or if the owner would of explained it to me that she was waiting for inspection, I could of made that decision to pull my child from that care until they got their stuff together. All of this went undetected, we only found this out because of my court case after my daughter died. I thought everything was legit.

Senator Hogan: Following the incident, there was a taskforce appointed to review all of the licensing and the concern. That group met literally monthly in response to your situation. That 8-month process made major changes in licensing. I didn't know if you knew that. It was bill 2190. We took your concern very seriously. These issues were talked about, but there were so many problems. You have had a powerful impact on all children of ND, and we need to thank you for being here today. You changed childcare licensing.

Chair Lee: You were the catalyst for a lot of changes that happened.

Lynne Reiseanuer: I did not know. Being in those court rooms against DHS was very hard. I didn't win any of the court cases. But now my main goal is that no one has to walk my road.

Chair Lee: The department has been responsive in that area. We can't rehash all the courts decisions. But it would be fair to say that the people who were working with childcare at the height of the oil boom, were trying their best to make sure people could get to work. I think a lot of people that do in home daycare care about the children, not so much paperwork. They are juggling a lot. It's not an excuse, but it's part of the reason and we need to make sure it doesn't happen again.

Lynne Reiseanuer: I have friends who are in-home day care owners. I am not trying to make it harder for parents to find care or a day care to provide the care. I am simply asking for safety precautions to be put in place. I have spoken to many owners of daycares. Not one of them does not have insurance. I am just asking it to be a requirement. I feel most would have it in place anyway.

Senator Clemens: We talk about the insurance company notifying the department if there is a lapse in insurance. Is there something in place where the parents are notified? There's not. The department knows about it but where does it go from there? The parents should be notified that the insurance has lapsed.

Senator Hogan: I would be interested in how you feel about allowing a childcare provider to opt out of insurance, but requiring notification?

Lynne Reiseanuer: I would be okay with it, as long as the parent got to make that conscious choice. If their child ends up in a situation like mine, these parents need to understand the financial burden they would take on and the risk involved. In my situation, just because a daycare didn't have the insurance, that the building had it, the individual had it. You can't go after a building. As long as the parents have that choice. But if they have this in place, it's actually protecting the medical carrier insurance people as well. I understand why Blue Cross Blue Shield had to do it, but it was hard. When you lose everything and they hand you a bill afterwards, it is hard. There is a connection between the licensing agent, the social worker and the daycare provider. If there is the insurance person thrown into the mix, they can go to the licensing agent directly and bring up issues with paperwork or notices required. This

doesn't only protect the children, but also the workers. Not that any amount of money could ever fix this. It's an emotional, physical, financial road. Every child should be safe.

Senator Larsen: What was the financial cost of this?

Lynne Reiseanuer: The medical debt alone is \$250,000, funeral expenses were over \$18,000 and the head stone was \$8,000. Loss of wages between by husband and myself is anywhere from \$10,000-25,000. The cost of living in Fargo for 3 weeks, granted I didn't eat so that saved money, that was a couple hundred dollars. I had friends and family flying from all over the country. The plane ride for my daughter alone was over \$16,000. All the court days, the days lost at work... I would estimate ½ a million. I've had help from my insurance company granted, but I am out a lot.

(51:16) Amanda Carlson, Early Childhood Services Administrator, DHS: Testified neutral on SB 2163. No written testimony. Just wanted to clarify a couple points. To Senator Hogan regarding requirements for liability insurance. We do have administrative rules for facility based childcares. Centers, preschools, outside of the home care are all required to carry insurance. The other question about what would happen if the department was notified regarding lapse in insurance. Because of the language, by law the department would be required to take action. We'd be looking at a correction order. If not corrected in the specified amount of time, we'd have to look at either suspension or revocation.

(52:46) Senator Anderson: Can you tell us the specific requirements for the liability that you require for that insurance?

Amanda Carlson: We do not have any specific limits in administrative rule.

Senator Andersons: A condition of licensure, would notification of the parents happen if you took action?

Amanda Carlson: Yes, upon a correction order being issued, parents are notified.

Senator Hogan: One of the options that we have been talking about is the opt out notification. Would you see that becoming part of the licensing process?

Amanda Carlson: I think it would make sense that we would then gather that information and have parents' signatures, just like we do on a variety of other things.

Senator Hogan: You already do that on other things?

Amanda Carlson: Correct, child care providers have to submit policies and procedures. I know we will talk about that with SB 2287 regarding aquatic activities. We do gather that info from them upon initial licensure, as well as renewal. If there are any concerns while we are conducting visits, we can gather that info again as well.

