

2019 SENATE HUMAN SERVICES

SB 2043

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2043
1/8/2019
Job # 30534

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez / Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 50-11.1-04, section 50-11.1-07.8, subsection 1 of section 50-11.1-17, and subsection 2 of section 50-25.1-11 of the North Dakota Century Code, relating to regulation of early childhood services and claims of child abuse and neglect.

Minutes:

Testimony Attached #1-2

Senator Curt Kreun, District 42, Grandforks: Testified as sponsor and to explain the bill.

Jonathan Alm, Department of Human Services, Attorney: See Attachment #1 for testimony in favor of the bill. Self-dec is an individual that can care for five and under. They still have rules to comply with. They qualify for child care assistance and the food program through DPI. If an individual didn't want to a self-dec they can still care for children but don't qualify for assistance.

Chair Lee: Self-dec is Self-declared?

Mr. Alm: Correct, Self-Declared.

Section 2 of the bill goes through what we currently have for a license/registration. If there is a report of child abuse or neglect the changes on line 7-11, is to make it clear that child abuse and child neglect are viewed as two different things. Line 12, we are adding a licensed self-declaration and registration document. The changes in line 18-22 we are making it clear that this would apply to adults and minors. Line 28, requirement of notification to the provider added. Page 4 line 1-10, gives us discretion of how the assessment affects the children in that licensed or self-declaration provider. Line 11-16 adding notification to the parent if a person is banned from the location. Amendment is on page 3 of testimony. Lines 17-21, prohibition notices to the parent.

Senator Anderson: How do you know who the child care provider is taking care of, in order to make notification to the parent.

(13:28) Mr. Alm: The county license worker will receive that info from the provider themselves.

Mr. Alm: Page 4-5 line 24, If we suspend we can always reconsider. If law enforcement requests a delay of the notification, we will delay it for that person. Section 3 on page 5 line 20-21, removes AED requirement for self-declaration provider. Section 4 page 6, able to provide notification.

Senator Anderson: What problems do the changes correct?

Mr. Alm: The bill will give authority to department to make notifications to parents if there is a child in the home who is being abused or neglected, apart from the child care provided.

Senator Hogan: There was an allegation against a child care center and the parents were notified of the investigation, but they weren't notified of the outcome. They didn't receive the follow up notice. Will this bill clean that up?

Mr. Alm: Section 4 will clean that up and provide notification.

Senator Hogan: My concern is to make sure when false allegations are made that there is real transparency with the parents and provider. That the follow up is followed through.

Senator Clemens: The reason for striking the use of the defib is that due to liability issues?

Mr. Alm: The instructions are easy to use and there is no law to require a defib on premises.

Chair Lee: AEDs are easy to operate and the instructions are in the box, so there shouldn't be a mandatory class on it.

Senator Curt Kreun: (Returned to the podium to take questions.)

Senator Hogan: What prompted you to introduce this bill?

Senator Curt Kreun: Actually one of the individuals that I know very well, got caught in the middle of this when the bill went into effect. The unintended consequences basically tell them they are guilty until proven innocent. There is no communication. The word investigation is critical in this change. Gives the ability for pre-assessment which gives much less disruption to the staff, children, parents without needed cause. We need to protect the child, but also our child care providers and businesses from unjustified claims. We need to have protection for quality daycare, and protection for quality owners and operators as well.

Senator Anderson: We had a similar thing in Bismarck. Happy to see we added the notification to the providers themselves. The parents were notified but the provider wasn't.

Senator Curt Kreun: That goes right back to what I indicated when the staff finds out what it does, you'll have a hard time finding staff to work under those circumstances.

(27:00) Dan Polasky, Grandforks Wonder Years Child Care Center, Owner: See Attachment #2 for testimony in favor of the bill.

Senator Anderson: Your comments are good, might not adopt all your proposed amendments.

Chair Lee: Any questions?

(35:00) Bill Bauhman, CEO & Executive Director YMCA, Bismarck: Testified in favor of the bill. Childcare providers are very committed with what they are doing. We are going to do everything we can to make sure our children are safe. I completely endorse the changes that Sen. Kreun has proposed. The AEDs are not a part of licensing. You can put them in your center, but if you chose to use it and now your being judged on why you used it or if you should or shouldn't have used it. I agree with that language being struck out, and also the language changes to allow flexibility.

Chair Lee: gave opportunity for more testimony, for or opposed. There was none.

Senator Anderson: What we were discussing whether there is notification to the parent after the investigation. Your facial expression seemed critical. How does the process actually work now?

(39:03) Marlys Baker, Department of Human Services, Child Protection Services Administrator: There has been a great deal of confusion, requiring notification at various points of the child protection process and containing different amounts of information at different times. Previous to the 2017 session, where the notification was required to all the parents in child care, notifications were provided to parents in Child Protection Services. Those notifications only sent when there was an actual substantiated accusation. Law changed in 2017. Some people believed that notifications to parents in child care also only needed to be sent when there was a decision that services were required for protection. That didn't follow proper procedure regardless of the decision, parents needed to be notified.

(40:57) Senator Anderson: If the allegations are proven not substantiated, are the parents sent another explanation?

Marlys Baker: The parents receive notification that there is a child protection assessment in the childcare. There is no info on the nature of the concern, the individual, it's confidential until the investigation is complete. Then after, the parents get notified of the result whether it is confirmed or not.

Senator Clemens: What prompts these accusations or are some of the slanderous? Where are these coming from when someone is innocent but yet there is an accusation?

Marlys Baker: Child Protection Agency has to accept all reports of suspected abuse and neglect. At the time of the assessment it isn't known whether in fact there is anything to this report or not. We do have the ability to terminate an assessment if nothing is found to be truthful and provide notification.

