

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfried at 1:30 P.M. on March 25, 2008, in Room 313-S of the Capitol.

All members were present except Representative Dale Swenson
Representative Benjamin Hodge

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Jason Long, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Conferees:

Representative Knox
Representative Otto
Mary Vanhooser, TLM Childcare
Chris Ross-Baze, Child Care Licensing and Child Care Registration
Tom Krebs, Governmental Relations Specialist, Kansas Association of School Boards
Eldonna Chesnut, Kansas Public Health Assn.
Nancy Jensen, City of Wichita, Licensing Program
Catherine Gray
Deb Crowl, Administrator for Emporia Child Care
Nancy Jensen, Supervisor Child Care Program for the City of Wichita

Others attending:

See attached list.

Subcommittee report on HB 2003, HB 2053, HB 2851 and HB 2728 by Representative Knox.

Mike Heim, Revisor of Statutes, gave an overview of HB 2972, including a balloon which corrects content unintentionally omitted from the drafting of the bill.

After answering questions from the Committee, the Chair opened the public hearing on HB 2972 - Child care facilities; family day care homes.

Representative Knox gave a subcommittee report of HB 2003, HB 2053, HB 2728 and HB 2851. Representative Knox stated that there seems to be more of a problem with rural areas than urban areas. KDHE has already recognized the problems and has been doing a fine job reaching out for suggestions and taking initial steps to resolve these issues. KDHE reported to the subcommittee about policy exceptions developed and currently being implemented after they conducted their best team listening tours.

Action of the child care subcommittee has been introduced and includes:

Using the actual birthday of a 5 year old rather than the definition of "Kindergarten age" when defining capacities for various ages.

Incorporating HB 2728; child care facilities in schools.

Rules and regulations developed for doubling of capacity of family day care homes with two licensed adults present and with adequate space.

Exceptions on sleeping distances for multiple birth children when requested by a parent.

Requiring courteous and professional inspections as specified in a code of conduct developed in

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 25, 2008, in Room 313-S of the Capitol.

rules and regulations and including a discipline process, with no inspection of private areas of the home unless accompanied by the licensee.

Required that a copy of the code of conduct together with discipline procedure provided to all licensees. ([Attachment 1](#))

Representative Otto spoke briefly as a proponent to **HB 2972**. He explained that his intent is to have a good educational program without the interference of KDHE. Doubling the amount of children allowed would help in rural areas. He stated that it is hard for rural areas to comply with the regulations. He strongly supports this bill and asked the Committee to support **HB 2972**. (No written testimony submitted)

Mary Vanhooser was welcomed to the Committee by the Chair as a proponent to **HB 2972**. She stated that the limitation of child care providers is being experienced in the urban setting as well as rural areas. She stated that most parents are concerned about the number of adults supervising their children, not the amount of children. She stated that if you add a five year old child to the mix, this is not a problem. She offered to work with the state and KDHE to use their child care home as a pilot program for this idea. ([Attachment 2](#))

Tom Krebs, Governmental Relations Specialist, stood as a proponent to **HB 2972**. Mr. Krebs stated that a significant part of the bill directly affects our members' ability to offer services to their patrons, which is the part of the bill KASB strongly supports. ([Attachment 3](#))

Christine Ross-Baze, Director, Child Care Licensing and Registration Program, stood opposed to the bill and requested that the Committee not move this bill this session and give KDHE the opportunity to take a look at it and come back next year with suggested statute changes or, if necessary, possible updates to their own policies. In conclusion she stated that some of the issues here today have merit, but that the issues are very complicated and may have some unintended consequences. ([Attachment 4](#))

The Committee asked questions regarding retribution from the Department on daycare providers and the professional conduct of the caseworkers.

Speaking in answer to a question regarding sleeping regulations, Ms. Ross-Baze stated one of the issues was spreading communicable diseases and also the danger of an infant rolling over on another and suffocating the child.

Ms. Ross-Baze was asked to explain the tiers of inspection and due process hearings.

The Kansas Public Health Association was represented by Eldonna Chesnut as an opponent to **HB 2972**. Ms. Chesnut asked the Committee to please remember that there is a provision in place for verification of what providers are stating occurred regarding regulations written, fines, etc. She stated that everyone can access the childcare licensing files by filing an open records request. ([Attachment 5](#))

Nancy Jensen, Supervisor Child Care Program for the City of Wichita, stood in opposition to **HB 2972**. She stated that **HB 2972** has many elements not consistent with best management practices for regulated child care facilities and contains provisions that appear to already be included within the current KDHE policies and procedures. ([Attachment 6](#))

Catherine Gray, concerned citizen, shared her concerns with the Committee regarding **HB 2972**. She said that although she supports the rights of school districts and non public schools to provide child care, that they should abide by specific conditions. She suggested that the course of action for this Committee is to support KDHE in regulating any and all forms of child care. ([Attachment 7](#))

Deb Crowl, Administrator for Emporia Child Care came before the Committee as an opponent to

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HB 2972. Ms. Crowl stated that she is a supporter of regulations. She opined that regulations are based on research and provide essential health and safety guards for children in care. Increasing the number of children especially at key times when parents and children are coming and going, increases the risk of harm to children. She asked the Committee to allow the Best Team to complete their work concerning regulations. (Attachment 8)

Written testimony only was provided by Jody Smith, City-Cowley County Health Department. (Attachment 9)

The Chairman closed the public hearing on **HB 2972**.

The Chair recognized Representative Judy Morrison to speak on **HCR 5033**. Representative Morrison offered a balloon on HCR 5033, seconded by Representative Powers. Motion passed.

Representative Morrison moved HCR 5033 as amended favorable for passage, seconded by Representative Peterson. The motion passed.

Chairman Siegfried adjourned the meeting. The next meeting will be March 25, 2008, at 5:00 p.m. in Room 313-S.

House Federal and State Affairs Guest list

Date 3/25

Name

Organization

Catherine Gray

Growing Minds Child Care / KAEC

Diane Purcell

Kansas Association for the Ed. of Young Children

Holly Turner

Kansas Assoc for Ed of Young Child.