(54:23) Senator Larsen: At a facility is licensed and insured, with a good number of kids, they pay a certain amount per month/ per child. What is the amount a person pays per month at a residential place? What I hear, is if you take a kid to daycare its \$500-800 a month. I

don't hear the exact amount. If I take them to such and such a daycare and it's so much a month, or if I take them to an in-home daycare and it's the same?

Amanda Carlson: I don't have a direct answer, because I don't know the dollar amount. All I have is antidotal information from the 2 past early childhood services administrators had said. They either could not find a carrier that would offer them insurance outside of their homeowner's insurance. Or if they could the cost was so prohibitive. I believe the mix that you might be looking at is a group license, because that can happen in a residence as well as at a facility. We can do more research into that. But my understanding is that for an in-home provider, the type of liability insurance they have would just be connected to their homeowner's insurance policy.

Chair Lee: It would be helpful to know what the definitions of the various sizes and types of licenses are. I find it confusing.

(Made a comparison of conference committee with the House from years ago.)

We bungee between what is too strict and what is not strict enough with childcare. We don't have the perfect answer.

Amanda Carlson: I will quote Senator Veeda, he had reached out on comparison between Century Code and Early Childhood policy. The way he finished his ask was perfect, "Balancing the need to keep our children healthy and safe, with making a service available for those families so that they have a place to go". That is what we are all working towards.

Chair Lee: Yes, agreed. I think the constitution should be the skeleton, then the muscles and tissue should be the statute that comes around it. As we move into this, it's better for it to be done in rule as circumstances change. There is public input and legislative oversight of changes in administrative rules. We can only fix something in statute every other year when the legislature meets. We need a balance.

Amanda Carlson: For the next 3 bills relating to childcare, we don't have anything specific in Century Code regarding any of them. It is all in administrative rule and/or policy.

Chair Lee: If there are areas that you see as more have a place in statute rather than rule, we would like to know that. And vice versa.

(1:02:30) Senator Hogan: It seems to me, at one-point in-home group facilities had liability requirements. Can you do some research to see when we took that out?

Amanda Carlson: Just to clarify, you want me to check on just to licensed or self-declaration and in-home providers as well?

Senator Hogan: The whole continual. If there is anything regarding liability, it would be helpful to have that.

Chair Lee: Please add that in the list of definitions for us.

Further questions? Seeing none, we will close the public hearing on SB 2163.

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Human Services Committee
Red River Room, State Capitol

SB 2163
2/5/2019
Job # 32219

- Subcommittee
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Committee Clerk Signature: Justin Velez

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Relating to proof of liability insurance for early childhood programs

Minutes:

No Attachments

Storm Olson, Attorney, Legal Advisory Unit with the Department of Human Services:

The updates on the early childhood services bills SB 2163, SB 2287, and SB 2294. This morning I met with Amanda Carlson and we spent some time going over the bills and gathering additional information that you had requested yesterday regarding the number of providers who are the group and family home inside the residence. We have 920 with the state, that means that there are 11,000 plus slots available for children in those provider daycares. The average cost per month, per child, is 2,000 dollars. Having said that, that is an average across the state obviously larger communities are possibly going to cost more, the age of the child as well. Due to the way they collect the statistics, it is 0 to age 5. Having said that we do have providers that the monthly cost per child for an infant is 600 dollars, so that is our lowest dollar amount per child. We also made some additional phone calls, we reached outside the state and talked to Nationwide insurance and some of the larger insurance companies. They couldn't give us quotes specific for North Dakota however, they gave us ranges. Let say for a small family provider liability insurance can range from 250-500 dollars annually.

Madam Chair Lee: Does that mean up to a certain amount of children?

Storm Olson: They would not give us that information because they said it would be very specific to the individual. The coverage though is 1-million-dollars per incident and a 2-million-dollar maximum. They did say for group providers because they usually have larger numbers, their policy could be as much as 2000 dollars a year. They could not give us an exact quote. There are still questions we want to answer in the sense of if a policy lapses or is cancelled, what is the average turn around to acquire a new policy because that becomes very important for the department. Anytime there is a violation of what is considered a required licensing standard the correction process is based on a few things; the safety of the children and how long it would take to fix the problem. We are also looking into how it might work for the insurance companies to notify DHS.

Senator O. Larsen: When I have my daycare and get my license do you know when I have my license?

Storm Olson: Correct.

Senator O. Larsen: so when I don't renew it you send me a notice, so when I have my insurance license I need to have my E&O insurance at the same time. If I don't have E&O insurance and proof to give to my carriers, that is easy to do would you agree?

Storm Olson: Yes, what we were considering was when someone applies for a license or for a renewal there is a list of documents they have to provide to us, such as fire and health inspection, proof of insurance. However, once those are done there are no, unless we discover a violation in a visit or through a report the presumption is that it is good for those full 12 months. If we could require that they pay the full year.