Senator Clemens: After the fact, when everything has been proven innocent. Have you seen a trend? Does the child come home and tell the parent? Does the parent notice marks or bruises? What does history show?

Marlys Baker: Most of the parents are reporting out of concern for the child. Most times the child has disclosed something to the parent. Sometimes there is an injury that occurred during child care, or a combo of both.

Senator Hogan: How many reports of abuse and neglect are there in child care centers in a year in ND? How many are substantiated? Occasional or patterned?

Marlys Baker: We do not have good numbers on the number of reports or assessments. At the time we did not have solid data except for one year. I would have to have that data pulled.

Chair Lee: Basic info would be helpful.

Senator Anderson: Could we ask Baker to review the testimony. To tell us what the department thinks of the Attachment #2 page 3.

Senator Curt Kreun: In response to Senator Clemens and why these individuals do this. The majority of them are disgruntled employees or the parents didn't want to pay their bill. The business was going to close when I took it over. I had to make drastic changes to make this a viable child care center. Had I not been able to do that, it would not be here today because of false allegations. In July - October 2017, eighteen cases reported in Cass county and zero services were required at that time. It is a minimal amount that we find out services are required. Some of this is very frivolous, some of this is very serious. People use allegations as a way to get even. Not to take away the urgency to keep children safe.

Chair Lee: In many cases these people can't defend themselves due to HIPPA. It has created an atmosphere of fear.

Senator Curt Kreun: It is a fine line we walk in order to provide the care and educational aspect to childcare. We need to use common sense when reporting.

Chair Lee: We may need more discussion on this amendment. We will delay that for now. Closed the hearing on SB 2043.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2043
1/22/2019
Job # 31222

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to regulation of early childhood services and claims of child abuse and neglect.

Minutes:

Attachment #1

Madam Chair Lee opens the discussion on SB 2043.

Madam Chair Lee: There was a Polasky suggestion that we were going to look at.

(01:13-08:04) Jonathan Alm, Attorney with the Department of Human Services. Please see **Attachment #1** for proposed amendment suggestions from Dan Polasky. Mr. Alm goes over the proposed amendment suggestions with the committee.

(03:22) Madam Chair Lee: If you have that in something other than short hand, would you be able to provide that as a supplement for us?

Jonathan Alm: Yes, I will clean up my notes and then I will send it the clerk.

Madam Chair Lee: Are there any more questions for Jonathan Alm?

Jonathan Alm: There are five other ones too.

Madam Chair Lee: Please, go ahead.

(03:42) Jonathan Alm continues reviewing Attachment #1 with the committee.

(05:10) Madam Chair Lee: The 2017 law requires that letter to be sent at onset so that they can make that decision.

Jonathan Alm: Right, and prior to 2017 the department had discretion instead of a shall it was a may, and then the law passed and made it to a shall. It required us, so a lot more providers and families were receiving a lot more letters than what they had in the past. Prior to we had discretion to determine whether or not we should inform based on the facts and situation determined we might have looked at it and said you know what maybe not credible,

maybe not needing to do that notification to the parent, so we did not in cases we would have done that.

Madam Chair Lee: Which way does the department see it working out the best for the families and providers in the department.

Jonathan Alm: Underneath the current statute I did help Senator Kreun write this, and it does allow us to have more discretion as to provide a notification. It is not reversing what happened in 2017.

(06:31) Jonathan Alm continues reviewing Attachment #1 with the committee.

(08:04) Madam Chair Lee: If you all would not the original amendment that Mr. Alm had proposed was on page 4 line 15 that we would include after “programs” insert “self-declaration or in-home provider”.

Jonathan Alm: Correct.

Madam Chair Lee: Any question about that original proposed amendments or the remarks from Mr. Polasky?

Senator Anderson: I move to **ADOPT AMENDMENT.**
Seconded by Senator O. Larsen

ROLL CALL VOTE TAKEN
6 YEA, 0 NAY, 0 ABSENT
MOTION CARRIES TO ADOPT AMENDMENT.

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

Madam Chair Lee: Any discussion on the amended bill.

Senator O. Larsen: It was interesting about the comments that the one guy made that none of the other school districts and other entities don't have this law or process and it is equally devastating if anybody else had to go through this, if they were a child being abused. I just found that interesting in the testimony as that was coming down that these guys are really going through quite a process when they have to run through this gauntlet.

Senator Hogan: But allegations of misconduct or abuse and neglect in a school or any other facility are investigated. The licensing is the piece that is different because we don't license schools. There is a different licensing process and that is the piece that is different.

Senator K. Roers: I think to Jonathan Alm's point it would be interesting to actually see how similar are the processes, and are there some that have a very low bar and some that have a very high bar and it would be an interesting exercise.

Senator O. Larsen: Teachers are licensed and I mean many professions are licensed and have ethics and standards to live by too.

Senator Anderson: As Senator K. Roers pointed out we don't license schools. We don't close the school because there is an allegation against one teacher. It is quite a bit of difference the way they are treated definitely.

Senator Hogan: You might be interested to know that not every state has a child abuse and neglect process. Many states have it internal within their HR (Human Resources) structure and separate from CPS (Child Protective Services).

Senator K. Roers: Part of the distinction is that here we are licensing the building as opposed to the person.

Madam Chair Lee: Ok, lets vote on SB 2043 as amended unless there is further discussion.

ROLL CALL VOTE TAKEN

6 YEA, 0 NAY, 0 ABSENT

MOTION CARRIES DO PASS, AS AMENDED.

Senator Anderson will carry SB 2043 to the floor.

Madam Chair Lee closes the discussion on SB 2043.

