

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

<b>N.D. Admin. Code Chapters</b>	)	<b><u>REPORT OF THE</u></b>
<b>75-03-07, 75-03-07.1, 75-03-08,</b>	)	<b><u>DEPT. OF HUMAN SERVICES</u></b>
<b>75-03-09, 75-03-10, 75-03-11,</b>	)	<b>March 13, 2018</b>
<b>and 75-03-11.1, Licensing of</b>	)	
<b>Early Childhood Services</b>	)	
	)	
<b>(Pages 415-490)</b>	)	

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

1. The proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1 are being amended as a result of 2017 Senate Bill No. 2090.
2. These rules are related to changes in a federal statute or regulation, specifically P.L 113-186 and Title 45, Code of Federal Regulations, part 98, relating to the Child Care and Development Block Grant Act of 2014.
3. The Department uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the

content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

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

4. A public hearing on the proposed rules was held in Bismarck on December 11, 2017. The record was held open until 5:00 p.m. on December 21, 2017, to allow written comments to be submitted. One comment was received at the public hearing. Six written comments were received within the comment period. A "Summary of Comments" is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,457.25.
6. The proposed rules amend chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1. The following specific changes were made:
  - Section 75-03-07-04** is amended to clarify when the sudden infant death prevention training needs to occur.
  - Section 75-03-07-06** is amended to update statutory citation changes.
  - Section 75-03-07.1-02** is amended for consistency purposes and to add training for infant and pediatric cardiopulmonary

resuscitation, the use of an automated external defibrillator, and first aid for providers and emergency designees in compliance with 2017 Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block Grant Act of 2014.

**Section 75-03-07.1-04** is amended to remove exemption language that expired January 1, 2016, that allowed for two provider in-home registrations, self-declarations, or licenses in a single residence; and to change an applicant's requirement to identify an emergency designee from "shall" to "may."

**Section 75-03-07.1-06** is amended to update statutory citation changes.

**Section 75-03-07.1-07** is amended for consistency purposes to add language "single-use" to the minimum sanitation requirements available at each sink.

**Section 75-03-07.1-08** is amended to clarify that alternative feeding instructions be "in writing" from the parent or child's medical provider.

**Section 75-03-07.1-13** is created to add minimum emergency and disaster plan requirements for self-declared providers.

**Section 75-03-08-07** is amended to remove exemption language that expired January 1, 2016, that allowed for two provider in-home registrations, self-declarations, or licenses in a single residence.

**Section 75-03-08-08.1** is amended for consistency purposes; to amend or add training for infant and pediatric cardiopulmonary resuscitation, the use of an automated external defibrillator, and first aid for providers in compliance with 2017 Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block

Grant Act of 2014; and to change a provider's requirement to identify an emergency designee from "shall" to "may."

**Section 75-03-08-10** is amended for consistency purposes and clarify that sudden infant death prevention training is only required prior to the provider having unsupervised access to infants.

**Section 75-03-08-12** is amended for consistency purposes; to remove the basic child care training exemption for substitute providers and emergency designee in response to the reauthorization of the Child Care and Development Block Grant Act of 2014; and to add training for infant and pediatric cardiopulmonary resuscitation, the use of an automated external defibrillator, and first aid for staff members in compliance with 2017 Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block Grant Act of 2014.

**Section 75-03-08-21.1** is amended for consistency purposes, and to add language "single-use" to the minimum sanitation requirements available at each sink and to add requirements that establish that provider have available beds, cots, mats, or cribs with bedding and establishing cleanliness, hygiene, and safety requirements.

**Section 75-03-08-24** is amended to clarify that alternative feeding instructions be "in writing" from the parent or child's medical provider and remove redundant language regarding mattresses, sheets, cleanliness, hygiene, and safety requirements.

**Section 75-03-08-27** is amended to update statutory citation changes.

**Section 75-03-09-08** is amended to change a group child care provider requirement, to identify an emergency designee from

“shall” to “may”, and to remove redundant language regarding cardiopulmonary resuscitation training requirements.

**Section 75-03-09-10** is amended for clarification purposes to add the language “department approved” to the minimum qualifications for a group child care supervisor with an associate’s degree and to remove redundant language regarding cardiopulmonary resuscitation and first aid training requirements.

