

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2149  
(Human Services Committee)  
(At the request of the Department of Human Services)

AN ACT to create and enact a new subsection to section 50-01.2-03 of the North Dakota Century Code, relating to duties of county social service boards; and to amend and reenact sections 50-11-00.1 and 50-11-04, subsection 2 of section 50-11-06.6, section 50-11.1-02, subsection 5 of section 50-11.1-03, sections 50-11.1-04, 50-11.1-06, 50-11.1-07, and 50-11.1-07.1, subsection 1 of section 50-11.1-07.2, sections 50-11.1-07.4, 50-11.1-07.5, 50-25.1-02, 50-25.1-06, and 50-25.1-06.1, and subsection 3 of section 50-25.1-11 of the North Dakota Century Code, relating to authorized agents of the department of human services for foster care licensing, child care licensing, and child abuse and neglect services.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new subsection to section 50-01.2-03 of the North Dakota Century Code is created and enacted as follows:

Supervise and administer designated child welfare services under the direction and supervision of the department of human services. Through established procedures the department of human services may release the county social service board of this duty or the county social service board may request to be released from this duty by the department of human services. If a county is released from the county's duty to supervise and administer designated child welfare services under this subsection, the county retains its financial responsibility for providing those services unless otherwise negotiated and approved by the department.

**SECTION 2. AMENDMENT.** Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-00.1. Definitions.** As used in this chapter:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Department" means the department of human services.
2. 3. "Facility" means a family foster home for adults, family foster home for children, group home, or residential child care facility for children.
3. 4. "Family foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.
4. 5. "Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all the children in foster care are related to each other by blood or marriage, in which case such limitation does not apply.
5. 6. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the home of a caregiver, to a person age eighteen or older, who is unable, neglects, or refuses to provide for the person's own care.

- 6- 7. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, group home, or residential child care facility.
- 7- 8. "Group home" means a residence in which foster care is regularly provided for more than four, but less than ten, unrelated children.
- 8- 9. "Residential child care facility" means a facility other than an occupied private residence providing foster care to more than eight unrelated children, except as may be otherwise provided by rule or regulation.

**SECTION 3. AMENDMENT.** Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-11-04. Inspection by the department - Inspection and report by ~~county social service board~~ the department or its authorized agent.** The department and its authorized agents at any time may inspect any facility licensed under the provisions of this chapter or with respect to which a license application has been made. The department and its authorized agents shall have full and free access to every part of the facility. The department may require, on a case-by-case basis, prior to or after licensure, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the facility must be open for the inspection of the department or its authorized agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the ~~county social service board of the county in which the facility is located~~ department or its authorized agent shall inspect any facility for which a license is applied or issued, and shall report the results of the inspection to the department.

**SECTION 4. AMENDMENT.** Subsection 2 of section 50-11-06.6 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person, organization, corporation, or limited liability company is entitled, upon request, to be advised by the department or ~~county social service boards~~ its authorized agent regarding the policy, procedure, and intentions of the department or ~~county social service boards~~ its authorized agent toward placement of children in that person's, organization's, corporation's, or limited liability company's facility if:
- a. The person, organization, corporation, or limited liability company is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or
  - b. The person, organization, corporation, or limited liability company is applying for its license to provide foster care for children under this chapter.

**SECTION 5. AMENDMENT.** Section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-02. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.

- ~~2.~~ 2. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
- ~~3.~~ 3. "County agency" means the county social service board in each of the counties of the state.
- ~~4.~~ 4. "Department" means the department of human services.
- ~~4.~~ 5. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, or known by any other name.
- ~~5.~~ 6. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
  - a. Substitute parental child care provided pursuant to chapter 50-11.
  - b. Child care provided in any educational facility, whether public or private, in grade one or above.
  - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
  - d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
  - e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
  - f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
  - g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
  - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
  - i. Headstart programs that are federally funded and meet federal headstart standards.
  - j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.
- ~~6.~~ 7. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.