January 22, 2019

SL
1801

PROPOSED AMENDMENTS TO SENATE BILL NO. 2043

Page 4, line 15, after "program" insert ", self-declaration, or in-home provider"

Renumber accordingly

Date: 1/22/19
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2043**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 19.6629.02001

Recommendation:	<input checked="" type="checkbox"/> Adopt Amendment <input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass <input type="checkbox"/> As Amended <input type="checkbox"/> Place on Consent Calendar <input type="checkbox"/> Reconsider	<input type="checkbox"/> Without Committee Recommendation <input type="checkbox"/> Rerrefer to Appropriations <input type="checkbox"/>
Other Actions:		

Motion Made By Sen. Anderson Seconded By Sen. O. Larsen

Total (Yes) 6 No 8

Absent ♂

Floor Assignment

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

Date: 1/22/19
Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2043**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input checked="" type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input checked="" type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar	<input type="checkbox"/> Reconsider	<input type="checkbox"/>

Other Actions: Reconsider

Motion Made By Sen. Anderson Seconded By Sen. K. Roers

Total (Yes) 6 No 0

Absent

Floor Assignment Sen. Anchorage

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

REPORT OF STANDING COMMITTEE

SB 2043: Human Services Committee (Sen. J. Lee, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2043 was placed on the
Sixth order on the calendar.

Page 4, line 15, after "program" insert ", self-declaration, or in-home provider"

Renumber accordingly

2019 HOUSE HUMAN SERVICES

SB 2043

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2043
3/4/2019
33124

- Subcommittee
 Conference Committee

Committee Clerk: Nicole Klaman

Explanation or reason for introduction of bill/resolution:

Relating to regulations of early childhood services and claims of child abuse and neglect

Minutes:

3

Senator Kreun: Introduced SB 2043, written testimony not provided. This bill does mainly 3 things; 1. Removes the requirement for training of automated external defibrillator, AEDs 2. Housekeeping items per LC 3. Amends the law relating to Dept. of Human Services notification in the case of child abuse and neglect assessment.

AEDs contain extensive instructions and do not require training. They are not mandated and are a cost burden.

This bill protects the child and the individual alleged. 92% of neglect or abuse reports are unsubstantiated. It can be an anonymous allegation and sometimes when people are behind on their childcare bill, they avenge by claiming child abuse.

(0:08:12)

Rep. Karen Rohr: Since the implementation, there were 4 cases of fraudulent abuse reported?

Senator Kreun: Yes, that I am aware of. You will hear testimony on 1 of those as well as the consequences of this fraudulent report.

Jonathan Alm, Attorney with Dept. of Human Services: In support, written testimony provided, see **attachment 1**. Bill relates to regulation of early childhood services and claims of abuse and neglect.

Chairman Weisz: If the abuse is being committed by a minor or another child on the daycare premises?

Jonathan Alm: It wouldn't be a household member or staff, but this situation would not require further notification.

Representative Todd Porter: The AED component, Are we going backwards in removing the training?

Jonathan Alm: If it's already part of the training, it wouldn't need to be rewrote to remove it. If it's not provided, they wouldn't need to seek the training.

Rep. Porter: Page 2 line 17, would it be better to leave the language AED, insert "including the use of" to make sure it's inside of those classes.

Jonathan Alm: That is a policy that maybe looked at.
I found this summer, finding the AED was difficult in the building.

Rep. Porter There's an app, Pulsepoint. It will show you the location of registered AEDs registered.

Rep. Rohr: Who is communicating with the stakeholders, as it's a sensitive information

Jonathan Alm: County workers.

Representative Clayton Fegeley: As a certified CPR instructor, one of the things comes to bare is a first time user/trainee are fearful of the AED.

Senator Kreun: The training process is mandatory and has become a price issue. The cost has raised since this has become an issue. I feel we need to take a look at how it's administered because we are adding a cost to facilities.

Rep. Porter I couldn't disagree with you more. They are used on any age with cardiac issues. If you cherry pick out what should be trained, then you will end up with substandard training. AED should be a part of the CPR training.

Representative Karen Rohr: When interviewing for daycare providers, there is a checklist on how to address a crisis and steps to take. If AED is not a part of it you may lose business.

Senator Kreun: We need to look at how it's administered.

Chairman Weisz: Further support?

Dan Polasky, owner of Wonder years Child Care Center, Grand Forks: In support, written testimony provided **attachment 2**. As the bill is currently written it does not offer protection for those directly caring for children. Personally experienced false allegations of abuse.

Chairman Weisz: Further support?

Samantha Pulvermacher, Director of Divide County Social Services in support, written testimony provided see **attachment 3**. Allows for discretion in notification of families if there is risk.

(0:44:32)

Chairman Weisz: It doesn't seem as this bill is going to change the removal of the alleged from the premise.

Samantha Pulvermacher: My understanding is that it would allow for discretion if there appears to be an immediate concern for risk.

Rep. Rohr: What percentage of the time is someone removed?

Chairman Weisz: Further support? Opposition.

Bonnie Steiger, American Heart Association: No written testimony provided. We ask that the overstrike of the removal of AEDs be restored.

Representative Kathy Skroch: Would staff be able to access that type of training thru another venue vs training as a collective?

Bonnie Steiger: I'm not absolutely sure. But it seems that the people are receiving training specific to their jobs at the daycare center.

Chairman Weisz: We have a question for the Department.

Rep. Rohr: What is the percentage of time an accused is removed from the premise? Reimbursed for the financial loss.

Jonathan Alm: 3 times this year. The change is in the prohibition and suspension it gives us discretion.

Rep. Rohr: The second part of my question.

Jonathan Alm: That would create a liability to the state while weighing the facts and allegations.

Rep. Rohr: What is the timeframe that would occur?

Jonathan Alm: Defer to director to stream line the process.

Rep. Skroch: Things become public and how do we clear the names of the falsely accused?

Jonathan Alm: We would not make public announcements, prohibited under states confidentiality

Chairman Weisz: Closes hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2043
3/19/2019
33963

- Subcommittee
- Conference Committee

Committee Clerk: Nicole Klamann

By: Elaine Stromme

Explanation or reason for introduction of bill/resolution:

Relating to regulations of early childhood services and claims of child abuse and neglect.