**Section 75-03-09-12** is amended to remove the basic child care training exemption for substitute providers and emergency designee in response to the reauthorization of the Child Care and Development Block Grant Act of 2014; and to amend or add training for basic child care course, infant and pediatric cardiopulmonary resuscitation, the use of an automated external defibrillator, and first aid for staff members in compliance with 2017 Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block Grant Act of 2014.

**Section 75-03-09-14** is amended to remove redundant language regarding spacing between cots and cribs and for consistency purposes to add language “single-use” to the minimum sanitation requirements available at each sink for a facility.

**Section 75-03-09-16** is amended to update the minimum fire and emergency evacuation drill requirements for consistency purposes and as recommended by the State Fire Marshall.

**Section 75-03-09-18** is amended to remove redundant language regarding cleanliness of cots and mats and to add requirements that establish that provider have available beds, cots, mats, or cribs with bedding and establishing cleanliness, hygiene, and safety requirements.

**Section 75-03-09-24** is amended to clarify that alternative feeding instructions be “in writing” from the parent or child’s medical provider and remove redundant language regarding mattresses, sheets, cleanliness, hygiene, and safety requirements.

**Section 75-03-09-27** is amended to update statutory citation changes.

**Section 75-03-09-29** is amended to update references to citations.

**Section 75-03-10-09** is amended to change a child care center operator’s requirement to identify an emergency designee from “shall” to “may” and to remove redundant language regarding cardiopulmonary resuscitation and first aid training requirements.

**Section 75-03-10-10** is amended to add the language “department approved” to the minimum qualifications for a child care center director and to clarify when a director needs sudden infant death prevention training.

**Section 75-03-10-12** is amended for consistency purposes; to amend or add training for basic child care infant and pediatric cardiopulmonary resuscitation, the use of an automated external defibrillator, and first aid for providers in compliance with 2017 Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block Grant Act of 2014; to clarify when a staff member needs sudden infant death prevention training; and to remove the exemption for substitute providers and emergency designee in response to the reauthorization of the Child Care and Development Block Grant Act of 2014.

**Section 75-03-10-16** is amended to update the minimum fire and emergency evacuation drill requirements for consistency purposes and as recommended by the State Fire Marshal.

**Section 75-03-10-18** is amended to add requirements that establish that provider have available beds, cots, mats, or cribs with bedding and establishing cleanliness, hygiene, and safety requirements and to add language "individually designated" to the minimum sanitation requirements available at each sink.

**Section 75-03-10-24** is amended to clarify that alternative feeding instructions be "in writing" from the parent or child's medical provider and to remove redundant language regarding mattresses, sheets, cleanliness, hygiene, and safety requirements.

**Section 75-03-10-27** is amended to update statutory citation changes.

**Section 75-03-10-30** is amended to update citations.

**Section 75-03-11-08** is amended to remove redundant language regarding cardiopulmonary resuscitation and first aid training requirements.

**Section 75-03-11-08.1** is amended to add the language "department approved" to the minimum qualifications of a preschool director.

**Section 75-03-11-08.2** is amended to add the language "department approved" to the minimum qualifications of a preschool teacher.

**Section 75-03-11-13** is amended for consistency purposes and to amend or add training for basic child care, infant and pediatric cardiopulmonary resuscitation, the use of an automated external defibrillator, and first aid for providers in compliance with 2017

Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block Grant Act of 2014.

**Section 75-03-11-14** is amended to add language “individually designated” to the minimum sanitation requirements near handwashing sink.

**Section 75-03-11-16** is amended to update the minimum fire and emergency evacuation drill requirements for consistency purposes and as recommended by the State Fire Marshal.

**Section 75-03-11-27** is amended to update statutory citation changes.

**Section 75-03-11.1-08** is amended to change a school-age child care program operator’s requirement to identify an emergency designee from “shall” to “may” and to remove redundant language regarding cardiopulmonary resuscitation and first aid training requirements.

**Section 75-03-11.1-08.1** is amended to add the language “department approved” to the minimum qualifications of a school-age child care program director and to add, for consistency purposes, language when training courses can be counted toward licensing requirements.