7. 8. "Group child care home" or "group child care facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
8. 9. "In-home provider" means any person who provides early childhood services to children in the children's home.
9. 10. "License" means the right, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, or preschool educational facility.
40. 11. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.
44. 12. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.
42. 13. "Registrant" means the holder of a registration document issued by the department in accordance with this chapter.
43. 14. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
44. 15. "Registration document" is a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.

**SECTION 6. AMENDMENT.** Subsection 5 of section 50-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. All fees collected under subsection 3 must be paid to the ~~county social service board~~ department or the department's authorized agent and must be used to defray the cost, to ~~that board~~ the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

**SECTION 7. AMENDMENT.** Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term.** Applications for early childhood facility licenses must be made on forms provided, in the manner prescribed, by the department. The ~~county agency~~ department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all facilities applying for a license. The applicant for a license and the applicant's employees, and, if the license is for an occupied private residence, every person living or working in that residence, may be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall grant a license for the operation of an early childhood facility upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;

3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application;
5. The facility has paid its license fees and any penalties assessed against the facility as required by section 50-11.1-03; and
6. The group child care or child care center facility maintains at all times during which early childhood services is provided at least one person who has received training and is currently certified in rescuer cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department.

The license issued to the operator of an early childhood facility must be in force and effect for a period of not more than two years.

**SECTION 8. AMENDMENT.** Section 50-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-06. In-home provider - Registration voluntary - Issuance of registration certificate - Term.** In-home providers may apply for a registration certificate from the department. ~~The county agency department or the department's authorized agent shall determine whether the standards have been met and shall issue or deny a registration certificate based upon that determination.~~ Registration certificates for in-home providers must be in force and effect for not more than one year.

**SECTION 9. AMENDMENT.** Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07. Investigation of applicants, licensees, and registrants - Maintenance of records - Confidentiality of records.**

1. The department and ~~the county agency~~ its authorized agent at any time may investigate and inspect the conditions of the facility, the qualifications of the providers of early childhood services in any early childhood facility, and the qualifications of any in-home provider seeking or holding a license or registration document under this chapter. Upon request of the department or ~~the county agency~~ its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect any facility for which a license is applied for or issued and shall report the findings to the ~~county agency department or the department's authorized agent~~.
2. Licensees and registrants shall:
  - a. Maintain such records as the department may prescribe regarding each child in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the children upon forms furnished by the department;
  - b. Admit for inspection authorized agents of the department ~~or the county agency~~ and open for examination all records, books, and reports of the home or facility; and
  - c. Notify the parent, guardian, or custodian of each child receiving care at the facility and each employee of the facility of the process for reporting a complaint or a suspected licensing violation.
3. Except as provided in subsection 4, all records and information maintained with respect to children receiving early childhood services are confidential and must be properly safeguarded and may not be disclosed except:

- a. In a judicial proceeding;
  - b. To officers of the law or other legally constituted boards or agencies; or
  - c. To persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.
4. A provider of early childhood services, upon the request of the parent or guardian of a child for whom the provider provides such services, shall make available to the parent or guardian a list of the names, telephone numbers, and addresses of the parents or guardians of children for whom early childhood services are provided. The list may only include the names, telephone numbers, or addresses of parents or guardians who grant the provider permission to disclose that information.

**SECTION 10. AMENDMENT.** Section 50-11.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.1. Notice.** After each inspection or reinspection, the ~~county agency~~ department or the department's authorized agent shall, by certified mail, send copies of any correction order or notice of noncompliance, to the early childhood facility.

**SECTION 11. AMENDMENT.** Subsection 1 of section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the ~~county agency~~ department or the department's authorized agent finds, upon inspection of an early childhood facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order must be issued to the facility. The correction order must cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.