Minutes:

Chairman Weisz: Opened the meeting on SB 2043.

We are going to look at 2043 and 2245 together, on 2043 the amendments; bring back the AED.

(it removes the overstrike)

Rep. M. Ruby: Made a motion to adopt the amendment on SB 2043.

Rep. Rohr: Seconded.

Chairman Weisz: a voice vote was taken.

Voice vote carried to adopt the amendment 19.0029.03001 for SB 2043.

Rep. Rohr: I make a motion for a Do Pass on SB 2043.

Rep. M Ruby: Seconded.

A roll Call Vote was taken: Yes 13 No 0 Absent 1

Do Pass as amended on SB 2043.

Rep Fegley: carries SB 2043.

Meeting adjourned.

March 19, 2019

DP 3/19/19

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2043

Page 2, line 17, after "and" insert ", including"

Page 2, line 17, remove the overstrike over "the use of an automated external defibrillator"

Page 2, line 19, remove the overstrike over "and automated external defibrillator"

Page 2, line 25, after "and" insert ", including"

Page 2, line 25, remove the overstrike over "the use of an automated external defibrillator"

Page 2, line 27, remove the overstrike over "and automated external defibrillator"

Page 5, line 31, after "and" insert ", including"

Page 5, line 31, remove the overstrike over "the use of an automated external defibrillator"

Page 6, line 2, remove the overstrike over "and automated external defibrillator"

Page 6, line 5, after "and" insert ", including"

Page 6, line 5, remove the overstrike over "the use of an automated"

Page 6, line 6, remove the overstrike over "external defibrillator"

Page 6, line 7, remove the overstrike over "and automated external defibrillator"

Renumber accordingly

Date: 3/19/19
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL SB 2043**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0029.03001

Recommendation:	<input checked="" type="checkbox"/> Adopt Amendment <input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass <input type="checkbox"/> As Amended <input type="checkbox"/> Place on Consent Calendar <input type="checkbox"/> Reconsider	<input type="checkbox"/> Without Committee Recommendation <input type="checkbox"/> Rerrefer to Appropriations
Other Actions:	<input type="checkbox"/>	

Other Actions: Reconsider

Motion Made By Rep. M. Ruby **Seconded By** Rep. Rohr

Absent _____

Floor Assignment

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

Voice Vote Carries Removes overstrike in the amendment

Date: 3/19/19
Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL SB 2043**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 19.0029.03001

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

Other Actions: Reconsider _____

Motion Made By Rep. Rohr **Seconded By** Rep. M. Ruby

Absent 1

Floor Assignment Rep. Fegley

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

REPORT OF STANDING COMMITTEE

SB 2043, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2043 was placed on the Sixth order on the calendar.

Page 2, line 17, after "and" insert ", including"

Page 2, line 17, remove the overstrike over "the use of an automated external defibrillator"

Page 2, line 19, remove the overstrike over "and automated external defibrillator"

Page 2, line 25, after "and" insert ", including"

Page 2, line 25, remove the overstrike over "the use of an automated external defibrillator"

Page 2, line 27, remove the overstrike over "and automated external defibrillator"

Page 5, line 31, after "and" insert ", including"

Page 5, line 31, remove the overstrike over "the use of an automated external defibrillator"

Page 6, line 2, remove the overstrike over "and automated external defibrillator"

Page 6, line 5, after "and" insert ", including"

Page 6, line 5, remove the overstrike over "the use of an automated"

Page 6, line 6, remove the overstrike over "external defibrillator"

Page 6, line 7, remove the overstrike over "and automated external defibrillator"

Renumber accordingly

2019 TESTIMONY

SB 2043

Testimony

Senate Bill 2043-Department of Human Services

Senate Human Services Committee

Senator Judy Lee, Chairman

January 8, 2019

Chairman Lee, and members of the Senate Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you to support Senate Bill 2043, which was introduced by Senator Kreun. This Bill relates to regulation of early childhood services and claims of child abuse and neglect.

Section 1:

The proposed changes in Section 1 of this Bill amend section 50-11.1-04 of the North Dakota Century Code regarding early childhood services. Page 2, lines 1 through 13 consist of a few clerical changes meant to enhance clarity of statutory language. The changes made on page 2, lines 15 through 30 remove the requirement that owners, operators, and staff members at a licensed early childhood program receive training and are currently certified in the use of an automated external defibrillator.

Section 2:

The proposed changes in section 2 of this Bill amend language currently in law regarding suspension of a license, self-declaration, or registration document; and makes other changes regarding authority of the Department. The change made on page 3, line 5 changes wording from "child abuse and neglect investigation" to "child abuse and neglect assessment" to more accurately represent the child abuse and neglect process the Department uses.

The proposed changes on page 3, lines 7 through 11 is to provide clarity that child abuse and child neglect are two separate accusations for which the Department to determine whether it should suspend a license, self-declaration, or registration document of an owner or operator, holder of a self-declaration, or in-home provider.

The proposed changes made on page 3, line 12 add new language to clarify that a license, self-declaration, or registration document may be suspended by the Department upon a child abuse or neglect services required determination, if continued operation is likely to jeopardize the health and safety of children present.

The proposed change on page 3, lines 18 through 24 clarifies that Department may prohibit the presence of an adult or minor household member from the premises of an early childhood program, self-declaration, or in-home provider when children are in care, upon a report of child abuse or neglect on the early childhood premises if the continued presence of that individual is likely to jeopardize the health and safety of the children present. A similar change is also made on page 3, line 31.