Eldonna Chesnut

Johnson County Public Health

Amy Warkentin

Johnson County Health Dept. ^{KPHA}

Kathy Griffin

Johnson County Health Dept.

Chris Fox Beze

KOHE - CCLR

Josh Koel

KOHE - BRCE

Gamy Jensen

City of Wichita Environmental Services

Dale Doter

City of W. ch

Deb Crowl

Emporia Child Care

Doug Bowman

CCECOS

Cindy D'Ercole

KAC

Nathan Milburn

Steineger Legislative Assistant

Jane Carter

AFSCME

Don Zavadny

AFSCME / CCPT

Mary Vanhooser

TLM Childcare

Mike Taylor

UG

Kim Wint

LKM

Judy Maler

KAC (Ks. Assn of Counties)

Trent Sebitts

AFP

House Federal and State Affairs
Guest list

Date 3/25/08

Name

Organization

Dick Morrissey - KDHE

Katie Gubau

Tom Kutz

Ron Seebert

Michelle Schroeder

Kearney Associates

ICAB

Hein Law Firm

Danrou GWA Relations

**Report from
The Federal and State Affairs Subcommittee on
Children's Day Care
HB2003, HB2053, HB2728, HB2851**

The subcommittee met on numerous occasions and heard from many people about child day care in Kansas. This included K. D. H. E. personnel and city/county regulators and surveyors. We heard from both rural and urban areas about numerous situations.

Many child day care providers contacted us from across the state with positive and negative evaluations. At least six legislators shared encounters with constituents relative to state regulation of child day care. The contact list of interested parties who have given input of one kind or another exceeds fifty names. All of these had one thing in common, a desire to better care for the needs of Kansas children.

It seems clear that a child day care crisis exists in this state. As many as 70,000 Kansas children are in need of good, legal, available, affordable day care but are without it. This situation far exceeded the scope of the subcommittee. A few initial actions are recommended to the committee and are listed in **HB2972**, with a cleanup amendment needed which will follow. However, this situation is large and complex and deserves much more attention.

K. D. H. E. has already recognized the problem and has been doing fine work reaching out for suggestions and taking initial steps to resolve these issues.

K. D. H. E., Bureau of Child Care and Health Facilities, reported to the subcommittee about policy exceptions developed and currently being implemented after they conducted their Best Team listening tours.

Three of these exceptions relating to increases of allowed number of children are attached.

K. D. H. E. also notified us of the existing process to request other exceptions on a case by case basis.

K. D. H. E. is also studying long term revisions of regulations concerning group size, child staff ratios and age ranges.

K. D. H. E. maintains successful partnerships to regulate local child care providers with local city (Wichita) and county (Johnson County) organizations, which are substantially funded locally.

However, it appears that significant problems exist currently in some rural areas of the state.

K. D. H. E. has committed to formalizing pilot programs to experiment with new groupings for small centers to address capacity issues and local community needs. Improvements in communication between providers, surveyors and the Department in rural areas are a recognized need.

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Attachment /

K.D.H.E. is making great strides to address existing problems and has committed to reporting back to the legislature on these efforts of comprehensive reform as they gain experience with the changes they are implementing.

Action of the child care subcommittee has been introduced as **HB2972** and includes:

- Using the actual birthday of a 5 year old rather than the definition of “kindergarten age” when defining capacities for various ages.
- Incorporating HB2728; child care facilities in schools.
- Rules and regulations developed for doubling of capacity for family day care homes with two licensed adults present and with adequate space.
- Exceptions on sleeping distances for multiple birth children when requested by a parent.
- Requiring courteous and professional inspections as specified in a code of conduct developed in rules and regulations and including a discipline process, with no inspection of private areas of the home unless accompanied by the licensee.
- Required that a copy of the code of conduct together with discipline procedure be provided to all licensees.

Administrative Policy and Procedure Manual
Kansas Department of Health and Environment
Bureau of Child Care and Health Facilities

Policy: Exception to Exceed the Licensed Capacity for School Age Children

Program CCLR – Early Care and Youth Programs Section 2008 - 001

Applies to: Licensed Day Care Homes and Group Day Care Homes

Effective Date: March 10, 2008

EXCEPTION TO EXCEED THE LICENSED CAPACITY TO PERMIT 2 ADDITIONAL CHILDREN, KINDERGARTEN AGE TO 11 YEARS OF AGE TO BE IN CARE

I. POLICY

An exception is granted to K.A.R. 28-4-114(e)(1), (f)(1) and (h) to allow the licensed capacity to be exceeded to permit two additional children, kindergarten age to 11 years of age, to be in care between the hours of 6:00 AM and 6:00 PM as follows:

1. During the academic school year before and after school, in-service days, school holidays, emergency school closures such as snow days and school breaks not to exceed two consecutive weeks; and
2. During the two consecutive weeks prior to the opening of the academic school year in August/September and following the end of the academic school year in May/June.

A second caregiver, 16 years of age and older, shall be in attendance with the children in a licensed day care home when 3 children under 18 months of age are in care during the time the licensed capacity is exceeded.

Parents of children in care shall be informed if the licensed capacity will be exceeded pursuant to this policy.

This exception shall be posted next to the license.

Note: In some cities and counties local codes and ordinances may not permit the licensed capacity to be exceeded. Before caring for additional children under this policy, check with your local code office to determine if caring for additional children will violate local code requirements.

II. PROCEDURES

This exception is effective as of the date stated above and remains in effect unless the Department determines the exception is no longer in the best interest of children and families. If a licensee is found in noncompliance with this exception policy on more than one occasion, the department may expire the exception, in writing, for that licensee.

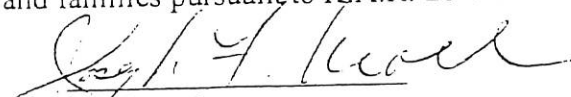
III. PURPOSE

The purpose of this exception is to provide greater capacity in licensed day care homes and group day care homes to care for children kindergarten age to 11 years of age during the school year, right before school starts and right after school lets out for the summer.