Senator O. Larsen: E&O is the Errors and Omissions insurance and it is the million-dollar thing, you have to pay by the year and they time stamp it.

Storm Olson: I think that helps us because we were thinking of this as, if they are making monthly payments and they don't make a payment then the policy could cancel and then we wouldn't know since we only asked for the documents at the time of application and renewal. However, if this is the case then we would have a stamp dated document. We were also thinking that they would have to post their license and the insurance.

Senator K. Roers: Refusal to cover. One of the things I remember hearing in testimony was sometimes it's difficult to find a carrier when you run a daycare out of your home. I'm just curious if that is a question that you can add to your questionnaire. Maybe there are some lobbyist that has information, for example in the last three months have you denied insurance for this, for a daycare.

Senator O. Larsen: If I have my house licensed how many kids can I watch?

Storm Olson: It depends on the age of the children.

Senator O. Larsen: Like pre-k

Senator Hogan: It's 7 children with no more than 3 under the age of 24 months, plus two additional school age children. I just want confirm, currently we require liability insurance for every group except the licensed family child care, is that right?

Storm Olson: That is actually incorrect we require liability for all facilities providers which would exclude the family home and the group provider who is licensed to provide care in a resident. The group license provider who is providing care in a facility is required to carry the liability insurance.

Senator Hogan: If we wanted to modify this bill, we would want to specify that those two groups are what we are trying to cover in this bill.

Madam Chair Lee: What I hear you saying is that any care that is provided in a home does not require liability insurance.

Storm Olson: That is correct. However, I would like to point out the language that is proposed in the bill says “all licensed providers”, that would then cover the family licensed provider and the group residential licensed provider. That language would cover all licensed providers, recognizing it is not going to cover the self-declaration provider or the in-home provider.

Senator Hogan: In terms of the majority of our license slots already have this. Do you think that is true?

Storm Olson: Yes, I would say the majority do. We did check DHS early childhood services have never required the family provider or the group residential provider to have liability insurance. However, there were some changes to other insurances such as car insurance that did include that group, that may have been what you were thinking of.

Madam Chair Lee: The licensed group child care can be in a home or a facility and licensed up to thirty children, but the in-home childcare which is unlicensed can care for 5 or fewer or 3 infants in a home.

Storm Olson: And you also have the family license provider.

Madam Chair Lee: What does the department suggest is an appropriate consideration for us in this area if we were going to do some updates because I am relying on the expertise of the division to help us here.

Storm Olson: I am attempting to provide the combination of merging all three bills and what may go in code and what may go in rules. We will be proposing language that we would add into the administrative code which would happen at a later date.

Senator O. Larsen: We were talking about that in the discussion of this it does make sense I can't believe that people would be doing this type of work without insurance. You just have to have it no matter what you are doing. The fencing part that should be in rule. My house I am supposed to have railing around my deck that is rules for me to have insurance it is not a law. It makes sense to have the built part of it.

Senator Anderson: We don't want the insurance so why do we need the railing.

Madam Chair Lee: In my insurance days I had a client who thought he was being cheated. This man and his wife were building a new house and I told him that if he didn't build it out of the flood plain that he would have to buy flood insurance. He didn't want to and he paid cash for the house so the bank could require him to have that insurance. These rules really irritate people who think they don't have to bother with it because it isn't something they think affects them, but if he didn't have his house raised up above the flood plain, if he sold his house the buyer would have to buy the insurance before they could purchase.

Storm Olson: I looked at current code we have a section that lays out the requirements a provider to fill out for a new application and a renewal. We were thinking we would just add the insurance to that section, so now it is in the list of qualifiers that they are required to provide to us. We are actually reaching out to pull some data across the nation to see what is best practices on supervising children on different age groups. We also wanted to know how much water was in a wading pool, it is 2.5 feet. The official amount of water in a wading pool is up to 2.5 feet. We do us language in rule that say, ratios should be appropriate based on the activity, and the age of children.

Senator O. Larsen: One last question in regard to the insurance it was interesting you were talking about the numbers of day care providers in the state when it is legislation do you think people will realize there are a lot more carriers than what they think. When we faced the flood situation in Minot, there are a lot of flood insurance people there but all the bankers had the mindset that we didn't need it. I do think there are carriers out there that cover that type of situation we are looking at.

Storm Olson: I agree. A lot of times what we discover is a lack of knowledge and access to information. It might be something if we reach out to child care ware or some of the other vendors that we work with to help develop a list of insurance companies that we can confirm do offer that kind of insurance and even carriers outside of the state. At least that way we are providing a resource for those providers for them to get the insurance because if we don't do that we are placing a very large burden on them that they haven't been required to do before.

Madam Chair Lee: Thank you for all of the information that you have provided.