The proposed changes on page 3, line 28 through page 4, lines 10 would now require the Department, in addition to notifying the parent, to also notify the owner, operator, holder of a self-declaration, or in-home provider if an owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor household member of the program is the subject of a child abuse and neglect assessment under certain circumstances. The additional elements that now must be met for notification to be provided to parents, as well as to the owner, operator, holder of a self-declaration, or in-home provider, include that: the reported child abuse or neglect places children in the early childhood program, self-declaration, or in-home provider at risk of abuse or neglect; and that if the reported child abuse or neglect occurred outside the care, supervision, or guidance of children in an early childhood program, self-declaration, or in-home provider, there was an impact or potential impact on the care, supervision or guidance of children in the early childhood program, self-declaration, or in-home provider.

The proposed changes on page 4, lines 11 through 15 state that Department shall notify the owner, operator, holder of a self-declaration, or in-home provider, as well as the parent, that an owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor household member is prohibited from the premises of the early childhood program. The amendment attached to my testimony will add "self-declaration, or in-home provider" to page 4, line 15 after "program".

The proposed changes on page 4, lines 17 through 21 state that upon the conclusion and disposition of a child abuse and neglect assessment for which a determination services are required is found or for which the Department issued a notice under amended subsection 2 of section 50-11.1-07.8 under this Bill, the Department shall provide notification of the disposition to the parent of each child who at the time of the determination is receiving early childhood services.

The proposed changes on page 4, line 24 through page 5, line 2 adds new language that clarifies that the Department may reconsider a suspension or prohibition issued under Section 2 of this Bill; and that, if law enforcement requests a delay in notification, Department may delay notifying the owner, operator, holder of a self-declaration, or in-home provider, as well as the parent of any child receiving early childhood services. It also provides that in order for such a delay to be valid, a law enforcement request for

this delay in notification must be provided in writing to Department within forty-eight hours of law enforcement receiving notification of an alleged criminal matter. The notification delay may last up to sixty days, and upon request of law enforcement, may be renewed.

Section 3:

The proposed changes in this Section amend the requirements for a self-declaration applicant to operate. Minor clerical changes are made on page 5, lines 20 and 21. Page 5, line 30 through page 6, line 8 remove language that required a self-declaration applicant and their emergency designee to be certified and trained in the use of an automated external defibrillator device.

Section 4:

The proposed changes in this Section amend section 50-25.1-11 of the North Dakota Century Code, which relates to confidentiality of records regarding reporting of child abuse and neglect. New language states that Department shall notify the owner, operator, holder of a self-declaration, or in-home provider the name of the subject, summary of the facts, and the results of an assessment if the report involves the owner, operator, holder of a self-declaration, or in-home provider, an adult or minor staff member, or an adult or minor household member of the early childhood program, self-declaration, or in-home provider who is providing care to the child. Previously, this information regarding the name of the subject, summary of the facts, and result of the assessment was only to be provided to the parent or legally appointed guardian of a child receiving services at the facility.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

SB 2043
1-8-19
#1 Pg. 4

PROPOSED AMENDMENTS TO SENATE BILL NO. 2043

Page 4, line 15, after "program" insert ", self-declaration, or in-home provider"

Renumber accordingly

Testimony in support of:
Senate Bill 2043: Relating to regulation of early childhood services
and claims of child abuse and neglect.

#2

Submitted by:
Dan Polasky
3223 Lord Circle
Grand Forks, ND 58201

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#2 Pg. 1

Good morning members of the Senate Human Services Committee.

My name is Dan Polasky. My wife and I have owned and operated Wonder Years Child Care Center in Grand Forks for just over 13 years. We have an enrollment of around 200 kids and we employ between 55-65 staff members. We spend our days trying to protect and teach the youngest of North Dakotans. I am here in support of SB 2043 because I believe it is an improvement over the current policy, which, while written to protect the children in our care, does just the opposite for those of us who are directly caring for them. My support comes with the caveat that I would like the bill to go even further to protect providers.

Child abuse is a terrible crime, and the damage done to the child and family is profound. Every allegation of child abuse must be taken seriously and an offender must be punished harshly, but it is a fact that many if not most allegations are proven to be unfounded. When an innocent provider is accused of something so heinous, the damage done to that person is nearly as profound. I know, because it happened to me.

Before buying my Center in 2006, I worked there as a staff member for almost two years. We bought it so we could watch our own kids grow up there. Over the course of my time there I have cared for literally thousands of kids. Nearly three dozen of those kids have come back to work for me, and others have even started bringing their own kids to our Center. I have spent countless hours with these kids in all kinds of situations, and their safety was always my top concern. I never gave anyone a reason to think otherwise. I was one of the good guys. But in July of 2017, my local licensor came to our Center and told me that someone had made an allegation against me. She couldn't tell me who made it, what they said, or when this supposed incident occurred. She did tell me that I would have to sign a form stating that I could not be present in my own building while kids were present until the investigation was over or DHS would take my license away and close us down. She also said I would be contacted by CPS at some point for an interview. There was no investigation done before I was kicked out of my building

and business. No one talked to staff or the kids. There was no due process. It didn't matter that I had never actually done anything to harm a child. In the eyes of the State, I was now officially a threat to the safety of the kids.

It took weeks before I found out what the allegation was. The family had made an accusation and then promptly went on vacation. They didn't even allow the child to be interviewed until they returned two weeks later. The child had been gone from the Center for about a year and a half and was three when she left. She never said I had touched her or looked at her inappropriately, but it was in the same vein. It was also easily proven false by a quick look around the Center and a few interviews. Even so it took another month before CPS interviewed me, and then another month after that before they actually went to the Center to look around and ask questions of the staff. It eventually took three months before I was cleared. Once the police and CPS closed the case, DHS wrote a letter to all the families in my Center telling them that I had been accused of neglect or abuse of a child in my care, but that the investigation showed that I didn't actually do it.