IV. AUTHORITY

The Secretary of the Kansas Department of Health and Environment has the authority to grant exceptions to regulations when it is in the best interest of children and families pursuant to K.A.R. 28-4-119b.


Program Director


Bureau Director

Administrative Policy and Procedure Manual
Kansas Department of Health and Environment
Bureau of Child Care and Health Facilities

**Policy: Exception to Exceed the Licensed
Capacity for Children 11 Years of Age and Older**

Program CCLR – Early Care and Youth
Programs Section 2008 -002

Applies to: Licensed Day Care Homes and
Group Day Care Homes

Effective Date: March 10, 2008

EXCEPTION TO EXCEED THE LICENSED CAPACITY FOR CHILDREN 11 YEARS OF AGE AND OLDER UNRELATED TO THE CHILD CARE PROVIDER

I. POLICY

An exception is granted to K.A.R. 28-4-114(e)(2), (f)(2) and (h) to not include a maximum of two children, 11 years of age and older unrelated to the child care provider, in the licensed capacity under the following circumstances:

1. The child or children are not on the premises for the purpose of receiving child care in the day care home; and
2. The child or children are friends of the provider's own child and are on the premises no longer than 2 hours a day visiting during child care hours.

Parents of children in care shall be informed if children, 11 years of age and older, are permitted to visit during child care hours pursuant to this policy. When children who are visiting have access to children in child care they shall be supervised.

This exception shall be posted next to the license.

Note: In some cities and counties local codes and ordinances may not permit the licensed capacity to be exceeded. Before caring for additional children under this policy, check with your local code office to determine if caring for additional children will violate local code requirements.

II. PROCEDURES

This exception is effective as of the date stated above and remains in effect unless the Department determines the exception is no longer in the best interest of children and families. If a licensee is found in noncompliance with this exception policy on more than one occasion, the Department may expire the exception, in writing, for that licensee.

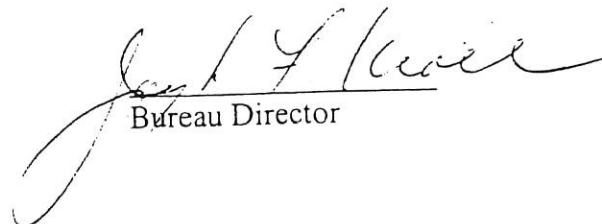
III. PURPOSE

The purpose of this exception is to provide flexibility in licensed day care homes and group day care homes so that older children of the child care provider may have friends over during child care hours and the provider does not have to include the friends in the licensed capacity.

IV. AUTHORITY

The Secretary of the Kansas Department of Health and Environment has the authority to grant exceptions to regulations when it is in the best interest of children and families pursuant to K.A.R. 28-4-119b.


Program Director


Bureau Director

**Policy: Exception to Exceed the Licensed
Capacity During the Noon Hour**

Applies to: Licensed Day Care Homes and
Group Day Care Homes

Effective Date: March 10, 2008

**EXCEPTION TO EXCEED THE LICENSED CAPACITY DURING THE NOON HOUR FOR 2
ADDITIONAL CHILDREN ATTENDING PART-DAY PRESCHOOL OR PART-DAY
KINDERGARTEN**

I. POLICY

An exception is granted to K.A.R. 28-4-114(e)(1), (f)(1) and (h) to exceed the licensed capacity for one hour over the noon hour to permit 2 additional children, 3 years of age and older who attend part-day preschool or part-day kindergarten to be in care on days school is in session.

A second caregiver, 16 years of age or older, shall be in attendance in a licensed day care home when 3 children under 18 months are in care during the time the licensed capacity is exceeded.

For the purpose of this exception, “preschool” includes any of the following: a preschool licensed by the department, a preschool operated by a private school exempt from department regulation pursuant to K.A.R. 28-4-422(a)(2) or a preschool operated by a Unified School District.

Parents of children in care shall be informed if the licensed capacity will be exceeded pursuant to this policy.

This exception shall be posted with the license.

Note: In some cities and counties local codes and ordinances may not permit the licensed capacity to be exceeded. Before caring for additional children under this policy, check with your local code office to determine if caring for additional children will violate local code requirements.

II. PROCEDURES

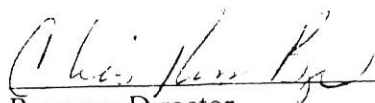
This exception is effective as of the date stated above and remains in effect unless the Department determines the exception is no longer in the best interest of children and families. If a licensee is found in noncompliance with this exception on more than one occasion, the department may expire the exception, in writing, for that licensee.

III. PURPOSE

The purpose of this exception is to provide greater capacity and flexibility in licensed day care homes and group day care homes to care for children who attend part-day preschool or part-day kindergarten during the school year when school is in session.

IV. AUTHORITY

The Secretary of the Kansas Department of Health and Environment has the authority to grant exceptions to regulations when it is in the best interest of children and families pursuant to K.A.R. 28-4-119b.


Program Director


Bureau Director

1 (b) Every assessment of a family day care home under this section
2 shall be conducted in a courteous and professional manner. Assessments
3 shall be administered in a manner so that all homes assessed are treated
4 fairly and assessed on an equal basis without a quota for citations. No
5 assessments shall be conducted in areas of the home not used for business
6 purposes, unless the person conducting the assessment is accompanied by
7 the person registered to operate the home or person in charge of the home.

8 Sec. 5. K.S.A. 65-522 is hereby amended to read as follows: 65-522.
9 The secretary shall adopt rules and regulations to implement the regis-
10 tration provisions of K.S.A. 65-516 to 65-522, inclusive. Any limitation on
11 sleeping distances for children in family day care homes shall not apply
12 to twins or other multiple birth children when so requested in writing by
13 a parent or guardian.