Senator Anderson: The other thing about insurance is, if you have a mortgage you can ask your insurance company to provide the certificate of insurance directly to the bank and I would think these providers could as their insurance companies to provide one directly to the department. Along with that, the carrier might provide the cancellation notice as well.

Storm Olson: I think the department is open to all suggestions and how we are going to receive that knowledge. Obviously when we receive it, any violations in relationship to that, we already have processes in place so it would be very simple for us to build that into our policies and procedures. Asking the provider to submit a copy even.

Madam Chair Lee: I really like Senator Andersons point the insurance carriers are geared up and the person who is paying for it doesn't have to worry about it.

Senator Hogan: To make sure that it is clear to track so that the insurance company sends it. Historically the tracking and data collection on childcare licensing had been manual which has been a bit of the problem and the new website is a piece of that. Your much more electronic now correct?

Storm Olson: You are correct we are more electronic. The website wouldn't be just an informational service for citizens of North Dakota, providers will be able to submit all paperwork electronically and then be sent to the appropriate representative and then after being approved it will be sent to the state for final approval.

Madam Chair Lee: I think we should be moving forward some of this with a little less resistance from the people who always resist anything we do here because this Velva incident is still pretty fresh in people's minds. That incident may assist us in moving it forward to groups of legislators who might otherwise resist the idea from what they would see as more restraints.

Senator Hogan: And also the resistance from the childcare providers for any kind of regulation. Every time we get a childcare bill there is a lot of resistance.

Madam Chair Lee closes the discussion on SB 2163.

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Human Services Committee
Red River Room, State Capitol

SB 2163
2/12/2019
Job # 32579 (11:00-25:02)

- Subcommittee
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Committee Clerk: Justin Velez

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Relating to proof of liability insurance for early childhood programs

Minutes:

Attachments #1-4

(11:00-25:02) Jonathan Alm, Attorney with the Department of Human Services: On SB 2163, the difficult part is that in the past the department has looked into requiring insurance for all providers and I do believe based on what we researched back then, that it was fairly difficult for family and group providers to obtain the necessary insurance that they felt would be required if state law required it. During that time, we have only required center pre-school, and school age to have liability insurance to cover for property and other loses. I don't know what the unintended consequences will be if we require insurance to be provided for family and group, so that is something that policy committee is going to have to weigh. What I did is the proposed amendment looked at what we have currently for center pre-school and school age for our rules and I used that same language as far as what the insurance requirement would be so that it is consistent throughout all five license providers. We also wanted a delayed implementation in case to get some time for providers to look at it so we have January 1, 2020. The amendment did make it so if upon application or re-application, is when they would have to provide it to the department. What that does, it allows us not to have to chase down those insurances, but when someone comes to us and it's a March 1st re-application then they have to provide it to us at that time, so it will save the departments and the counties some time trying to track that stuff down. In some cases, the situation will be as, insurance may not be in effect until the end of 2020 because that is when their application or renewal is up. That is basically what those amendments runs down that it is dealing with the owner operator that has to ensure that they have the insurance and when they have to provide it to the department or the county. **(Please see Attachment #1 for administrative rules, Attachment #2 for proposed amendments, and Attachment #3 for Christmas tree bill mark up.)**

Jonathan Alm: Right now, there is no requirement for family and group providers to have any insurance except for if they are going to transport children in a vehicle.

Madam Chair Lee: Right.

Senator Hogan: In terms of this will impact the facilities that already have liability coverage. These requirements already apply to the childcare centers and pre-schools and school age programs.

Jonathan Alm: You are correct.

Senator Hogan: So this is, in some ways, just expanding that requirement to the two groups.

Jonathan Alm: You are correct.

Senator Hogan: I just wanted to be clear.

Jonathan Alm: I think the difficult part is whether or not the small rural area providers are able to get the insurance in those communities and that might be a possibility. I know in the past that was part of the discussion is that they had a difficult time to actually get that happening.

Senator O. Larsen: I'm just handing out a sheet to see what a E&O insurance looks like **(Please see Attachment #4)** and how easy it is to obtain it, I know that we had some discussion in testimony that there were this many people that would need the coverage and I believe that when the insurance department realizes and sees how much coverage is there and is the need they will come on board. Mine isn't an instate insurance but, it is very easy to get and it's something everything should have.

Senator Anderson: Senator O. Larsen this would not cover these child care providers for what we are talking about here, they need a different insurance.

Senator O. Larsen: If they could get that through that same online entity. Mine is just for health insurance, they have it for series 65 and my Allstate guy who does the property and casualty it would be the same thing. It's just showing how easy it is to get the piece of paper and being able to fax it to the department and have it. I know when there was some testimony saying it is going to drive up things out of business, it won't. It will be a 500-dollar policy I'm sure.