**Section 75-03-11.1-08.3** is amended to remove redundant language regarding first aid training requirements and to add, for consistency purposes, language when training courses can be counted toward licensing requirements.

**Section 75-03-11.1-08.4** is amended for consistency purposes; to remove the basic child care training exemption for substitute staff and emergency designees in response to the reauthorization of the Child Care and Development Block Grant Act of 2014; and to



add training for infant and pediatric cardiopulmonary resuscitation, the use of an automated external defibrillator, and first aid for staff members in compliance with 2017 Senate Bill No. 2090 and the reauthorization of the Child Care and Development Block Grant Act of 2014.

**Section 75-03-11.1-16** is amended to update the minimum fire and emergency evacuation drill requirements for consistency purposes and as recommended by the State Fire Marshal.

**Section 75-03-11.1-18** is amended to remove redundant language regarding mattresses, sheets, cleanliness, hygiene, and safety requirements, to add language "individually designated" to the minimum sanitation requirements available at each sink, and to add requirements that establish that provider have available beds, cots, mats, or cribs with bedding and establishing cleanliness, hygiene, and safety requirements.

**Section 75-03-11.1-24** is amended to remove redundant language regarding mattresses, sheets, cleanliness, hygiene, and safety requirements.

**Section 75-03-11.1-27** is amended to update statutory citation changes.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. The anticipated fiscal impact resulting from the implementation of

the proposed amendments is nominal.

10. A constitutional takings assessment was prepared and is attached to this report.

11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Jonathan Alm  
Legal Advisory Unit  
North Dakota Department of Human Services  
March 9, 2018



Doug Burgum, Governor  
Christopher Jones, Executive Director

**SUMMARY OF COMMENTS RECEIVED  
REGARDING PROPOSED AMENDMENTS TO  
N.D. ADMIN. CODE CHAPTERS 75-03-07, 75-03-07.1, 75-03-08, 75-03-09,  
75-03-10, 75-03-11 AND 75-03-11.1  
EARLY CHILDHOOD SERVICES**

The North Dakota Department of Human Services (the Department) held a public hearing on December 11, 2017, in Bismarck, ND, concerning the proposed amendment to N.D. Administrative Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11 and 75-03-11.1, Early Childhood Services.

Written comments on these proposed amendments could be offered through 5:00 p.m. on Thursday, December 21, 2017.

One individual attending the public hearing made a comment. Six written comments were received within the comment period. The commentors were:

1. Kathy Schumacher, 405 NE 2<sup>nd</sup> St, Linton ND 58552 (701.321.2899)
2. Joan Enderle, American Heart Association, 1005 12<sup>th</sup> Ave SE, Jamestown ND 58401
3. Joan Enderle, American Heart Association, 1005 12<sup>th</sup> Ave SE, Jamestown ND 58401
4. Darlene Hoffart, 2111 10<sup>th</sup> Ave SW, Devils Lake ND 58301
5. Lila Robbins, Right Start Daycare, 304 18<sup>th</sup> Ave SE, Devils Lake ND 58301
6. Carrie McLeod, American Heart Association Advocate, Sanford Health, 406 Main, Fargo ND 58103
7. Evonne Geigle, 315 Woodlea Dr, Devils Lake ND 58301

**SUMMARY OF COMMENTS**

**Comment:** Department of Human services would like to eliminate ratio waivers. I understand the waivers started when the oil boom started making money for North Dakota. In order to bring employees into North Dakota we had to have enough room for their children, if I am correct. So daycares were able to take on additional .24 points or one child into their day care. Williston is not and was not the only community that was struggling to find daycare. Our community and the surrounding community is still having problems finding quality daycare. In our area there is families where the husband or the wife are having to quit their job and stay at home or they are moving away. I have had a few waivers in the past years and I don't know what my families would have done if that wasn't possible anymore. Last May I had a waiver and I have another waiver starting soon until May of 2018. There is not a one opening in Linton. I have had 29 phone calls from July of 2016 until July of 2017. If bringing money to North Dakota is important let us daycare providers provide for the people that need to work. One extra child per daycare willing to get a waiver can help. Years ago there was plenty of quality daycares there was not a demand for us like there is now. Thank you for taking the time to hear my side of this problem.