14 New Sec. 6. Pursuant to this act, the secretary of health and envi-
15 ronment shall adopt rules and regulations to provide:

16 (1) A code of conduct for inspectors which includes a process for the
17 discipline of inspectors and termination of inspectors in appropriate
18 circumstances;

19 (2) a special rule dealing with twin or other multiple birth children
20 who are in day care facilities;

21 (3) provisions to allow for double the capacity of children in each
22 category in a family day care home if there is a ~~additional adult~~ caregiver
23 and if the home has appropriate the amount of space available; and

24 (4) the definition of a ~~five year old~~ child shall reflect the child's
25 birthdate.

26 Sec. 7. K.S.A. 72-8236 is hereby amended to read as follows: 72-
27 8236. (a) The board of education of any school district may: (1) Establish,
28 operate and maintain a child care facility; (2) enter into cooperative or
29 interlocal agreements with one or more other boards for the establish-
30 ment, operation and maintenance of a child care facility; (3) contract with
31 private, nonprofit corporations or associations or with any public or pri-
32 vate agency or institution, whether located within or outside the state, for
33 the establishment, operation and maintenance of a child care facility; and
34 (4) prescribe and collect fees for providing care at a child care facility.

35 (b) Fees for providing care at a child care facility established under
36 authority of this section shall be prescribed and collected only to recover
37 the costs incurred as a result of and directly attributable to the establish-
38 ment, operation and maintenance of the child care facility. Revenues from
39 fees collected by a board under this section shall be deposited in the
40 general fund of the school district and shall be considered reimburse-
41 ments to the district for the purpose of the school district finance and
42 quality performance act and may be expended whether the same have
43 been budgeted or not and amounts so expended shall not be considered

licensed

Kindergarten age

fifth

birthday

(5) A copy of the code of conduct and the disciplinary procedure shall be given to all licensees.

Testimony on HB2972

Mary Vanhooser
TLM Childcare
Overland Park, KS
March 19, 2008

Good afternoon, I am here today to discuss why HB2972 will benefit children in Kansas and improve the quality of child care across the state. I have worked with children for more than 7 years and have run a group child care home for more than 3 years. My business partner and I have helped raise more than a dozen children, many of whom we have had from infancy through Kindergarten.

I want to address to specific aspects of HB2972 that I have personal experience with, although, I generally support all aspects of the bill.

First, I want to address the fiscal age of Kindergarten children. As the law is currently written, children who turn 5 after August 31 do not count as 5 (or school age) until the following June. This causes a hardship for parents and child care providers because these 5 year olds must be counted in the toddler age group. Parents pay more for children in the toddler age group, so they must pay higher rates for a longer period of time. The toddler age group for child care currently ranges from 18 months to the fiscal 5. Clearly there is a huge difference in the level of care children need in that age group and 5 year olds quickly become helpers for the smaller children. Allowing 5 year olds to count as Kindergarten age on their birthday instead of fiscally will provide parents with a child care cost savings, will allow older children to stay with provider they have built a relationship with, and allow providers to take in an additional toddler or two, helping to alleviate some of child care shortages we face.

Secondly, I want to look at developing new rules and regulations that would allow two licensed professional child care providers to join together and have double the capacity that two providers have separately. Right now, if I left my partner and did care in my own home we could have 6 more children separately than we can together. I have truly thought of buying the house next to my partner so we could take the children currently sitting on our waiting list. To me, it just seems ridiculous that if we separate our business and take away another adult supervisor we can actually care for more children.

We would love to be able to serve up to 16 children and are willing to hire a 3rd part-time helper to help with the most stressful parts of the day, including lunch and nap. If we look at the current regulations, 1 person can care for 3 infants, 3 toddlers and 2 school age children. Therefore 2 adults should be able to care for 6 infants, 6 toddlers and 4 school age children, and in many cities across the state 2 adults do care for this amount of children, they just do so in 2 separate houses.

We would be willing to work with the state and KDHE if they would like to use our child care home as a pilot program for this idea. We are willing to take additional training hours, if needed. The parents who have chosen our child care home have told us many times that they went with us because we have two adult supervisors with their children at all times. They appreciate that level of additional care. They know that their tiny baby will be able to be held while the other adult cooks lunch. They know that in case of an emergency, action can immediately be taken without other children losing supervision. They appreciate that one of us can take vacation or sick time without having to close the entire facility.

Thank you for listening today. I hope action on these issues can be taken quickly.

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March 25, 2008

Attachment

2

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on **HB 2972**
before the
House Federal and State Affairs Committee
by

Tom Krebs, Governmental Relations Specialist
Kansas Association of School Boards

March 25, 2008

Good Afternoon, Mr. Chairman and members of the committee. Thank you for this opportunity to offer the KASB perspective on **HB 2972**.

A significant part of the bill directly affects our members' ability to offer services to their patrons, which is the part of the bill KASB strongly supports. Originally the language of **HB 2728**, the bill would allow any district the ability to offer child care programs using their own expertise and capacity for oversight and monitoring rather than having to duplicate duties with the Kansas Department of Health and Environment.

KASB believes the portion of the bill dealing with school districts and their ability to develop child care settings has the major impact of increasing the advantages associated with local control. First, it is permissive in that only districts that choose to pursue those responsibilities will be charged with them. A district that wants to continue to partner with KDHE would be allowed to do so. Only larger districts or those that have banded together to provide services are the ones likely to take on the additional challenges. Generally, that would only happen if they believe they have the capacity to do so, and there would be a corresponding increase in administrative efficiency associated with the initiative.

We are neutral on the other proposed amendments to the statute, but the reality is districts that take on their own programs would be in a much better position to ensure professional visitations by inspectors as they would be district employees. Nonprofessional performance could efficiently be dealt with through existing supervision practices.

Thank you for your consideration, and I'd be happy to stand for questions.

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Attachment 3



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Health

Testimony on HB 2972

Presented to
House Committee on Federal and State Affairs
By
Christine Ross-Baze, Director
Child Care Licensing and Registration Program

March 19, 2008

Chairman Siegfried and members of the Committee on Federal and State Affairs, my name is Christine Ross-Baze and I am the director of the Child Care Licensing and Registration Program at the Kansas Department of Health and Environment. Thank you for the opportunity to appear before you today regarding House Bill 2972.

