

HF1508 - 1E - "Modify Child Care Licensing Provisions"

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 Committee: **Health and Human Services Finance**
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 Agency: **Human Services Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
General Fund	-	676	581	581	581
Total	-	676	581	581	581
Biennial Total			1,257		1,162

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2017	FY2018	FY2019	FY2020	FY2021
General Fund	-	8.1	8.1	8.1	8.1
Total	-	8.1	8.1	8.1	8.1

Executive Budget Officer's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with MMB's Fiscal Note policies.

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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2017	FY2018	FY2019	FY2020	FY2021
General Fund	-	676	581	581	581	581
Total		-	676	581	581	581
Biennial Total				1,257		1,162
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	676	581	581	581	581
Total		-	676	581	581	581
Biennial Total				1,257		1,162
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

Section 1 modifies the existing definition of “serious injury” to one that “requires treatment” rather than “is treated” by a physician within chapter 13.

The remainder of the provisions apply only to family child care license holders. Section 1 states that, if a correction order, fine, license suspension, temporary immediate suspension, revocation, denial, conditional license, or final order of a denial (hereinafter “licensing actions”) makes the following data private 1) until a final decision, final order, or resolution is issued with regard to the licensing action and time for appeal expires; and 2) the licensing action was resolved in favor of the current or former licensees or applicants:

- the general nature of the complaint or allegations leading to the temporary immediate suspension;
- the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment;
- the existence of settlement negotiations;
- the record of informal resolution of a licensing violation;
- orders of hearing;
- findings of fact;
- conclusions of law;
- specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action;
- whether a fine has been paid; and
- the status of any appeal of these actions.

In addition, if a licensing action is partially resolved in favor of the current or former licensees or applicants, the above data points are private data on individuals and nonpublic data to the extent that the data relates to the portion of the order that was resolved in favor of the current or former licensees or applicants. A licensing action is considered “resolved” when a final agency decision is issued.

Section 2 is not applicable to DHS

Section 3 modifies the existing definition of “annual” to “during a licensing term, beginning with the effective date and ending the day before the annual anniversary or expiration.”

Section 4 requires that following an inspection or home visit of a family child care provider, an employee must provide written notification of potential licensing violations prior to departure, including conditions that constitute a violation, action required, and time allowed to correct the violation. In addition, the section permits the commissioner to only issue a

licensing violation for a potential licensing violation included in the notification.

Section 5 modifies existing law and states that requesting reconsideration for a correction order stays the requirements of the correction order pending outcome of appeal. In addition, requests for reconsideration would no longer be final and would be subject to appeal under chapter 14. In addition, Section 5 requires an annual report required to chairs and ranking minority members of legislative committees with jurisdiction over human services policy from the previous year that includes the number of licensed FCC appeals of correction orders, the number of correction order appeals granted by DHS, and the number of correction order appeals that DHS denies.

Section 6 requires the commissioner to create and issue a certification of licensors and provide certification training for FCC licensors. As part of the requirements for certification and training, within first 2 months of employment and before “providing oversight and inspection of license holders,” licensors must be certified and complete at least 8 hours of training. The commissioner must develop the training to ensure uniformity and the training must include: explicit instructions that licensors must apply only statutes, rules and department policies, the rights of license holders including grievance and appeal rights; information that it is the responsibility of county staff to make license holders aware of these rights; and the procedure to seek clarification from the department prior to issuing a correction order if there is a dispute between the license holder and the county licensor regarding the applicability of a statute or rule. Section 6 also requires the Department to develop a procedure to implement training and oversight of county staff; DHS must conduct biennial reviews of county licensing performance. DHS must provide notice on new laws and provide the notice to county agencies and FCC license holders. Finally, Section 6 requires DHS to revoke a licensor’s certification if the county licensor engages in any activity that would result in a BGS disqualification, if the licensor refuses to follow proper protocol, and if, by a preponderance of evidence, it is determined that the licensor engaged in unethical or improper behavior towards a license holder, including harassment, stalking, or violating the rights of a license holder.

Section 7 requires DHS to notify affected license holders of changes in statute, rule, federal law, regulation, and policy necessary to county agency administration of the program. Notification under this section may be accomplished by electronic means and must be made available online.

Assumptions

Section 1 has no fiscal impact to the Department as written.

Section 2 is not applicable to the Department as written.

Section 3 has no fiscal impact to the Department as written

Section 4 has no fiscal impact to the Department as written. Training costs for county licensors related to this provision are included in the costs for Section 6.

Section 5, as written, applies to all service classes licensed by the Department of Human Services. DHS does not have data on the number of correction orders issued by county licensors, but we can estimate that number using the number of correction orders issued in child care centers. In CY16, child care licensors conducted 304 licensing inspections and 865 complaint investigations and issued 622 correction orders. Therefore, correction orders were issued approximately 53 percent of the time (622 correction orders divided by 1,169 licensing visits (304 licensing inspections plus 865 complaint investigation)). The child care center licensors were unable to complete reviews on a two-year cycle due to the large number of complaint investigations. However, for purposes of this estimate, we are using a two-year review cycle for the number of licensing visits in lieu of the combined number of licensing visits and complaint investigations for each service class, and we are estimating 53 percent of the licensing visits will result in a correction order.