**Response:** The Department appreciates your response and values your feedback as a provider and member of your community. The Department agrees to remove the proposed changes to sections 75-03-09-09 and 75-03-10-08 concerning the waiver. The Department also strongly encourages that discussions continue with Early Childhood Services Advisory Board, parents, providers and other stakeholders in order to continue seeking a positive solution for those affected by child care shortages.

**Comment:**

Good morning, for the record I am Joan Enderle, I am the Early Child and Education policy director in North Dakota for the American Heart Association. For the past three years, I've been working with several key health areas impacting a healthy start for North Dakota children. My background and training is in nutrition, I'm a licensed registered dietician, working for 35 years in North Dakota.

I am here today to encourage the Department of Human Services to also open up the sections of the N.D. Administrative Code, Early Childhood Services related to standard guidance on nutrition (food and drink), physical activity and screen time within the licensing code, ensuring that every North Dakota child within the Childhood Services program receives at minimum a baseline level of quality service to provide for their bodies to grow and minds develop.

As the Department noted in a July 31, 2013 presentation for the interim Economic Impact Committee – "Licensing Must Support Quality". Within the presentation framework the following points were highlighted:

- In ND, about 78% of mothers with young children work outside the home.
- It is common for young children in ND to spend 65% of their waking hours with a caregiver other than a parent.
  - 90% of a child's brain is developed by age 5.
  - Rich early childhood experiences are necessary for development of language and literacy skills, thinking skills, self-confidence and self-control.
  - Children need, at a minimum:
    - stable, nurturing caregivers who interact positively with them,
    - the ability to explore and discover their environment safely and with proper supervision,
    - good nutrition and appropriate times for rest,
    - plentiful time for active movement and play,
    - an environment which includes plenty of toys, books and materials that support learning.

In today in North Dakota 3 out of 4 children under the age of six have all available parents in the labor force. With today's children our future workforce of tomorrow, providing the solid building blocks makes sense and cents for North Dakota.

While the presentation by the department noted “plentiful time for active movement and play” as one of the minimum needs for children, current rules are silent as to the time. The American Heart Association proposes physical activity standards consistent with the most recent version of the YMCA’s Healthy Eating and Physical Activity (HEPA) standards for Childhood Programs of 60 minutes of moderate and vigorous physical activity for full day programs and 30 minutes for half day. Physical activity is essential for kids to reach their developmental milestones.

A 2011 study in the Journal of Pediatrics reported that TV viewing in young children has been associated with cognitive and speech delays, aggressive behavior, decreased academic performance, and obesity. Screen time also potentially displaces other activities such as reading, physical activity and imaginative play, all of which are beneficial to children’s growth and development. The American Heart Association proposes screen time standards consistent with the YMCA’s HEPA standard for Early Childhood Programs of sixty minutes daily of educational programming for children over the age of 2 with zero time for those under two.

During the past three years of special grant funding, AHA has worked actively at a variety of childcare provider service levels to learn challenges and barriers in reaching efficiency in nutrition including training, parent engagement, education and access to reimbursement. One of the key challenges that has been identified is the multiple USDA nutrition programs. The AHA proposes that the USDA Child and Adult Care Food Program (CACFP) be the nutrition standard for licensed child care providers in North Dakota.

Currently CACFP has a 90% participation rate by home based child care providers in North Dakota and 35% of center/group facilities. By specifying just this one program, there is consistent guidance on nutrition standards for all providers and organizations who support providers can streamline training and develop early and timely guidance to help all providers who qualify to opt in for the federal reimbursement for meals although participation is not required.

In addition to the CACFP standards, the American Heart Association proposes minimum health and drink standards be implemented by adopting the Healthy Eating Research Recommendations for Healthier Beverage guidelines.

Attached to these comments are the sections recommended for further rules work, and how minimum standards for nutrition (food and beverage), physical activity and screen time could be incorporated into proposed rules.