**SECTION 12. AMENDMENT.** Section 50-11.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.4. Fiscal sanctions.** An early childhood facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules promulgated pursuant to subsection 2 of section 50-11.1-08. The fiscal sanction must be assessed for each day the facility remains in noncompliance after the allowable time period for the correction of deficiencies ends and must continue until a notice of correction is received by the ~~county agency~~ department or the department's authorized agent in accordance with section 50-11.1-07.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

**SECTION 13. AMENDMENT.** Section 50-11.1-07.5 of the North Dakota Century Code is amended and reenacted as follows:

**50-11.1-07.5. Accumulation of fiscal sanctions.** An early childhood facility shall promptly notify the ~~county agency~~ department or the department's authorized agent in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the ~~county agency~~ department or the department's authorized agent, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be reinspected within three working days after receipt of the notification. If, upon reinspection, it is determined that a deficiency has not been corrected, the daily assessment of fiscal sanction must resume and the amount of fiscal sanction which otherwise would

have accrued during the period prior to resumption must be added to the total assessment due from the facility. ~~The county agency department or the department's authorized agent~~ shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; provided, that written request for the hearing is made to the department within ten days of the notice of resumption.

**SECTION 14. AMENDMENT.** Section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-02. Definitions.**

1. "A person responsible for the child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private school or nonresidential child care facility; an employee of a public or private residential home, institution, or agency; or a person responsible for the child's welfare in a residential setting.
2. "Abuse of alcohol", "alcohol abuse", or "abused alcohol" means alcohol abuse or dependence as defined in the current diagnostic and statistical manual published by the American psychiatric association or a maladaptive use of alcohol with negative medical, sociological, occupational, or familial effects.
3. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's welfare, or who is suffering from or was subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07.
4. "Assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child.
5. "Authorized agent" means the county social service board, unless another entity is designated by the department.
6. "Citizen review committee" means a committee appointed by the department to review the department's provision of child welfare services.
7. "Department" means the department of human services or its designee.
- ~~6.~~ 8. "Harm" means negative changes in a child's health which occur when a person responsible for the child's welfare:
  - a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
  - b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
- ~~7.~~ 9. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is an employee of a residential child care facility, a treatment or care center for mentally retarded, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.
- ~~8.~~ 10. "Local child protection team" means a multidisciplinary team consisting of the designee of the director of the regional human service center, together with such other representatives as that director might select for the team with the consent of the director of the county social service board. All team members, at the time of their selection and thereafter, must be staff members of the public or private agencies they represent or shall serve without

remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three members. The department shall coordinate the organization of local child protection teams on a county or multicounty basis.

- 9: 11. "Neglected child" means a deprived child as defined in chapter 27-20.
- 40: 12. "Prenatal exposure to a controlled substance" means use of a controlled substance as defined in chapter 19-03.1 by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.
- 44: 13. "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.
- 42: 14. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health, a representative of the attorney general, a representative of the superintendent of public instruction, a representative of the department of corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency they represent or shall serve without remuneration. An attorney member of the child protection team may not be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

**SECTION 15. AMENDMENT.** Section 50-25.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-06. Protective and other services to be provided.** The department ~~and the appropriate county social service board~~ shall provide protective services for the abused or neglected child and other children under the same care as may be necessary for their well-being and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children. The department may discharge the duties described in this section through an authorized agent.

**SECTION 16. AMENDMENT.** Section 50-25.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**50-25.1-06.1. Caseload standards - Reimbursement.** The department shall adopt caseload standards establishing minimum staff to client ratios for the assessment of reports of child abuse or neglect and the provision of protective services. Within the limits of legislative appropriation, the department shall reimburse ~~each county~~ its authorized agent, upon claim being made by the ~~county~~ authorized agent, for seventy-five percent of additional staff costs caused by the imposition of such caseload standards. Upon a determination that legislative appropriations are insufficient to reimburse each claiming ~~county~~ authorized agent in the amount of seventy-five percent of such additional staff costs, the department shall reimburse each claiming ~~county~~ authorized agent for that percentage of additional staff costs which the appropriation is sufficient to defray.

**SECTION 17. AMENDMENT.** Subsection 3 of section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:



3. Authorized staff of the department, ~~appropriate county social service boards and its~~ authorized agents, and appropriate state and local child protection team members, and citizen review committee members.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2149.

Senate Vote:    Yeas    47        Nays    0        Absent    0

House Vote:    Yeas    91        Nays    0        Absent    3

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State