I have appreciated the opportunity to present before the Subcommittee on Day Care concerning the work the Department is undertaking to comprehensively review the child care statutes, policies and procedures in the child care licensing program. The Department, based on recommendations from the members of the Child Care Licensing Systems Improvement Best Team (Best Team), has already begun addressing many of the most pressing issues presented before the Committee this session and in the Listening Tours conducted in late 2007. The Department, by working through issues in the Best Team, will continue to tackle additional challenges using a thoughtful, research-based, consensus building process that balances child safety and well being with the market place realities facing child care providers in offering services that are available, affordable and accessible.

The Best Team membership includes day care home and center based providers, parents, educators in higher education, KACCRRRA, Child Care Providers Together and AFSCME, Child Care Providers Coalition, the Kansas Association for the Education of Young Children, Head Start, local health department surveyors and administrators, SRS and the Department of Education. The members of the Best Team are in the trenches every day and represent the leaders and experts in the child care field.

House Bill 2972 proposes to make a number of amendments to the Child Care Act affecting all the child care programs licensed and registered by the Department. While some of the provisions of HB 2972 have merit, the issues are very complicated and may have unintended consequences.

BUREAU OF CHILD CARE AND HEALTH FACILITIES CHILD CARE LICENSING AND REGISTRATION PROGRAM
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 200, TOPEKA, KANSAS 66612-1074

Voice 785-296-1270 Fax 785-296-0803

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March 25, 2008

Attachment - 4

The Department would appreciate the Committee not making any changes to the Child Care Act this session to give the Best Team the opportunity to thoughtfully and comprehensively look at the child care statutes, policies, procedures and licensing requirements in order to make recommendations to policy makers for necessary changes.

In reviewing House Bill 2972 the Department has the following comments:

1. Concerns exempting certain services programs and services from child care licensing requirements and amending K.S.A. 65-501 and K.S.A. 72-8236.

K.S.A. 72-8236 authorizes Boards of Education to establish, operate and maintain or enter into agreements to establish, operate and maintain child care facilities. These child care facilities are required to be licensed by KDHE under child care statutes to provide protections for children and parents and to provide a level playing field with community based child care facilities so that the same requirements must be met by all entities wanting to open a child care facility.

The Department of Education does not have statutory oversight of child care facilities in public or private schools so exempting child care facilities from child care licensing requirements will reduce the protections parents and children currently have through the licensing process. Routine health and safety inspections and complaints of poor child care practices and unsafe conditions will no longer be authorized or conducted.

While the bill requires criminal history background checks, it does not prohibit persons with certain convictions from working in the child care program nor does it require a check of the SRS Child Abuse and Neglect Registry. Child care licensing requirements do prohibit persons with certain convictions and validations of child abuse from working with children.

The Department of Education and the Department of Health and Environment have written guidelines that are used by local school districts to determine what programs are considered educational instructional programs subject to education statutes and requirements and what programs are considered child care facilities subject to child care licensing statutes and requirements. If the intent of the bill is to exempt educational instructional programs authorized by statutes governing education from child care licensure then this amendment is not necessary as they are already not subject to child care facility licensure.

Some examples of child care facilities that are licensed by KDHE in school settings are infant toddler programs that care for children of parents who are students of the school district and child care programs caring for teacher's children while the teachers are at work. In some circumstances private entities and community organizations operate before and after school programs on the school premises during the school year and on no school days to meet the needs of working families. Some accredited non-public schools, in addition to kindergarten through grade 12, also operate full day child care centers for infants, toddlers or preschool age children. These centers may or may not be on the premises of the accredited school. Accreditation standards would not apply to the child care center, so in effect there is no oversight or protections for parents.

The Department does not support the proposed statutory amendments as written and requests consideration be given to having this issue be addressed through the Best Team process.

2. Amending KSA 65-508 and K.S.A. 65-522 Sleeping Distance for Twins and Multiple Births when requested by Parents

This issue can currently be addressed on an individual basis through the Department's exception procedure and a statutory amendment is not necessary to accommodate requests of this type. In the long term the Department can address this issue through the regulation revision process as recommended in proposed New Section 6 of this bill.

The Department does not support amending the statutes to include this language.

3. Amendments to K.S.A. 65-512 and K.S.A. 65-520 regarding Inspections.

House Bill 2972 proposed to amend K.S.A. 65-512 and K.S.A. 65-520 to require inspections be conducted in courteous and professional manner and that the inspections are fair, equal and without quotas for citations. It proposes to limit the Department's ability to inspect only those parts of the facility used in the business unless accompanied by the licensee or person in charge. Further it proposes to subject any inspector to discipline if the inspector violates these provisions.

The Department does expect that inspections be conducted in a courteous and professional manner and that the inspections be fair, equal and without quotas. Inspectors are subject to the same personnel policies as all other employees in their agencies. The Department believes this provision is unnecessary in statute as employee conduct is already appropriately addressed in agency personnel policies and inspectors should not be singled out for discipline differently than other employees. The majority of inspectors are not KDHE employees. The majority are inspectors employed by local health departments and private child placing agencies. All these entities have personnel policies governing employee conduct. When an inspector is alleged to have behaved unprofessionally or not conducting the inspection in accordance with expectations, the complaint is referred to their supervisor for appropriate action. If the inspector erred, additional training and supervision is often the most effective way to address concerns.

Child care inspectors have a difficult job. They have to investigate complaints in which the provider is known to have a criminal history, accused of abusive behavior or is high on illegal drugs. The training they receive and their background in public service all support good customer service. However, inspectors are human beings and occasionally err either in procedure or in responding to a difficult situation. A statutory provision singling them out for discipline will make it difficult to find qualified individuals to do the job.