The value of timely agency action is three-fold:

- Ensuring every ND child in Childhood Services receives the same opportunity to basic standards for the building blocks of a healthy life.
- Movement and active play in early childhood facilitates the motor, social and

- cognitive development needed for healthy growth and wellbeing essential for our kids to succeed in school and the future workforce
- Best leverages the utilization of special grant funding available now for engaging childcare providers, state agencies that oversee licensing, childhood services programs related to nutrition, physical activity and screen time along with supporting organizations together for mapping service delivery improvements, opportunities, leveraging training and support resources, and other programs.

I'm happy to respond to any questions you may have at this time.

**North Dakota Child Care Administrative Rules Update**  
**Family Child Care Homes Early Childhood Services Chapter 75-03-08**  
**Group Child Care Homes Early Childhood Services Chapter 75-03-09**  
**Child Care Center Early Childhood Services Chapter 75-03-10**

The American Heart Association is pleased to provide these suggested updates to the North Dakota administrative rules regulating child care in the state. We believe that every child deserves a healthy start in life, and recognize that child care providers are in a unique position to support a healthy environment for children to learn and grow. These proposed updates to the rules will help child care providers establish programs that offer healthy food and physical activity choices for children in an overall safe setting, which will build a foundation of healthy habits that will carry children forward into adulthood.

The American Heart Association respectfully proposes adding or replacing the following language in the administrative rules to ensure all our youngest residents are provided with evidence-based nutrition, physical activity, and screen time standards.

**Physical Activity & Screen Time**

Physical activity patterns develop in childhood and tend to last through adulthood. Given that the early years play a vital role in the development of health-related behaviors, early intervention around screen time and physical activity is required to prevent sedentary behaviors from carrying into adolescence and adulthood

- **Family Child Care Homes Early Childhood Services**
  - Suggested language for 75-03-08-20. Program requirements
    2. The program must be designed with intervals of stimulation and relaxation and a balance between periods of active play and quiet play or rest. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
      - a. The program must include opportunities for moderate and vigorous physical activity for at least sixty minutes per day during a full-day program or thirty minutes per day for a half-day program for all children.



6. The program must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.
  - a. The program must include opportunities for moderate and vigorous physical activity for at least sixty minutes per day during a full-day program or thirty minutes per day for a half-day program for all children.
  - b. Screen time (such as television, movies, cell phones, video games, computers, and other digital devices) shall not be allowed for children under two years of age. For children over two years of age, screen time shall be limited to less than sixty minutes per day during a full-day program or thirty minutes per day for a half-day program.
- o Suggested language for 75-03-10-24. Specialized types of care and minimum requirements
  1. Infant Care.
    - a. Environment and Interactions
      - (4) The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area. Infants six months of age or younger must be provide supervised daily tummy time, or time in the prone position.

### **Nutrition**

We suggest having the rules clearly require that all food served in child care programs, whether home-based or center-based, meet the Child and Adult Care Food Program (CACFP) nutrition standards, regardless of whether the program officially participates in CACFP for reimbursement purposes. There are many CACFP support tools available to help child care programs implement these nutritional standards. Please note that we are not asking that child care programs be required to join the CACFP program, but simply to use the nutrition standards set by CACFP.

- **Family Child Care Homes Early Childhood Services**
  - o Suggested language for 75-03-08-21. Minimum standards for food and nutrition

A provider shall serve children nutritious meals or snacks according to the following requirements:

    1. When the provider is responsible for providing food to children, the all food supplied must meet current United States department of agriculture Child and Adult Care Food Program (CACFP) nutritional standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours in a sanitary manner.
    10. If juice is served, it must be 100% fruit or vegetable juice, served only once per day, and limited to four ounces per day for children two-to-four years of age, and six ounces per day for children five years of age and older. Juice may not be served to child under two years of age.



11. Beverages with added sweeteners (such as flavored milk, soda pop, fruit drinks, sports drinks, and energy drinks) may not be served.

- **Group Child Care Homes Early Childhood Services**

- Suggested language for 75-03-09-21. Minimum standards for food and nutrition
  1. When the provider is responsible for providing food to children, the all food supplied must meet current United States department of agriculture Child and Adult Care Food Program (CACFP) nutritional standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in the group child care must be treated in a safe and sanitary manner with safe and sanitary equipment.  
10. If juice is served, it must be 100% fruit or vegetable juice, served only once per day, and limited to four ounces per day for children two-to-four years of age, and six ounces per day for children five years of age and older. Juice may not be served to child under two years of age.  
11. Beverages with added sweeteners (such as flavored milk, soda pop, fruit drinks, sports drinks, and energy drinks) may not be served.