Madam Chair Lee: For 1-3 million.

Senator O. Larsen: Yeah.

Madam Chair Lee: Would it depend on the ages and the number of children in the facility?

Senator O. Larsen: I don't know how they utilize and do that. My caseload now covers, I can't even put a number on the premium and people I cover now it's in the thousands.

Senator K. Roers: This would become a condition of licensure?

Jonathan Alm: Yes, that would be a licensure requirement and if they did not provide proof we would not license and if we found out that they dropped their license then we would move to revoke.

Senator K. Roers: We also has a conversation about opting out with notification and Amanda had shared with us that they do that with some other requirements, that they could opt out but they had to provide.

Jonathan Alm: I didn't specifically have that conversation and we could look at putting an opt out requirement.

The committee at the same time says "I don't want to"

Madam Chair Lee: We just wanted to see if you saw some reason why we ought to.

Jonathan Alm: When you look at it you might have 30 kids in a group getting to opt out is pretty difficult to get all 30 to agree.

Senator Anderson: I'm going to oppose this amendment in an effort to get insurance (inaudible). We constantly faced with making legislation for anecdotal stories or specific cases and in this case, this wouldn't have helped. They had insurance, the insurance lapsed in less than 10 days before the department could make notice to anybody and this is an issue between the provider and the parent and they weren't paying close enough attention and something happened. I'm not sure we are going to fix that.

Senator Hogan: We currently do this same practice with childcare centers and pre-schools and school age programs. Do we know how often this happens that this insurance lapses and the kind of consequences?

Amanda Carlson, Early Childhood Services Administrator for the Department of Human Services: Currently, I don't have any information regarding how often this is found. It certainly would be noted on a renewal if they could not provide proof of their liability insurance, but that isn't anything that we document because we wouldn't issue the renewal until we have the certificate. What it would result in currently would be that they would just not get licensed until they have produced proof of insurance.

Senator Hogan: One of the things that we have talked about is costs and the difficulty of getting it. Are you aware of any situations where childcare centers or all of the people that are currently required have had costs difficulty getting access to insurance.

Amanda Carlson: I am not aware of any situations, I have had conversations with childcare centers around SB 2163 and it has not been reported to me that they have had difficulty obtaining insurance or the costs has been burdensome to them. I have only received anecdotal information regarding family providers or group providers in a residence.

Senator Hogan: And is that just their perspective?

Amanda Carlson: Correct, I have the information that they gave me which is they checked into it and the amount that it would cost is prohibitive.

Madam Chair Lee: It may prohibitive to them but not for somebody else.

Amanda Carlson: I would agree; I think perception is a lot of it.

Madam Chair Lee: Any further questions for Amanda?

Senator K. Roers: I move to **ADOPT AMENDMENTS**
Seconded by Senator O. Larsen

ROLL CALL VOTE TAKEN
5 YEA, 1 NAY, 0 ABSENT
MOTION CARRIES TO ADOPT AMENDMENTS

Senator K. Roers: I move a **DO PASS, AS AMENDED**
Seconded by Senator O. Larsen

ROLL CALL VOTE TAKEN
5 YEA, 1 NAY, 0 ABSENT
MOTION CARRIES DO PASS, AS AMENDED
Senator K. Roers will carry SB 2163 to the floor.

VOTE WAS HELD OPEN FOR SENATOR CLEMENS
Job # 32584

Senator Clemens votes yea on amendments and also votes yea for a do pass, as amended. The above votes reflect the totals including Senator Clemens votes.

February 12, 2019

SK
1021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2163

Page 1, line 2, after "programs" insert "; and to provide an effective date"

Page 1, line 7, after the underscored comma insert "at the time of licensure application or renewal, an owner or operator of"

Page 1, replace lines 8 through 12 with:

"provide proof liability insurance is carried by the early childhood program to insure against bodily injury and property damage."

Page 1, line 13, replace "insurance carrier that certifies a liability policy under subsection 1" with "owner or operator of an early childhood program"

Page 1, line 14, replace "certified" with "liability"

Page 1, line 15, remove "by filing with the department a notice of cancellation or termination of"

Page 1, line 16, remove "the certified insurance policy"

Page 1, after line 16, insert:

"SECTION 2. EFFECTIVE DATE. This Act becomes effective January 1, 2020."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2163**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0114.01001

- 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 Roers Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Chair Lee	X		Senator Hogan	X	
Vice Chair Larsen	X				
Senator Anderson		X			
Senator Clemens	X				
Senator Roers	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

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

Date: 2/12/19
 Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2163**

Senate 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 Roers Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Chair Lee	X		Senator Hogan	X	
Vice Chair Larsen	X				
Senator Anderson		X			
Senator Clemens	X				
Senator Roers	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen K. Roers

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

REPORT OF STANDING COMMITTEE

SB 2163: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2163 was placed on the Sixth order on the calendar.