I can't accurately describe how it feels to be wrongly accused of something that is looked at so heinously by the public. It's a mixture of shame, embarrassment, confusion, anger and fear. People instinctively believe these types of accusations, especially of men that work with kids. I knew people looked at me differently, even though I didn't deserve it. I still live with that feeling. I never worried about being found guilty in court, because I knew that the truth would eventually come out. My concern was 1) being found guilty in the court of public opinion and losing my reputation and business, and especially 2) that my kids would be teased and bullied at school for having a monster freak of a dad. The stress was unbearable. Every time a police car would drive through our neighborhood I wondered if my kids would have to see me being handcuffed and taken to jail. I couldn't eat or sleep. I lost fifteen pounds. It was a nightmare. And even so, I was one of the lucky ones. The State only sent a letter after my investigation was done. Shortly after the allegation was made against me, the rule that this bill would amend went into effect. The State now sends a letter to every family at the start of an investigation, before any facts are even known. In effect, the State is branding these providers as guilty before any questions are asked. Because make no mistake, people believe these allegations before they even think about the specifics. Worse still is the fact that once the families are notified, neither the local licensors, CPS nor the DHS is allowed to tell anyone what the allegation is about. Not even the operator is told the details so that they might take preventative actions. The process does nothing but sow fear in the families and

then the State refuses any request for answers. A second letter detailing the outcome is sent to the families once the investigation is complete.

It is my strong belief that the State should not be sending any letters announcing allegations that have not yet been investigated, much less been proven. And once an allegation is shown to be without merit, the case should be dropped with no letter stating that the allegation was made. An innocent provider should be treated as just that...innocent. No other profession is subject to this standard, not teachers, nurses, therapists, police officers, or lawmakers. Everyone deserves due process. As the law stands, the State of North Dakota is acting as if child care providers should be presumed guilty, even after they are proven innocent. It is your job as elected officials protect all North Dakotans, especially the children. You shouldn't have to hurt providers to do it.

I encourage and implore you to support SB 2043, if possible with the following amendments:

- allegations must be quickly assessed for validity, preferably by consulting with people most closely associated with the child and accused (ideally the operator and other staff members)
- if allegation appears valid, the accused should be removed from the premises discreetly and until such time as the investigation can be completed
- no letter should be sent to any parent unless and until after an allegation has been proven true
- if a provider has been removed by the State and is later found innocent, the State should be obligated to make him/her financially whole for wages lost through no fault of their own
- if allegations are proven to be true, a letter should be sent to all families explaining the nature of the incident and the outcome of the investigation
- if the State believes this process is fair, it should be expanded and implemented to cover all professions that care for vulnerable populations (teachers in public and private schools, health care workers in clinics and hospitals, home health workers, counselors, etc)

Thank you for your time and for the opportunity to speak.

Dan Polasky

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Senate Bill 2043

Responses to constituent concerns: Dan Polasky

1. Allegations must be quickly assessed for validity, preferably by consulting with people most closely associated with the child and accused (ideally the operator and other staff members)

- When a report of suspected child abuse or neglect is received by a county social service agency, the agency assigns a category to the report based on the severity and urgency of the report. Assessment initiation must occur, by policy, within 24 hours, 3 days or 14 days dependent on the category.
- When a report indicates a violation of a criminal statute (typically physical or sexual abuse) the county social service agency must contact law enforcement.
- The law enforcement agency then takes the lead for the criminal investigation and the county social service agency works with law enforcement to complete the child protection assessment.
- The typical order of interviews is to first interview the child, then to interview the parent/subject, and then to interview other persons with knowledge of the concerns and to gather any needed documentation.
- When a criminal investigation is occurring, the law enforcement agency directs the timing and sequence of interviews. The county social service agency child protection worker follows the direction of law enforcement as not to interfere in the criminal investigation.

2. If allegation appears valid, the accused should be removed from the premises discreetly, and until such time as the investigation can be completed

- Current statute permits the Department to prohibit the presence of an individual upon a report of child abuse or neglect at the premises of the licensed program, holder of the self-declaration, or registration if continued operation or the presence of the accused individual is likely to jeopardize the health and safety of the children present.
- The Department and the county social service agency do not physically remove the individual. If law enforcement chooses to make an arrest on the premises, that is not under the control the social service agency.

3. No letter should be sent to any parent unless and until after an allegation has been proven true

- Under the current statute, notice must be sent to parent of a child in an early childhood program at the onset of a child protection assessment.

- Under current statute, when the assessment is complete, notice is then required to parents with children in the childcare as to the result of the assessment at the time the assessment is closed.
 - Notice at the closing of the assessment must contain the name of the individual, the determination of the assessment, and a brief summary of the facts.
 - Prior to 2017, no notices were sent to parents of children in early childhood programs.
4. **If a provider has been removed by the State and is later found innocent, the State should be obligated to make him/her financially whole for wages lost through no fault of their own**
 - This would place a liability on the State and create a need for a fiscal note. In addition, the Department can receive reports from any individual and must make a determination as quickly as possible to protect the health and welfare of the children. The Department's decision regarding restricting an individual or suspending a license may be delayed if the Department could be financially responsible until the Department's issues a "services required" finding, thus potential placing children more at risk.
 5. **If allegations are proven true, a letter should be sent to all families explaining the nature of the incident and the outcome of the investigation**
 - Current statute requires parental notification of the result of the assessment (see #3)
 6. **If the State believes this process is fair, it should be expanded and implemented to cover all professions that care for vulnerable populations (teachers in public and private schools), health care workers in clinics and hospitals, home health workers, counselors, etc.)**
 - This comment would be a policy decision to be made by the Legislature with the understanding that the Department may or may not have licensing authority over other professions. In addition, additional notice requirements would create a fiscal note.