- **Child Care Center Early Childhood Services**

- Suggested language for 75-03-10-21. Minimum standards for food and nutrition
  1. When the provider is responsible for providing food to children, the all food supplied must meet current United States department of agriculture Child and Adult Care Food Program (CACFP) nutritional standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.  
10. If juice is served, it must be 100% fruit or vegetable juice, served only once per day, and limited to four ounces per day for children two-to-four years of age, and six ounces per day for children five years of age and older. Juice may not be served to child under two years of age.  
11. Beverages with added sweeteners (such as flavored milk, soda pop, fruit drinks, sports drinks, and energy drinks) may not be served.

Thank you for considering these recommendations as you work to update the North Dakota administrative rules regulating child care. We look forward to working with you throughout this process.

**Response:** The Department appreciates your response and values your input. As 75-03-08-20, 75-03-08-21, 75-03-09-20, 75-03-09-21, 75-03-10-20, and 75-03-10-21 are not rules being considered for change at this time, no changes will be made. However, ensuring the health and well-being of our youngest citizens is a value held by all in the Department. We wish to continue discussing the recommendations made in your comment alongside

stakeholders, including the Early Childhood Services Advisory Board, families, providers and other State advisory committees in order to examine the impact these rules may have on providers and families. The Department will make no change to 75-03-08-24, 75-03-09-24, and 75-03-10-24 as a provider must currently ensure that infants have frequent and extended opportunities for freedom of movement, including creeping and crawling. The rule currently uses "including" which is not exclusive to just creeping and crawling. Therefore, extended opportunities for freedom of movement can also include tummy time or time in a prone position.

**Comment:**

I am writing in concern about the draft proposal revoking the waiver option for daycare providers. While living in a smaller town where childcare is limited, the waiver option has helped many families. From my personal experiences, the waiver option has helped families with multiple children to stay at the same daycare. It has also helped families that needed daycare on short notice due to moving to Devils Lake or because of their current daycare shutting down.

The waiver is also an asset to the providers that run in-home daycares and do not want to rely on an employee when they are only slightly over ratio. Finding trustworthy and reliable workers is difficult and tends to put more work on the daycare provider. If the employee is unable to show, the provider then has to send a child home which also puts more stress on the parent because they have to leave work to take care of their child.

I am currently using a waiver so that I could keep an infant that I took on during the summer while I had my step-daughter as an assistant. She went off to college in August and due to the waiver option, I was able to continue care for the infant. My current ratio with all of my enrolled children is 1.45 which is not an all day, everyday occurrence. I have two children that go to preschool from 8am-12pm on various days of the week and two after-school children that come at 3:45pm. It is also very common that a child will not show up due to a parent having the day off, vacation, or illness. The waiver option allows me to not have to worry about finding an employee for the rare occasions where I am over the 1.34 ratio.

**Response:** The Department appreciates your response and values your feedback as a provider and member of your community. The Department agrees to remove the proposed changes to sections 75-03-09-09 and 75-03-10-08 concerning the waiver. The Department also strongly encourages that discussions continue with Early Childhood Services Advisory Board, parents, providers and other stakeholders in order to continue seeking a positive solution for those affected by child care shortages.

**Comment:**

I am writing to express my concerns on state plans to eliminate the waiver that is currently available to child care providers. I feel the waiver is needed in situations like this to help families place their children or infants in child care.

The waiver has allowed families that already have a child in your care and are expecting another, to keep using you as a provider and not be forced to have to move their child to a different child care provider or have their children split up into different child care homes. It makes the working day longer in travel time for families if they have to use two different places for their children, which takes time away from their family time at the end of a work day.

The more children are forced to be moved around it puts a strain on attachment development. It is hard on the child care provider also to have to let a child go because you don't have room for the infant. It's also hard on the family to want to move because they have entitled their trust in your care and want to stay at your home daycare.

The waiver benefits the families that are uncomfortable with centers. They believe that centers don't provide a home feeling atmosphere. Some families don't like the fact that their children have to be in separate rooms at a center which does not allow them to bond and play with each other during the day.