Page 1, line 2, after "programs" insert "; and to provide an effective date"

Page 1, line 7, after the underscored comma insert "at the time of licensure application or renewal, an owner or operator of"

Page 1, replace lines 8 through 12 with:

"provide proof liability insurance is carried by the early childhood program to insure against bodily injury and property damage."

Page 1, line 13, replace "insurance carrier that certifies a liability policy under subsection 1" with "owner or operator of an early childhood program"

Page 1, line 14, replace "certified" with "liability"

Page 1, line 15, remove "by filing with the department a notice of cancellation or termination of"

Page 1, line 16, remove "the certified insurance policy"

Page 1, after line 16, insert:

"SECTION 2. EFFECTIVE DATE. This Act becomes effective January 1, 2020."

Renumber accordingly

2019 HOUSE HUMAN SERVICES

SB 2163

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2163
3/4/2019
33125

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to proof of liability insurance to early childhood programs and to provide an effective date.

Minutes:

Chairman Weisz: Opened hearing

Senator Shawn Vedaa, District 6: Introduced SB 2163, written testimony not provided. This bill came about because of a drowning incident in 2015. The daycare provider's insurance lapsed prior to the incident. This bill is in hopes that liability insurance will alleviate any future incidents.

Representative Bill Tveit: I am familiar with this incident. Had that insurance not lapsed, because the incident occurred offsite of the daycare, would the insurance had covered anything? Or are over burdening our providers with another responsibility?

Senator Vedaa: I look at it from a business standpoint. I don't know if it's a burden or not. The burden could lie on the child care provider if they don't have this. If they have any assets without liability insurance, it could be worse.

Rep. Tveit I understand you are not an insurance agent or adjustor, but in this question would there have been any compensation under that providers policy, had it not lapsed, due to the incident being off site.

Senator Vedaa: I'm almost certain it would have. Typically when you sit down and do something like this, you are going to have coverage. I do believe that the liability will follow you.

Representative Kathy Skroch: They are able to get coverage that will cover that child based on square footage of the lot. Because of that the back yard is the only place those kids can go. If they would take them off that property, they would not be covered. When they tried shopping for a policy that would, there wasn't an underwriter that would cover those extracurricular things. If there is no underwriter now, and we mandate this we would create

a high risk pool. Do you know what the cost of that coverage would be or how it would be weaponized to create a high cost permit.

Senator Vedaa; This doesn't address someone leaving their facility, it does represent liability insurance. It just creates the requirement of liability insurance at their facility. An incident is just as serious regardless if it happens on or off their facility property.

Representative. M. Ruby: Is it your understanding that what is covered with homeowners insurance be enough to meet the requirements?

Senator Vedaa; I think you would have to have a rider on your home owner's insurance. Typically, homeowners does not cover a business.

Rep. M. Ruby: It's my understanding that homeowners insurance will cover a daycare or kids, not your own, up to 5 children. Does that satisfy this bill?

Senator Vedaa: I'm pretty sure, if you fell under your homeowners, yes that would be enough.

Chairman Weisz: Further questions?

Representative Gretchen Dobervich: Not all daycares are home daycares. So if I have an offsite daycare, I would have to carry liability as I wouldn't have homeowners. Is this correct?

Senator Vedaa: Yes. The particular incident I referenced was an offsite daycare.

Chairman Weisz: Further support? Seeing none? Opposition?

Opposition: None

Chairman Weisz: Jonathan, I have a quick question please.

Jonathan Alm, attorney with Dept. of Human Services

Chairman Weisz: Would this include self-declared?

Jonathan Alm: It would not. It is a condition of licensure, self-declared are not licensed.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2163 A
3/4/2019
33222

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klaman

Explanation or reason for introduction of bill/resolution:

Relating to proof of liability insurance to early childhood programs and to provide an effective date.

Minutes:

Chairman Weisz: Opened meeting

Representative Kathy Skroch: I move a Do Not Pass

Representative Karen Rorh: Second

Roll Call Vote: Yes 7 No 5 Absent 2
Motion carries, Do not pass

Representative Chuck Damschen: Carrier

Chairman Weisz: Closed meeting

Date: 3-5-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL SB 2163**

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. Skroch Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich		X
Karen M. Rohr – Vice Chairman	X		Mary Schneider		X
Dick Anderson		X			
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	_____				
Todd Porter	X				
Matthew Ruby		X			
Bill Tveit	_____				
Greg Westlind		X			
Kathy Skroch	X				

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Damschen

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

REPORT OF STANDING COMMITTEE

SB 2163, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2163 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2163

January 18, 2019

I would like to first start out by introducing myself. My name is Lynne Reiseanuer, I am Gracelyn's mother. You may have heard of Gracelyn's story and if you have not, I would like to take a moment to share with everyone.

