February 1, 2017

Sub Committee on Childcare Access and Affordability

Re: DHS Oversite

Madam Chair and Committee members:

First, I apologize for not being able to attend the hearing and I am hoping that the topic/issues I will address in the testimony pertain to the topic at hand. (I am unable to attend 8:00 am hearings at this point in time.)

It is critical that the oversite of DHS on licensing for Family Childcare providers be improved. As a provider and having conversed with providers from many areas of the state, I would offer that t**his is the topic that makes our following Rule 2 the most problematic for Family Child Care providers**. The system as it is in place is dysfunctional at best, damaging at its worse.

1. **DHS cannot directly oversea the county licensors and their implementation of statute** just as a Target Manager cannot oversea a Walmart employee. State employees cannot oversea a county employee. A county licensor is functioning on their own with a supervisor. Many are performing multiple roles for foster care, child protection, and FCC licensing. Rules are not the same for all of these roles. The county licensor does not report to the state so when they have a question they are more likely to go forward with their perspective or to their supervisor who may likely be even less trained than themselves on the rules. **The licensor should be going to DHS for clarification but many do not**. They do their best and implement interpretation.

**Centers are directly supervised by DHS.** I am not a center to know how this fully plays out for centers but it would appear to give a more direct line of communication to DHS rather than a county licensor in the middle of communication. A state licensor would be more likely to go directly to DHS to ask for clarification prior to implementation than we experience county licensors doing.

1. **Checks and balances:** the ‘correctness’ of a licensor interpretation of a **Rule is primarily the role of the provider.** It is only through appeal and reconsideration requests that a specific Correction Order is brought to DHS for evaluation. (Negative actions are handled differently and communication between the county and DHS is more direct. (However, to providers it appears that DHS would likely take the ‘interpretation’ of a licensor and then evaluate through appeal.)

**This process is problematic:**

1. **Reconsideration of Correction Orders are not timely:** There appears to be no expectation on resolution/evaluation of Correction Orders. Personally, I had a licensor write my business up 5 correction orders. It took 10 months but finally 4 of the 5 were overturned. These correction orders stayed on my entry wall (and would potentially be on the DHS look up if that is implemented) for that time period and my licensor was incorrect.

**Reminder that providers are often not communicated what is expected by DHS prior to a problem.** For example: DHS has made a directive that trainings need to be completed by the end of the month that they were previously taken in. (i.e. SUIDs training taken May of 2015 must be taken by the end of May 2016.) Many providers have never been given this information and therefore are receiving correction orders.

1. **Negative Actions:** even if the provider appeals through the process and is proven ‘innocent’ by the **Administrative Judge, that ruling is only a recommendation back to DHS and not final** **determination**. I know of 3 providers who have had the Administrative Judge rule in their favor and DHS has made a determination to either continue to have the provider shut down, not issue a license or have the provider continue providing care but under a conditional license.

**Guilt or Innocence should not be DHS’s power over an appeal ruling by a judge.**

**Providers would assume, just as any citizen in this country, that by going through an appeal process and before a judge for a ruling that if proven innocent they would be able to continue with their business. That is not the case.**

1. **Communication:** **Clear, consistent communication does not exist from DHS to providers**. Communication as such goes to the county licensor and the state expects the county licensor to communicate and implement the information. There is no apparent expectation by the state that the county licensor communicates this information to providers.

It appears that **only a few counties disseminate this information prior to or at the time of implementation**. The balance of the providers in other counties are left to receive information from other providers when possible, wait until they are written up or corrected by their licensor or ‘ask the licensor’.

**Ask the Licensor** as implemented by DHS is flawed.

1. A provider askes DHS a question
2. DHS communicates with the licensor regarding their interpretation of the law
3. DHS evaluates the licensor answer,
4. DHS communicates the ‘interpretation’ to the provider

**This process:**

1. **Providers are put in the role of “outing” their licensor** which providers are very hesitant to do. This compromises the relationship between the provider and the licensor by triangulating the relationship. Negative reaction from a licensor is possible. Reminder: the state DHS has no role to ensure that this does not happen, they cannot oversee a county employee’s actions.
2. **Providers want an answer from DHS**. There likely is already confusion between the provider and the licensor. We have a right to know what DHS/Rule 2 says.
3. **Inconsistencies** continue: there are situations where providers have experienced an answer by a licensor being given out as ‘the answer’ when the answer is different in another county as that licensor gave a different answer.
4. **Correcting a licensor should not be the provider’s role.**  Providers are at the mercy of a licensor entering our homes and

4. **Review by DHS every 4 years:** This is a file review and not a timely review to correct a licensors misinterpretation of Rule 2. By that time any ability for the provider to ask for reconsideration is long past. It also has been implied and stated casually by licensors that they come under scrutiny by DHS for the number of correction orders they are issuing. Providers believe that an expectation by DHS on the county licensors to issue correction orders is in place, possibly by the process of evaluating their files every 4 years. It could be easy to assume that if a licensor is not issuing many correction orders maybe they are not doing thorough inspections.

**Suggested changes:**

1. **Communication sent to licensors and all updates to Rule 2 interpretation should be sent directly to providers from DHS simultaneously.**  Licensors should not have correct information from DHS that providers do not and therefor the providers are ‘left in the dark’.
2. **Administrative Judge’s ruling be a final decision not a recommendation to DHS.**
3. **“Ask the Licensor” needs to be anonymous and answered by DHS unless there is a reason the question is facility specific.** (DHS can circle back to the licensor to ensure they have correct understanding but they shouldn’t be the ‘first in’ with an answer.
4. **Minnesota consider restructuring licensing from a county implementation to at statewide system or a more direct reporting of county licensor interpretation with DHS.** I’m still not sure what all the ‘down side’ for providers would be, however I do know that then it would be a streamlined communication system between DHS and providers.

**I am aware that there are some proposals by DHS to have more oversite on implementation**, though I’m not clear on what all of these steps may be.

If the state would implement a direct communication with providers so that we knew what was going on and not left in the dark and there was motivation for county licensors to ask DHS when they were unsure then this would give clarity on an immediate need, not at a later date.

**Providers are asking for clear consistent implementation and a fair process**. We do not have that at this point in time. Hence, why I would suggest the numbers leaving FCC are increasing and those entering a diminishing thereby decreasing the overall number of care slots available for parents.

**Reminder that Family Child Care is the affordable method of providing care to families. Any statements about the high cost of child care in Minnesota are based on Center costs, not Family Child Care. Minnesota needs to stabilize this industry to ensure affordable and available child care for families to be able to work and go to school!**

Thank you for your time and effort in this legislative process to ensure that affordable quality child care is available to parents. **By fixing issues within the licensing system you can ensure that providers are more likely to stay in the business and join the industry of providing care.**

Sincerely,

Cyndi Cunningham

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