**Response:** The Department appreciates your response and values your feedback as a provider and member of your community. The Department agrees to remove the proposed changes to sections 75-03-09-09 and 75-03-10-08 concerning the waiver. The Department also strongly encourages that discussions continue with Early Childhood Services Advisory Board, parents, providers and other stakeholders in order to continue seeking a positive solution for those affected by child care shortages.

**Comment:**

As a licensed registered dietitian and certified diabetes educator, I encourage the agency to also address within rule revisions the provider licensing criteria related to nutrition, physical activity and screen time.

Today in ND, 3 out of 4 (73%) children under the age of six (about 47,000) have parents in the labor force who must rely on child care providers to watch over their children in order to remain employed.

Minimum standards for nutrition (food and beverages), physical activity (active play) and screen time within current North Dakota child care licensing administrative rules will help child

care providers establish programs that offer healthy food and physical activity choices for children in an overall safe setting.

Physical activity patterns develop in childhood and tend to last through adulthood.

- A 2017 publication from Healthy Eating Research reported that movement and active play in early childhood facilitate the motor, social and cognitive development needed for the healthy growth and wellbeing.
- A 2011 study in the Journal of Pediatrics reported that TV viewing in young children has been associated with cognitive and speech delays, aggressive behavior, decreased academic performance, and obesity. Screen time also potentially displaces other activities such as reading, physical activity, and imaginative play, all of which are beneficial to children's growth and development.

We suggest having the rules clearly require that all food served in child care programs, whether home-based or center-based, meet the Child and Adult Care Food Program (CACFP) nutrition standards, regardless of whether the program officially participates in CACFP for reimbursement purposes. There are many CACFP support tools available to help child care programs implement these nutritional standards. Please note that we are not asking that child care programs be required to join the CACFP program, but simply to use the nutrition standards set by CACFP.

- According to the CDC, children who are overweight or obese as preschoolers are five times more likely to be overweight or obese as adults. These children are at an increased risk of developing chronic disease, such as heart disease, stroke, and some cancers.

**Response:** The Department respects and values your input. The Department will make no change at this time since the changes you proposed are not included in this current rule making process. The Department encourages continued conversation with Early Childhood Services, the Early Childhood Services Advisory Board, stakeholders, parents, and providers in order to examine possible impact for providers, children, and families.

**Comment:**

I am writing this letter on behalf of parents that must deal with daycare provider shortages. I understand that providers will no longer be able to obtain waivers to increase their "numbers" to be able to keep families with new babies in the same provider. Families have to separate their young children because their provider is at full capacity according to the state guidelines. I feel that my provider runs a very well organized daycare and is wonderful with her daycare children, but if couldn't properly take care of them, she wouldn't apply for a waiver to have more children. In our town there is a daycare shortage which causes many problems for families trying to work and have children. Most of the time my daycare provider is only over by .02 which isn't even a child. Due to schedules of school and pre-school she isn't even over her ration for the entire day. I feel this should be based on an individual

N.D. Admin. Code Chapters 75-02-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11  
and 75-03-11.1  
Summary of Comments  
January 17, 2018

provider bases. Please reconsider keeping the option for daycare providers to be able to obtain waivers.

**Response:** The Department appreciates your response and values your feedback as a provider and member of your community. The Department agrees to remove the proposed changes to sections 75-03-09-09 and 75-03-10-08 concerning the waiver. The Department also strongly encourages that discussions continue with Early Childhood Services Advisory Board, parents, providers and other stakeholders in order to continue seeking a positive solution for those affected by child care shortages.

Prepared by:

Jonathan Alm, Director  
Legal Advisory Unit  
N.D. Dept. of Human Services

In Consultation with: Amy Olsen, CFS

January 17, 2018

cc: Amy Olsen, CFS

## MEMO

**TO:** Jonathan Alm, Director, Legal Advisory Unit

**FROM:** Amy Olsen, Early Childhood Services Administrator, Children and Family Services

**RE:** Regulatory Analysis of Proposed North Dakota Administrative Code chapters 75-04-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1.