My daughter Gracelyn was five years old when she passed away on July 1, 2015 from injuries sustained while in the care of KidQuarters daycare in Velva, ND. June 8, 2015, I received a call from the daycare owner stating "they found Gracelyn unresponsive in the pool". I did not understand so I asked what do you mean, where are you? That is when the daycare owner explained they were at the Velva Public Pool. I hung up the phone because my mind was going a million miles a minute. I got into my car and I drove as fast as I could to the Velva public pool. Upon arriving, one of the first things I noticed was how packed the pool was, I rushed in to find my lifeless five-year-old daughter laying on the pool deck as first responders were trying to revive her. I remember dropping to my knees screaming, praying she would take a breath. They loaded her into the ambulance and I remember begging them to let me ride with. I was unable to ride with her in the ambulance. I arrived at Trinity Hospital in Minot, ND a few minutes before the ambulance and I remember running through the ER doors as they were transporting her inside. Once, she was in a room being looked after, I recall one of the volunteers from the Velva ambulance coming up to me, giving me a hug and telling me its going to be okay "we were able to revive her on the drive in." A part of me, breathed a sigh of relief, but was quickly brought back to reality when I was informed that she was not ok. Gracelyn and I were then transported by plane to Fargo, ND under the care of Sanford Children's hospital. For the next three weeks I laid next to my daughter who was now in a coma. I did not leave her side. I prayed all day long that God would grant her a miracle. I just wanted her to wake up. I wanted my daughter back. In the morning hours of July 1, 2015 my daughter took her last breath. I held her for 4 hours rocking her back and fourth because I could not comprehend what just happened. Gracelyn was my only child and I could not leave her side. We have been a team since the day she was born.

Following her death, I spent two years in and out of court rooms. I appreciate the opportunity to share our story in hopes that laws will be changed in order to protect any future children and families from having to endure what I have. As a grieving mother being dragged through our court system is something, I do not wish on anyone. I do not wish, even on my worst enemy to ever lose a child. I will be honest; most court days are a blur, justice was not served criminally or civilly. I understand that no amount of justice will ever bring my daughter back, however I should have never lost my daughter or even been in those courtrooms. Her death was 100% preventable.

I would like to begin by addressing the proposed bills SB2163, SB2287, and SB2294.

SB 2287
2/4/19
#1 pg. 2

SB2287- Aquatic activities

I am asking that rules be put into place as far as aquatic activities are concerned while under the care of a licensed daycare. I am proposing the minimum requirements be as follows:

1. A child may not participate in an aquatic activity unless both parents of the child have given written permission, and the parents have disclosed the child's swimming ability.
2. Provide enhanced supervision ratios, with no fewer than one adult per three children.

This bill is very important to me. My child was taken by KidQuarters to the Velva public pool without my knowledge, without my consent. The daycare owner was aware of Gracelyn's swimming abilities as I had just discussed with her the Friday before that beginning in a few weeks I would be picking Gracelyn up early to take her to swimming lessons as she does not know how to swim. My child was taken on June 8, 2015 with 17 other children to a public pool. Where she was not being looked after. The daycare owner openly stated she allowed Gracelyn to go to the "big kid" side of the pool. It was at that point there was no supervision. My child ended up drowning. I still do not have answers, I still do not understand how this happened. How can 1 adult supervise 17 children at a public pool? How many children would you be comfortable with taking to a public pool alone?

This is not the first time near-drowning has taken place while under the care of a daycare in ND. November of 2014, two four-year old boys from Casselton, ND were on a trip with their local daycare. They both had a near-drowning experience in the hotel pool.

This bills intention is also to protect the daycare workers/owners responsible for taking children of a young age to potentially dangerous aquatic activities, from having an accident occur due to lack of supervision or the high increase of distractions taking place.

DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE RULES PROVISIONS

Senate Bill No. 2163

Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center

Ensure that liability insurance against bodily injury and property damage for the preschool is carried

Shall ensure that the school-age child care program carries liability insurance against bodily injury and property damage

Senate Bill No. 2287

"Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.

Aquatic activities:

- a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
- b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

Senate Bill No. 2294

Minimum Standards:

1. 16 pages of law and
2. 151 pages of administrative code.

Fencing for licensed providers:

The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.