On February 1, 2017, there were approximately 3,900 directly licensed programs. Based on a two-year review cycle, that equals 1,950 licensing reviews or 1,033 correction orders (53 percent of 1,950 licensing reviews) in directly licensed programs. There are also 14,095 family systems programs. Based on a two-year review cycle, that equals approximately 7,050 licensing reviews or 3,736 correction orders (7,050 reviews times 53 percent). Therefore, the total number of correction orders is 4,769.

In CY16, there were 36 requests for reconsideration of correction orders issued to child care centers or 5.8 percent (36 over 622). With the proposed legislative change, we estimate that the number of requests for reconsideration will double to 10 percent because license holders will have the option to avoid the cost of coming into compliance with correction orders due to the new allowance that any appeal or request for reconsideration stays the requirement to come into compliance with an issued correction. Assuming that the rate for request for reconsideration applies across all license holders, of the 4,769 correction orders issued, the Department would anticipate 477 requests for reconsideration under the proposed

language. Approximately one-half or 240 of the requests for reconsideration will be due to the legislative change.

It is estimated that each request for reconsideration will take 4 hours for an independent review by a DHS attorney which includes reviewing the licensing order, the documentation or comments submitted by the license holder, reviewing statutory and rule language cited in the violation, and writing a decision to either affirm or rescind the licensing violation. If 240 new requests are due to the legislation and it takes 4 hours per independent review, that is 960 hours, or approximately one-half of an FTE (attorney) to complete the reconsiderations (\$65,000 first year and \$58,000 the second and subsequent year State Program Admin Coordinator MAPE 14G-18-8). It is estimated that 75 percent of the requests for reconsideration will be upheld in whole or in part or 180 decisions affirming the correction order (240 times 75 percent). This will result in the potential for 180 appeals for a contested case hearing.

It is estimated that 25 percent of the license holders will request a contested case hearing. Therefore, there will be 45 requests for a contested case hearing (25 percent times 180 decisions). It is estimated that 45 contested case hearings will result in 8 billable hours per contested case from the Office of Administrative Hearings at a rate of \$170 per hour, charged to the Department. The total estimated OAH costs is \$61,200 (45 contested case hearings times 8 hours per hearing times \$170 per hour).

Office of General Counsel (OGC) would anticipate that allowing appeal of the commissioner's disposition of correction orders will result in a higher number of requests for reconsiderations because correction orders remain on the licensing record indefinitely and serve as a basis for more severe sanctions. Reviewing the appeal of a correction order will likely and generally require significantly less time than required for other matters.

OGC estimates that the proposed change would result in a need for at least .6FTE, taking into account the complexity of the issues and the potential number of appeals. .6FTE is based on the assumption that (1) OGC would receive approximately 45 correction order appeals per year (as predicted by the Licensing Division), combined with (2) OGC's estimate of the FTE required to administer the current appeal workload specifically for family child care licensing. The estimate of the number of potential appeals per year as a result of the new legislation is highly speculative.

Section 6. This analysis assumes Section 6 is intended to improve the consistency, oversight and transparency between DHS, county licensors, and family child care providers by developing and implementing a new model for training and monitoring county licensing staff for baseline knowledge and consistent application of pertinent rules and statutes, especially when conducting an onsite interview. In order to accomplish this level of oversight and training, 7 additional FTEs are needed (6 MAPE 14L, 1 MMA 16E).

Subparts (a) and (b) require the creation of a certification for county licensors and associated training. Several of the training requirements in this section are already included in a six-hour Licensing 101 training that is currently offered on a quarterly basis. An additional six-hour course will need to be developed to provide training on the remaining items. The six hour length is based on a training that DHS has provided Ramsey County licensors. Because the bill requires the training be completed within the first two months of employment, both six-hour trainings will need to be offered monthly. Two DHS Family Systems licensing trainers conducted 39 trainings in 2014 and 47 trainings in 2015 representing 126 and 242 hours of classroom time. Approximately 50 percent of the trainings were specific to family child care licensors while others included other licensed areas. It is assumed that training on issuing the notification to provider as required by Section 4 would be included in this training. Based on this analysis, an additional FTE would be needed to supplement this team to provide family child care specific, monthly trainings across the state. This FTE would also develop the new six-hour training. Additionally, each year new laws are enacted or adopted, they will need to develop written notices to county agencies and incorporate those changes into all training.