#1
SB 2043
3/4/19

Testimony

Engrossed Senate Bill 2043-Department of Human Services House Human Services Committee Representative Robin Weisz, Chairman

March 4, 2019

Chairman Weisz, and members of the House Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you to support Engrossed Senate Bill 2043, which was introduced by Senator Kreun. This Bill relates to regulation of early childhood services and claims of child abuse and neglect.

Section 1:

The proposed changes in Section 1 of this Bill amend section 50-11.1-04 of the North Dakota Century Code regarding early childhood services. Page 2, lines 1 through 13 consist of a few clerical changes meant to enhance clarity of statutory language. The changes made on page 2, lines 15 through 30 remove the requirement that owners, operators, and staff members at a licensed early childhood program receive training and are currently certified in the use of an automated external defibrillator as providers are not required to have automated external defibrillators.

Section 2:

The proposed changes in section 2 of this Bill amend language currently in law regarding suspension of a license, self-declaration, or registration document; and makes other changes regarding authority of the Department. The change made on page 3, line 5 changes wording from "child abuse and neglect investigation" to "child abuse and neglect assessment" to more accurately represent the child abuse and neglect process the Department uses.

The proposed changes on page 3, lines 7 through 11 is to provide clarity that child abuse and child neglect are two separate accusations for which the Department to determine whether it should suspend a license, self-declaration, or registration document of an owner or operator, holder of a self-declaration, or in-home provider.

The proposed changes made on page 3, line 12 add new language to clarify that a license, self-declaration, or registration document may be suspended by the Department upon a child abuse or neglect services required determination, if continued operation is likely to jeopardize the health and safety of children present.

The proposed change on page 3, lines 18 through 24 clarifies that Department may prohibit the presence of an adult or minor household member from the premises of an early childhood program, self-declaration, or in-home provider when children are in care, upon a report of child abuse or neglect on the early childhood premises if the continued presence of that individual is likely to jeopardize the health and safety of the children present. A similar change is also made on page 3, line 31.

The proposed changes on page 3, line 28 through page 4, lines 10 would now require the Department, in addition to notifying the parent, to also notify the owner, operator, holder of a self-declaration, or in-home provider if an owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor household member of the program is the subject of a child abuse and neglect assessment under certain circumstances. The additional elements that now must be met for notification to be provided to parents, as well as to the owner, operator, holder of a self-declaration, or in-home provider, include that: the reported child abuse or neglect places children in the early childhood program, self-declaration, or in-home provider at risk of abuse or neglect; and that if the reported child abuse or neglect occurred outside the care, supervision, or guidance of children in an early childhood program, self-declaration, or in-home provider, there was an impact or potential impact on the care, supervision or guidance of children in the early childhood program, self-declaration, or in-home provider.

The proposed changes on page 4, lines 11 through 15 state that Department shall notify the owner, operator, holder of a self-declaration, or in-home provider, as well as the parent, that an owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor household member is prohibited from the premises of the early childhood program, self-declaration, or in-home provider.

The proposed changes on page 4, lines 17 through 21 state that upon the conclusion and disposition of a child abuse and neglect assessment for which a determination services are required is found or for which the Department issued a notice under amended subsection 2 of section 50-11.1-07.8 under this Bill, the Department shall provide notification of the disposition to the parent of each child who at the time of the determination is receiving early childhood services.

The proposed changes on page 4, line 24 through page 5, line 2 adds new language that clarifies that the Department may reconsider a suspension or prohibition issued under Section 2 of this Bill; and that, if law enforcement requests a delay in notification, Department may delay notifying the owner, operator, holder of a self-declaration, or in-home provider, as well as the parent of any child receiving early childhood services. It also provides that in order for such a delay to be valid, a law enforcement request for this delay in notification must be provided in writing to Department within forty-eight

hours of law enforcement receiving notification of an alleged criminal matter. The notification delay may last up to sixty days, and upon request of law enforcement, may be renewed.

Section 3:

The proposed changes in this Section amend the requirements for a self-declaration applicant to operate. Minor clerical changes are made on page 5, lines 20 and 21. Page 5, line 30 through page 6, line 8 remove language that required a self-declaration applicant and their emergency designee to be certified and trained in the use of an automated external defibrillator device as self-declared providers are not required to have automated external defibrillators.

Section 4:

The proposed changes in this Section amend section 50-25.1-11 of the North Dakota Century Code, which relates to confidentiality of records regarding reporting of child abuse and neglect. New language states that Department shall notify the owner, operator, holder of a self-declaration, or in-home provider the name of the subject, summary of the facts, and the results of an assessment if the report involves the owner, operator, holder of a self-declaration, or in-home provider, an adult or minor staff member, or an adult or minor household member of the early childhood program, self-declaration, or in-home provider who is providing care to the child. Previously, this information regarding the name of the subject, summary of the facts, and result of the assessment was only to be provided to the parent or legally appointed guardian of a child receiving services at the facility.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

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Testimony in support of:
Senate Bill 2043: Relating to regulation of early childhood services
and claims of child abuse and neglect.

Submitted by:
Dan Polasky
3223 Lord Circle
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Child abuse is a terrible crime, and the damage done to the child and family is profound. Every allegation of child abuse must be taken seriously and an offender must be punished harshly, but it is a fact that many if not most allegations are proven to be unfounded. When an innocent provider is accused of something so heinous, the damage done to that person is nearly as profound. I know, because it happened to me.

Before buying my Center in 2006, I worked there as a staff member for almost two years. We bought it so we could watch our own kids grow up there. Over the course of my time there I have cared for well over a thousand kids. Over three dozen of those kids have come back to work for me, and others have even started bringing their own kids to our Center. I have spent countless hours with these kids in all kinds of situations, and their safety has always been my top concern. I never gave anyone a reason to think otherwise. I was one of the good guys. But in July of 2017, my local licensor came to our Center and told me that someone had made an allegation against me. She couldn't tell me who made it, what they said, or when this supposed incident occurred. She did tell me that I would have to sign a form stating that I could not be present in my own building while kids were present until the investigation was over or DHS would take my license away and close us down. She also said I would be contacted by CPS at some point for an interview. There was no investigation done before I was kicked out of my building

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and business. No one talked to staff or the kids. There was no due process. It didn't matter that I had never actually done anything to harm a child. In the eyes of the State, I was now officially a threat to the safety of the kids.