SB 2163
2/12/19
#2 pg. 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2163

Page 1, line 2, after "programs" insert "; and to provide an effective date"

Page 1, line 7, after "an" insert "owner or operator of an"

Page 1, replace lines 8 through 11 with "at the time of application or licensure renewal ensure that liability insurance is carried by the early childhood program to insure against bodily injury and property damage"

Page 1, line 12, remove "department"

Page 1, line 13, replace "insurance carrier that certifies a liability policy under subsection 1" with "owner or operator of an early childhood program"

Page 1, line 14, replace "certified" with "liability"

Page 1, line 15, remove "by filing with the department a notice of cancellation or termination of"

Page 1, line 16, remove "the certified insurance policy"

Page 1, after line 16, insert:

"SECTION 2. This Act becomes effective on January 1, 2020."

Renumber accordingly

SB 2163
2/12/19
#3 pg.1

Senate Bill No. 2163 Amendment Markup
Department of Human Services

A BILL for an Act to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to proof of liability insurance for early childhood programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Liability insurance.

1. As a condition of licensure under this chapter, an owner or operator of an early childhood program shall ~~establish proof of financial responsibility by filing with the department a written or electronically transmitted certificate of any insurance carrier duly authorized to do business in this state certifying a liability policy for the benefit of the early childhood program is in effect. The certificate must meet the requirements established by the department~~ at the time of application or licensure renewal ensure that liability insurance is carried by the early childhood program to insure against bodily injury and property damage.
2. An ~~insurance carrier that certifies a liability policy under subsection 1~~ owner or operator of an early childhood program shall notify the department not later than ten days after cancellation or termination of the certified liability insurance policy ~~by filing with the department a notice of cancellation or termination of the certified insurance policy.~~

SECTION 2. This Act becomes effective on January 1, 2020.



SB 2163
2/12/19
#4 pg. 1

CERTIFICATE OF INSURANCE

NOTICE: This insurance provides professional liability (E&O) insurance coverage for properly licensed individual insurance agents and insurance consultants. It is written on a "claims-made and reported" basis and applies only to "written claims" first made against an insured and reported to the Insurer during the Named Insured's Certificate Period. No coverage exists for claims first made or reported after the Named Insured's Certificate Period unless an extended reporting period applies. (For those Named Insureds who are residents of or practice in New York State, no coverage exists for claims first made or reported after the end of the coverage relationship unless an Extended Reporting Period applies.) Defense costs reduce the Limits of Liability and are subject to the Retention. Please review the policy carefully and discuss the coverage with your insurance agent or broker. This certificate of insurance does not amend, extend, or alter the coverage afforded by the insurance policy, and coverage is subject to all of the terms, conditions and exclusions of the policy.

NAMED INSURED:
LARSEN, LEVERRETT O

PRODUCER:
LOUIS MARINACCIO CA LICENSE #:0B44869

MINOT, ND 58701

8430 ENTERPRISE CIRCLE, STE 200
LAKEWOOD RANCH, FL 34202

COMPANY AFFORDING COVERAGE: CONTINENTAL CASUALTY COMPANY

COVERAGE: THIS IS TO CERTIFY THAT THE INSURED LISTED ABOVE IS COVERED UNDER THE POLICY OF INSURANCE LISTED BELOW, FOR THE CERTIFICATE PERIOD INDICATED. THE INSURANCE AFFORDED BY THE POLICY DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICY.

Policy Number	Certificate Period		Limits of Liability: Each Claim	Limits of Liability: Aggregate
596427449	11/1/2018	11/1/2019	\$1,000,000	\$3,000,000

COVERAGE:	RETENTION AMOUNT: Each Claim
Life, LTC, Accident, and Health	\$0
Medicare Advantage and Medicare Supplemental	\$0
Disability Income Insurance	\$0
Indexed Annuities/Fixed Annuities	\$0
Variable Annuities (if purchased)	Not Purchased
Mutual Funds (if purchased)	Not Purchased

NOTICE OF CLAIMS:
Life Agent Intake Notice Administrator, CNA
CNA - Claims Reporting
PO Box 8317, Chicago IL 60680-8317
or via email: SpecialtyProNewLoss@cna.com

SPECIAL PROVISIONS:

Named Insured's Endorsements attached at Certificate Inception:

DATE: 10/23/2018

BY *Louis Marinaccio*
Authorized Representative

This certificate of insurance is not a contract of insurance. It is merely evidence of insurance provided under a Master Policy. Covered claims are paid in accordance with the terms of the Master Policy. Coverage is provided based on representations made on the Named Insured's Application for Insurance. No coverage exists if the representations made on the Named Insured's Application for Insurance are discovered to be false. Failure to provide true and accurate responses to any of the questions on the Application for Insurance will result in the immediate voiding of the insurance coverage issued and/or the denial of claims asserted against the Named Insured. Coverage is in-force only if premium payments are current. A Policy Aggregate of \$50,000,000 applies under the Master Policy except with respect to those Named Insureds who are resident of or practice in New York State. A complete copy of the policy is available at www.napa-benefits.org/nd.