The bill does not contain a provision requiring the licensee or person in charge to, upon the request of the inspector, take the inspector to view the parts of the facility not used for the business. Without this added requirement, the licensee or person in charge can refuse to accompany the inspector. Unfortunately inspectors have been told certain areas were not used for child care but have found children hidden in these areas, have found meth labs, unlocked loaded guns, illegal drugs and fire safety concerns affecting the safety of the children.

The Department requests that consideration be given to allow the Best Team to address inspection protocols and the conduct of inspectors as part of the comprehensive review of the child care licensing system and not amend the statutes at this time.

4. New Section 6 Code of Conduct, Adopting Regulations for Twins and Multiple Births, Double the Capacity in Registered Family Day Care Homes, 5 year olds.

The Department recognizes the need to communicate in writing the expectations for conduct of both inspectors and child care providers during an inspection; the need to update and communicate inspection protocols; and the process used to resolve differences. The proposed New Section 6 requires the Secretary of Health and Environment to adopt rules and regulations to address these issues. There are already civil service regulations and individual agency policies that govern employee conduct. It would be difficult for the Department to adopt regulations governing personnel policies for non-state agency employees or for state employees that single out one classification.

The Department supports the recommendation to address the special circumstances of twins and multiple birth children and the 5 year old issue through the regulation revision process. The Department also supports addressing the number of children permitted to be in care, the age categories and the child staff ratios through the regulation revision process. The Department has committed to experimenting with alternate group sizes, age categories and ratios in small centers through pilot projects to address concerns expressed to the committee.

However, the provision for doubling the number of children in a family day care home does not fit the model of a registered family day care home. A registered family day care home is not inspected, the care giver does not need to meet any training requirements with the exception of first aid and there is no square footage requirement. This category of care is designed as an entry into the field of child care. In the Subcommittee meetings the discussions had centered on licensed group day care homes and not on registered family day care homes. The testimony on increasing the number of children in the group day care home category centered on the difficulty in meeting child care center requirements for caring for children in separate units by age groupings. Separating children into units by age is difficult for small centers of 12 to 24 children due the small number of children in each age category. The pilot programs proposed by the Department will provide for some relief in rural areas while at the same time provide data for what works.

The Department requests the committee consider not adopting New Section 6 for the following reasons:

1. The conduct of the inspectors is already addressed in agency personnel policies;
2. The Secretary would have difficulty regulating personnel policies of other agencies and having different regulations for inspectors who are state employees than other state employees in the agency;
3. The Department has the authority to address in licensing regulations the five year old issue, special rules for twins and multiple births, and rules for group size, ratios and age groupings so this additional authority is not needed. The Department is committed to address these issues in the Best Team process; and
4. Doubling the number of children in a registered day care home, licensed day care home or group day care home even with additional adults is not safe for children especially babies. The Department is committed to experimenting with group size, age ranges and ratios in pilot projects for small centers. Many of the Best Team members work with children every day and are in the best position to make recommends for revisions of licensing requirements that balance child safety and well being with the market place realities that face child care providers in providing services that are accessible, affordable, and available.

If the committee does decide to recommend doubling the number of children in registered family day care homes as proposed, the Department requests the committee consider giving the Department the same authority to write regulations and to inspect family day care homes as authorized in K.S.A. 65-508 and K.S.A. 65-512 for licensed child care facilities.

For the reasons stated in each section of this testimony the Department opposes House Bill 2972 as written.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.

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Testimony on House Bill 2972
Presented by Eldonna Chesnut
Johnson County Public Health on
Behalf of Kansas Public Health Association

Section 1(c) (1)-(6) - please see testimony provided by Johnson County Parks and Recreation Department who operates school age programs in many elementary schools in Johnson County.

Section 2(c) and Section 5 – lines 35, 35, and 37. Why put this in statute with no flexibility? Why not allow parents to request this in writing if they so desire. The provider can then send up an exception request to KDHE. If it is in the best interest of the child it can be approved and allowed. I assume the intent was multiple births of the same family but as currently written does not limit to related children.

Sec 3 (b) and Sec 4 (b) If you all feel so strongly that you want the first two sentences in there I don't see a problem with this. However, there are not, nor have there been any such quota requirement by KDHE. The desire of a professional surveyor is to walk into a home and find NO VIOLATIONS. We don't get bonuses or evaluations based on the number of violations we write. In fact surveyors in the counties I work with are always looking for ways to motivate providers to be in full compliance. One example is a reward to the provider for a violation free survey (a gift bag). Other ways are written and verbal praise for violation free surveys. Violation free surveys are an indicator that the child/children are in a safe, healthy stimulating out of home setting. That is the ultimate goal of childcare licensing.

Under this same section on lines 30, 31, 32, and 33 – putting this sentence into statute would do the children in the provider's care a huge disservice. The surveyors I know are already asking the providers if they want to go with them on the walk through. Good providers are going to say to go ahead because they need to attend to the children in their care. High quality "good" providers have no concern with surveyors doing a simple walk through as they have nothing to hide. On the other hand, providers that have a problem with a surveyor doing a simple walk through of their home, every where the children have access to, are usually the ones that have something to hide. The things **surveyors have found** on such occasions **include:** CHILDREN, fire arms, medications in reach of children, other such hazards and prohibited persons. Providers that knowingly have too many children in care will hide children in closets, bathrooms, under beds, in rooms they say they don't use for childcare, in the back yard, etc. Is this really the type of regulation you want your children, grandchildren,

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neighbors kids, etc exposed to? The Best Team is discussing this issue – leave it to them and to KDHE to deal with in Regulations not Statutes.

Likewise, under Sec 3 (b) (2) – leave this to KDHE to set in regulation. I know there are childcare providers who choose to not follow the regulations and are not professional with surveyors, so it stands to reason that there may be some surveyors that could be more professional with providers. However, allow KDHE and the Best Team to address this. What needs to be happening is if a constituent daycare provider contacts you with a concern – the first thing being told to them should be to contact the local licensing supervisor and if they don't feel they are getting what they need to then contact the regional administrator over the county at KDHE. If no one shares their concerns with a local supervisor or KHDE, how can we do anything about the problem?