It took two weeks before I found out what the allegation was. A family had made an accusation and then promptly went on vacation. They didn't even allow the child to be interviewed until they returned two weeks later. This child had been gone from the Center for about a year and a half and was three when she left. She never said I had touched her or looked at her inappropriately, but it was in the same vein. It was also very easily proven false by taking a quick look around the Center and by doing a few interviews. Even so, it took another month before CPS interviewed me, and then another month after that before they actually went to the Center to look around and ask questions of the staff. It eventually took three months before I was cleared. Even though the police and CPS determined that I had never done anything wrong, the DHS wrote a letter to all the families in my Center telling them that I had been accused of neglect or abuse of a child in my care, but that an intensive investigation showed that I didn't actually do it. I ask you, what does that letter do, other than to sow fear and label me a suspected abuser?

I can't accurately describe how it feels to be wrongly accused of something that is looked at so heinously by the public. It's a mixture of anger, shock, embarrassment, confusion, and fear. People instinctively believe these types of accusations, especially of men that work with kids. I knew people looked at me differently, even though I didn't deserve it. I still feel that standing before you now. I never worried about being found guilty in court, because I knew that the truth would eventually come out. My concern was twofold: 1st) being found guilty in the court of public opinion and losing my reputation and business, and 2nd (and most especially), that my own kids would be teased and bullied at school for having a dad labelled an abuser. The stress was nearly overwhelming. Every time a police car would drive through our neighborhood I wondered if my kids would have to see me being handcuffed and taken to jail. I couldn't eat or sleep. I lost fifteen pounds. It was a basically a nightmare. And even so, I consider myself one of the lucky ones. The State sent a letter only after my investigation was done. The rule that this bill would amend went into effect only weeks after the allegation against me was made. The State now sends a letter to every family at the start of an investigation, before any facts are known and before anyone is even questioned. In effect, the State is branding these providers as guilty before any questions are asked. Because make no mistake, people believe these allegations before they even think about the specifics. Making things worse is the fact that once the families are notified, neither the

local licensors, CPS nor the DHS is allowed to tell anyone what the allegation is about. Not even the operator is told the details so that they might take preventative actions. The current process does nothing but sow fear in families, and then the State refuses any request for answers. A second letter detailing the outcome is sent to the families once the investigation is complete.

It is my strong belief that the State should not be sending any letters announcing allegations that have not yet been investigated, much less been proven. And once an allegation is shown to be without merit, the case should be dropped with no letter stating that the allegation was made. An innocent provider should be treated as just that...innocent. No other profession is subject to this standard, not teachers, nurses, doctors, therapists, police officers, or lawmakers. Everyone deserves due process. As the law stands, the State of North Dakota is acting as if child care providers should be presumed guilty even after they are proven innocent. It is your job as elected officials to protect all North Dakotans, especially the children. You shouldn't have to hurt providers to do it.

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- no letter should be sent to any parent unless and until after an allegation has been proven true
- if a provider has been removed by the State and is later found innocent, the State should find a mechanism to make him/her financially whole for wages lost through no fault of their own
- if allegations are proven to be true, a letter should be sent to all families explaining the nature of the incident and the outcome of the investigation
- if, however, the State believes the current process to be fair, it should be expanded and implemented to cover all professions that care for vulnerable populations (teachers in public and private schools, health care workers in clinics and hospitals, home health workers, counselors, ministers, and any other profession the State deems to work with a similar population)

Thank you for your time and for the opportunity to speak.

Dan Polasky

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Testimony
Senate Bill 2043 – Regulation of Early Childhood Services and Claims of Child Abuse and Neglect
House Human Services Committee
March 4, 2019

Chairman Weisz and members of the House Human Services Committee, I am Samantha Pulvermacher, Director of Divide County Social Services. I am also a member of the North Dakota County Social Services Director's Association. I speak today in support of SB 2043.

As the law currently reads, when a report of suspected child abuse or neglect is received regarding an owner, operator, holder of a self-declaration, in-home provider, adult staff member, or adult household member of the child care program we shall notify the parents of the children enrolled in the program. The current state of the law requires notification to be made regardless of the nature and severity of the report. Reports received are sometimes false reports, inaccurate reports, or reports not meeting the definition of child abuse and neglect as defined in ND Century Code. These are reports that based on the wording of the current law, we are required to notify families which is unfair to the subject of the report as the report has not been substantiated (no abuse or neglect occurred). The subjects of these assessments are adversely impacted when notification automatically occurs regardless of the nature of the report. People tend to assume guilt when this notification is received and very often no child abuse or neglect has occurred. The current law is intended to protect children when a child abuse or neglect is suspected but it leads to unintended consequences to child care providers, staff

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members, and household members when it is determined that no abuse or neglect occurred.

SB 2043 allows for discretion in notification of families if the reported child abuse or neglect places children in the program at risk of child abuse or neglect. It also expands the possible subject of the child abuse or neglect assessment to include minor staff and household members. SB 2043 requires notification of parents upon a determination of services required as well as if we had determined risk at the beginning of the assessment and notification was provided at the onset. Law enforcement may be involved in the child abuse or neglect assessment, SB 2043 allows for law enforcement to request a delay in notification so as not to hinder their investigation of an alleged criminal matter.

Thank you for this opportunity to testify in support of SB 2043. I would be happy to address any questions from the committee.