Subpart (c) requires the commissioner to develop a procedure to increase training and oversight of county staff, including performing biennial reviews of county licensing performance. There are approximately 141 county licensors overseeing more than 8,500 family child care license holders. Currently, DHS evaluates county performance for compliance with rules and statutes once every four years. This analysis estimates that 5 FTEs dedicated in the Licensing Division are needed to change this review to once every two years. This represents a caseload of approximately 1 FTE to 30 individual county licensors. The additional FTEs would increase consistency among county licensors by having sufficient staff available to provide ongoing technical assistance, training and completing annual reviews of each individual county licensors work. The annual reviews would include at least one in-field observation of each licensor while conducting an inspection including a final exit interview, auditing a sample of each licensors files each year, and technical assistance on prioritization of violations, application of rules and statutes, and conducting exit interviews with licensed providers. Additionally, DHS staff would review across all county licensor licensing practices to identify areas of concern, as well as opportunities for training and clarification on interpretations of rule or statute.

Subpart (d) is duplicative of Section below. This analysis assumes that the requirements of subpart (d) would be met by completing the requirements of Section 7 and, therefore, those costs are not replicated here.

The Department assumes that, because county licensors are employees of their respective counties, the costs associated with evaluating licensor job performance would impact the counties rather than the Department. Therefore, Subpart (e), which requires the commissioner to revoke the certification of county child care licensors in various circumstances, would have no direct fiscal impact to the Department.

Section 7, as written, applies across services licensed by the Department of Human Services. As of March 1, the Department has 20,571 individual license holders with whom it would need to communicate under this provision. The Department currently communicates with directly license holders via email at least annually for notification of license renewal. DHS assumes that it would continue to communicate with directly licensed license holders through email to meet the requirements of this section, in addition to posting these communications to the Department website.

Expenditure and/or Revenue Formula

Sec. 5.

Attorney Review of Requests for Reconsideration

- 4 hours of attorney review time * each request for reconsideration
- 4 hours of attorney review time * 240 new requests for reconsideration = 960 hours of review time
- 960 equals approximately .5 FTE (2,080 hours minus 88 hours holidays, 80 hours annual leave, 40 hours sick leave/dental/medical appointments minus 32 hours OIG/Divisional meetings minus 50 hours unit meetings minus 24 hours training = 1,766 hours) $960/1,766 = .54$
- Attorney = State Program Admin Coordinator MAPE 14G-18-8 \$77,590 salary plus 30 percent benefits and fringe. First year administrative costs are \$29,000 (100 percent charged even though .5 FTE and .6 FTE. Second year administrative costs are 50% of the ongoing administrative costs of \$14,500.
- 1.1 FTEs attorneys = \$168,954 first year and \$126,904 second year.

Correction orders upheld following request for reconsideration

- 75% of all requests for reconsideration will be upheld by the commissioner
- 240 requests for reconsideration * 0.75 = 180 findings that may be appealed under proposed language

Contested hearing requests following the commissioner upholding correction order findings

- 25% of all affirmed correction orders will result in a contested case hearing
- 180 affirmed correction orders * 0.25 = 45 contested case hearings

Contested case hearing cost

- 1 contested case hearing = 8 hours of time by Office of Administrative Hearings
- 1 hour of time by Office of Administrative Hearings = \$170 billed to the Department of Human Services
- 45 contested case hearings * 8 hours of Office of Administrative Hearings time = 360 hours billed by the Office of Administrative Hearings
- 360 hours * \$170 charge per hour = \$61,200 cost of contested case hearings under the proposed language

Section 6

- DHS licensor (MAPE 14G-12-7) \$60,552 salary plus 30 percent benefits and fringe, \$29,000 first year / \$14,500 second year administrative costs plus \$2,000 travel, plus cell phone (\$1,320 first year and \$720 second year), plus \$100 training). Total first year \$111,138 x 6 FTEs = \$666,826. Total second year \$96,038 x 6 FTEs = \$576,226
- Unit Supervisor (MMA State Program Admin Director 16E-21-10) \$86,151 salary plus 30 percent benefits and fringe, \$29,000 administrative costs first year / \$14,500 second year administrative costs, plus \$1,000 travel, plus cell phone (\$1,320 first year and \$720 second year)
- Total = \$143,416 first year and \$128,316 second year.

Fiscal Tracking Summary (\$000's)						
Fund	BACT	Description	FY2018	FY2019	FY2020	FY2021
GF	11	General fund expenditures	1,040	893	893	893
GF	REV1	Federal Financial Participation 35%	(364)	(312)	(312)	(312)
		Total Net Fiscal Impact	676	581	581	581
		Full Time Equivalent	8.1	8.1	8.1	8.1

Long-Term Fiscal Considerations

None.

Local Fiscal Impact

Counties may experience additional costs to issue notices of anticipated correction orders at the time of inspection, in addition to additional human resources or legal costs in relation to the licensor certification revocation provisions under section 6, subpart (e).

References/Sources

Department of Human Services Licensing Information Lookup; Department of Human Services Licensing Information System.

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