In regards to conduct, why not include something about how the providers should treat the surveyors in a courteous and professional manner. As the subcommittee has heard, surveyors have been yelled at, cursed at, hit, had items thrown at them and threatened with physical harm. Where is the section that says since home daycare providers have CHOSEN to RUN A BUSINESS, they should treat the surveyor with the same professional respect they would like to be treated with? These providers CHOOSE to have a daycare in their home. No one forced them to, so like any business there are going to be rules, regulations, and statutes that have to be followed.

New Section 6 – (3) – see chart. If allowing 2 providers in a Family Daycare Home (registered home) then why don't they just become licensed as a group daycare home. It would allow more flexibility for the provider as the enrollment changed. Also there is a real space concern in the fact that some providers are providing daycare in an apartment or small home. Doubling the number of kids will not allow for adequate space for play or sleeping. For registered providers no initial or annual visit is made by statute – so how will adequate space be determined? Furthermore, many of our cities put additional regulations on daycare providers. One example is limiting the number of kids a provider can have – so even if the KDHE says they can have up to 10 (licensed) the city still restricts to 6.

Section 6 – (4) each regulation defines kindergarten age separately as does the food program. How will this change affect the existing regs and programs?

In closing, please remember that there is a provision for you to verify what providers are stating occurred regarding regulations written, fines, etc. Everyone can access the childcare licensing files by filing an open records request. We encourage parents to do this all the time when choosing a daycare home. It gives a complete compliance history of the provider. This way if a provider tells you they were fined a large amount of money for no reason, you can look at the file and find out what they were really cited for. I think you would all find this interesting reading coming from some of the providers. You would also be able to see what a good providers' file looks like. All you have to do is send a written request to Child Care licensing at CCLR@kdhe.state.ks.us Please put open records request on the subject line and identify which provider and what information about that provider you would like to see. Happy Reading!!



Nancy Jensen
Supervisor Child Care Program

TESTIMONY

City of Wichita
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Testimony on House Bill 2972
An Act concerning child care facilities and family day care homes;
Inspections and assessments; amending K.S.A. 65-501, 65-508, 65-512, 65-520,
65-522 and 72-8236 and repealing the existing sections.

House Federal and State Affairs Committee

March 19, 2008

House Bill 2972, currently before the committee, has many elements not consistent with best management practices for regulated child care facilities and contains provisions that appear to already be included within the current KDHE policies and procedures.

The elements within the bill that do not follow best management practices include:

- 1) A requirement that places children's health at risk by making exceptions to minimum sleeping distance requirements for twins and multiple-birth children without requiring a physician's order.
- 2) A requirement that limits the access of the inspector to areas of the facility not used for business purposes if the licensee or person in charge of the facility can not accompany the inspector because doing so would compromise supervision of the children in care, or if the licensee refuses access to the inspector.
- 3) A requirement that "any inspector who violates a provision of subsection (b) shall be subject to discipline" is not acceptable to the City of Wichita. Personnel issues are the responsibility of the employer and cannot be delegated to another entity.
- 4) A requirement that doubles the capacity of a registered day care home from 6 to 12 children if there is an additional adult available. House Bill 2792 does not provide for staff to child ratios, nor does it take into account the limited equipment, and supervision that occur in a childcare home even with two adults.

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- 5) A requirement that a Board of Education of any school district may establish, operate, and maintain a child care facility including infants and toddlers with only a teacher holding a teaching certificate or an administrator holding an administrator's certificate.

- 6) House Bill 2972, currently before the committee, repeals the Child Care Law in Section 8 and this places all children in out of home care in the entire state at risk. This law has been in effect since 1919 and was established to protect children.

If "Availability" is the focus of this bill, then it would be safer and healthier for children and their families to promote bills that foster retention and recruitment of quality child care providers and quality child care facilities.

The City of Wichita recognizes the impact of this bill on the regulatory process, childcare facilities, and most importantly, the families with children in out-of-home care. One of the main concerns verbalized by childcare providers during the recent statewide KDHE Listening Tour was their desire for consistent enforcement of regulations. Creating legislation that allows for non-standardized practices around the state, places children in out of home child care at risk where local agencies do not or cannot provide an adequate level of program support.

All of our interests are focused on what is best for our children in out of home child care. For this reason, the City of Wichita opposes HB2972. The subcommittee should allow the Best Team to fulfill its objectives as it has spent many hours touring the state, talking with providers and discussing their concerns.

Testimony presented by Catherine Gray, Family Child Care Professional and Owner/Operator of Growing Minds Child Care, Wichita, KS.

Good afternoon. My name is Catherine Gray and I am here today to share my concerns with the committee regarding HB 2972. First of all, I must say that I appreciate your leadership and strong support of child care programs and services across the state of Kansas. Your job is vital because you are promoting legislation to protect the interests of Kansas' most precious resource- our children. Today, I would like to share my personal insights on HB 2972 and suggest a different course of action on several key points.

I fully support the rights of school districts and non public schools to provide child care. I believe that every qualified entity that has an interest in providing care for children should be given the chance to do so, under specific conditions:

- The safety of all school district facilities being used for child care be regulated by the KDHE child care licensing standards and inspected annually
- The caregivers at these sites should be required to meet the criteria of all child care workers as established by KDHE
- Caregivers should be required to obtain the same amount of training as required by KDHE
- The care giving practices used at these sites should follow KDHE guidelines for all child care facilities

Therefore, the suggested course of action for this committee is to support KDHE in regulating any and all forms of child care. The Kansas Department of Health and Environment has the daunting task of regulating every facility that cares for children when their parents cannot be present with the purpose of protecting children from harm. As stated on the KDHE website, "Public regulation represents a basic level of protection for all children. Further, effective public regulation provides basic consumer protection." This is like the Hippocratic Oath in medicine: we must protect children and consumers.