**DATE:** July 18, 2017

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

### Purpose

Most of the proposed amendments are required as a response to the reauthorization of the Child Care and Development Block Grant Act of 2014 (CCDBG) and 2017 Senate Bill No. 2090. A review of the proposals was completed by, and guidance was provided by, the Early Childhood Advisory Board.

### Classes of Persons Who Will be Affected

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

### Probable Impact

Providing updates and clarification based on the CCDBG of 2014 will positively impact in-home providers, self-declared child care providers, and operators of family, group, center, preschool, and school age early childhood service

programs in that they will have background information as to why the changes are being made. These proposals will have a slight impact on providers.

#### Probable Cost of Implementation

There are expected costs to In-home providers, self-declared child care providers, and operators of family, group, center, preschool, and school age early childhood service programs. All staff will be required to complete a certified CPR/First Aid and Automatic External Defibrillator training. The cost of that course will be paid for by the provider, which averages \$40-\$80.

The projected costs for DHS associated with the proposed amendments will be the regular rulemaking costs of publishing and mailing notices and printing of new rule books.

#### Consideration of Alternative Methods

The division suggests no alternative methods, because the department is required to update rules at this time, based on federal law and statutory changes. However, the department will consider offering grants to providers for the cost of the trainings.

## MEMORANDUM

**TO:** Jonathan Alm, Director, Legal Advisory Unit

**FROM:** Amy Olsen, Early Childhood Services Administrator, Children and Family Services Division

**DATE:** July 18, 2017

**SUBJECT:** Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1

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The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. Federal law does mandate some of the proposed rules, and state law does mandate some of the proposed changes.

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

### 1. Establishment of Less Stringent Compliance or Reporting Requirements

The minimum standards of compliance have been established to ensure safe care for children enrolled in early childhood services programs. Less stringent standards have not been considered as the majority of the changes are in response to reauthorization of the Child Care and Development Block Grant Act of 2014 and changes made in accordance with 2017 Senate Bill No. 2090.

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

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

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



Yes, simplification of compliance reporting methods has been considered. The annual requirements that providers need to submit have been determined to be necessary for assuring safe care for the children enrolled in early childhood services programs.

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

The proposed amendments do not impose any design standards. There may be operational standards such as policy updates that would need to be addressed due to the rule updates.

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

There are no exemptions contained in the proposed rules.

## MEMORANDUM

**TO:** Jonathan Alm, Director, Legal Advisory Unit

**FROM:** Amy Olsen, Early Childhood Services Administrator, Children and Family Services

**DATE:** July 18, 2017

**SUBJECT:** Small Entity Economic Impact Statement Regarding Proposed Amendment to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1.

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to a proposed amendment to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, 75-03-11.1. Some of the proposed rules are mandated by federal law and others are not. The proposed rules are not anticipated to have an adverse economic impact on small entities.

### 1. Small Entities Subject to the Proposed Rules

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

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

### 2. Costs For Compliance

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

### 3. Costs and Benefits

The probable cost to private persons, consumers and/or providers who are affected by the proposed rules will be the cost of the First Aid, CPR and Automatic Defibrillator training that all staff are required to take within 90 days of hire. The impact on a provider for a late license would vary, depending on the

cost of the license, \$30 - \$100 (for a one year license) or \$70 - \$190 (for a 2 year license).

#### 4. Probable Effect on State Revenue

There is no effect on state revenue projected at this time.

#### 5. Alternative Methods

Most of the proposed revisions are required in response to the reauthorization of the Child Care and Development Block Grant Act of 2014 and a change made to N.D.C.C. chapter 50-11.1 during the 2017 Legislative Session. The division suggests no alternative methods at this time.

## FISCAL IMPACT

The anticipated fiscal impact resulting from the implementation of the proposed amendments is nominal.



Doug Burgum, Governor  
Christopher Jones, Executive Director

### TAKINGS ASSESSMENT

concerning proposed amendment to N.D. Admin. Code chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11 and 75-03-11.1.

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

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

Dated this 18th day of July, 2017.

by:

A handwritten signature in black ink, appearing to be "Christopher Jones", is written over a horizontal line. Below the line, the text "N.D. Dept. of Human Services" is printed.

N.D. Dept. of Human Services