As a Family Child Care Provider, I feel it is unfair and unjust to allow any group to be exempt from meeting licensure requirements. For family child care providers like me, licensing requirements are the minimum- the very least that we must do to protect and care for children. As the operator of a nationally accredited Family Child Care program, I choose to follow the higher child care standards outlined by the National Association of Family Child Care. I do this because I believe that "bare minimum care" is not what is best for children. Therefore, the notion of "no minimum care" leaves me deeply concerned.

As an advocate for children, I must implore the committee to reconsider the section of HB 2972 that would allow twins or other multiple birth children to be exempt from the sleeping distance requirements outlined in the KDHE regulations. The bill does not specify the ages of the children, and while co-sleeping might be socially acceptable, it is extremely dangerous for young infants. Years of research prove that shared sleep surfaces increase the risk of SIDS (Sudden Infant Death Syndrome) and SUDI (Sudden Unexpected Death in Infancy). Research also shows that babies who are born pre-term or small for their gestational age are most at risk.

Without the explicit understanding of all of these risk factors, a provision allowing siblings to co-sleep is dangerous to children. It is also a danger and a liability to Family Child Care Providers. This provision would force a child care provider to accommodate the parent's wishes, but it would not protect the provider in the event of a child's death. If a child died in care, the provider would be faced with the potential for lawsuits and the total loss of income while the incident was under investigation. Therefore, it is suggested that the committee not amend the sleeping distance requirements established by KDHE.

After working in the child care field for 15 years, I must admit that I have had many ups and downs with child care licensing surveyors. I have been frustrated by them, to the point of writing letters to KDHE to

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dispute their survey findings. But I have also been encouraged and motivated by their constructive criticism. I've learned that they have the difficult job of fairly and objectively interpreting regulations that are not always black and white. This past year, I began teaching Early Childhood courses for Butler Community College. In my course, students read, study and test over every single page of the KDHE Regulations handbook. Every semester, I learn a new way of understanding the regulations based on scenarios that my students present. I've called my licensing surveyor to receive clarification on the fine points of the regulations and always receive a thoughtful, thorough explanation. To penalize surveyors for their understanding of the regulations with disciplinary action is not the place of lawmakers. Every day, licensing surveyors must get out of their comfort zone and go into child care centers and the homes of family child care providers, looking for evidence that children are being cared for in a safe environment and that minimum care giving standards are being followed. We need to support them in their efforts, not threaten them with disciplinary action.

While I value my right to privacy and don't want to have to open my messy closet for a surveyor to look in, I am glad that every aspect of my home is subject to inspection. I would never forgive myself if my husband or children left something dangerous out that resulted in bodily harm to a young child. After seeing photos of home meth labs, with toxic chemicals stored in baby bottles left within children's reach, or reading about a Kansas child care provider who stored her drug paraphernalia in her garage and drugs in her car, I think that not allowing KDHE to inspect every area of a child care facility could be considered child endangerment. We must face the fact that there are many dangerous pastimes and illicit behaviors in our culture. Unfortunately, child care providers are not immune. It is the duty of KDHE to protect children in every setting. We must not only allow them to do so, but encourage their efforts for the safety and well-being of all children.

I realize that many of the provisions of this bill might seem helpful to small business owners/child care providers like myself, and for this reason, I appreciate the underlying goals of this bill. However, for the reasons I have mentioned, I urge the committee to vote no on House Bill 2972. Allow KDHE and the BEST team, with their vast amount of knowledge, experience, and expertise to make changes to the child care regulations. They truly have children's best interests at heart.

Thank you for your time.

Catherine Gray

I'm Deb Crowl, Administrator for Emporia Child Care. We have three facilities, two serve preschool age children and one serves infant and toddlers. I have been with the Center for 30 years and serve on numerous boards including the Kansas Association for the Education of Young Children. I am currently the Kansas representative and Vice-Chair for the Midwest Association for the Education of Young Children, which is made up of eight states.

Today I would like to speak opposing HB2972.

I am a supporter of regulations. Regulations are based on research and provide essential health and safety guards for children in care. Increasing the number of children especially at key times (early mornings and late afternoons) when parents and children are coming and going increases the risk of harm to children. During these busy times when provider's are more likely to be distracted, children are less likely to be supervised closely. Not only are accidents more likely to happen but communication with parents about the children would be next to impossible.

Child Care licensing surveyors are employees of the county they serve. Why do you as legislators feel you should be able to regulate employee behavioral consequences? Did you check to see if local county government has personnel polices and procedures for employment? If you feel a need to regulate local work then the state needs to fund the child care regulatory program at 100% instead of the current 50%.

My biggest concern with school districts providing care for children under school age is the facilities. Most of the school buildings are not made for small children. Would this meet health and safety standards? When the schools have no standards to meet, they are unfair competition for current child care homes and centers. We would lose fees and be forced to close.

I hope you consider everyone's testimony. Please allow the Best Team to complete their work concerning regulations. Remember we are the ones WITH the children everyday. I would once again invite you to come to our center to see how the day to day operation of child care works.

Deb Crowl
Emporia Child Care
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Jeanette Dillon - Child care

From: "Jody Smith" <jdsmith@cowleycounty.org>
To: <jeanetted@house.state.ks.us>
Date: 3/19/2008 12:33 PM
Subject: Child care
Attachments: Jody Smith .vcf

Hi – I believe that all registered child care providers should be inspected annually. Currently registered providers are just applying. No one knows if their home is adequate for children; are there adequate toys and learning tools; do they have proper paperwork for the children in the event of an accident or serious injury; or how many children they are watching. Basically they are just telling the state they are providing childcare, and that is all. No one really knows what the registered providers are doing or how many children they are watching.

Doubling the number of children allowed in a daycare home is not safe for children. The Child Care Systems Improvement Team needs to work on important decisions that will affect all of the community. Let them do their job.

All providers need training. Many providers do not understand how to take care of the children; to teach them; to build up their self-esteem; or to let the children have an imagination. Too often if a provider does not have an education on the needs of a child, the child is left in front of a television set and expected to learn from that.

Sincerely,

Jody Smith

Child Care Surveyor

City-Cowley County Health Department

Jody Smith

Child Care Surveyor

City-Cowley County Health Department

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