



BILL AND AMENDMENT SUMMARY

Children's Residential Facilities H-8154 to SF 2304

Status of Bill: House Floor
Committee: Government Oversight (9-0), SF 2304 passed Senate (50-0)
Lead Democrat: Representative Gaines
Floor Manager: Representative Kaufmann
Research Analyst: David Epley 515-281-6367
david.epley@legis.iowa.gov

April 6, 2016

Background

The Midwest Academy boarding school in southeast with facilities in Keokuk and Montrose was closed in January after allegations of sex abuse surfaced. In response to investigations, the Senate has introduced SF 2304. It is identical to a previous bill that passed the Senate and later died in the House Education Committee.

Operators of the Midwest Academy falsely claimed that they were accredited institution, and students living at the school were also enrolled in the Keokuk School District. The Department of Education (DE) required that the institution sign off on health and safety security provisions which lead to their negotiations breaking down, and Midwest Academy never pursued accreditation or sign off. DE did not have jurisdiction over Midwest Academy since they were not accredited, but the DE did notify school districts in the area that they were not accredited.

The Department of Human Services (DHS) reported to the House Oversight Committee that in 2008 Midwest Academy applied for and granted a foster group license. However Midwest Academy allowed license to lapse after a year. DHS currently cannot provide oversight of these types of child care centers.

Committee Amendment Summary, H-8154

H-8154 is a strike after to SF 2304, so it would become the bill. It provides for basic oversight for children's residential facilities including certification and inspection. Currently law, 237B, prohibits DHS from establishing oversight standards on these types of child care facilities. The bill eliminates 237B, and replaces it with 237C with more oversight authority. These are privately funded facilities designed to serve children (defined as less than 18 years of age) who are placed in a facility by a parent or guardian for reasons that are not exclusively recreational, and the child is not under custody or authority of DHS, juvenile court or another government agency. The facility offers 24-hour child care, including food, lodging, supervision, education, or other care on a full-time basis by a person other than a relative or guardian of the child. The bill provides a list of exempted facilities that already have a level of state oversight and inspection. Facilities **NOT** include in the regulation oversight of this bill include:

- A. Care furnished by an individual who receives the child of a personal friend as an occasional and personal guest in the individual's home, free of charge and not as a business.
- B. Care furnished by an individual with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.
- C. Child care furnished by a child care facility as defined in statute as a child care center, preschool, or a registered child development home.
- D. Care furnished in a licensed hospital or care furnished in a health care facility as defined in statute as a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with an intellectual disability.

- E. Care furnished by an approved juvenile detention home or juvenile shelter care home.
- F. Care furnished by a licensed child foster care facility.
- G. Care furnished by an institution listed in statute under the authority of DHS, including the following:
 - 1. Glenwood state resource center.
 - 2. Woodward state resource center.
 - 3. Mental health institute, Cherokee, Iowa.
 - 4. Mental health institute, Clarinda, Iowa [Closed].
 - 5. Mental health institute, Independence, Iowa.
 - 6. Mental health institute, Mount Pleasant, Iowa [Closed].
 - 7. State training school (at Eldora).
 - 8. Iowa juvenile home [Closed, was at Toledo].
- H. Care furnished by a facility licensed to provide care for substance related disorders.
- I. A licensed facility to provide care furnished by a Psychiatric Medical Institution for Children (PMIC).
- J. Care furnished by a bona fide religious institution.

(Note: The amendment adds "J." the bona fide religious institution" that is NOT contained in SF 2304. It also includes the following "Bona Fide Religious Institution Notification" which is also not in SF 2304):

Bona Fide Religious Institution Notification

An exempted bona fide religious institution is required to do the following:

- 1. Notify DHS within 30 days of the effective date of the act of their existence.
- 2. Allow annually one scheduled inspection and one unannounced inspection by a representative of the Department of Inspections and Appeals (DIA).
- 3. Authorize reasonable and timely access to clients and staff of the institution by representatives of DHS who are responsible for investigating an allegation of abuse.

DHS is charged with providing appropriate protection for children who are separated from the direct personal care of their parents, relatives, or guardians and to provide for the development, establishment, and enforcement of standards relating to the certification of children's residential facilities. Minimum standards must address the basic health and educational needs of children; protection of children from mistreatment, abuse, and neglect; address the appropriate use of seclusion, restraint, or other restrictive interventions; health; safety emergency; and the physical premises of the facility. Background and records checks of persons providing care are required that are the substantially equivalent to those applied for a child foster care facility provider.

Rules

DHS is the lead agency to establish certification standards for children's residential facilities in consultation with other agencies. The facility is required to be inspected by the State Fire Marshal's office for compliance with fire safety rules before a license is granted or renewed. Rules governing sanitation, water, and waste disposal standards of the facility are required to be adopted by the Department of Public Health (DPH). Rules governing educational programs and education services provided by children at the facility will be adopted by the State Board of Education. This would also include contracts of the facilities with school districts or non-public schools and public information required to be displayed. All contracts that would fail to comply with requirements would become null and void. In the case of any conflict between rules of the agencies, the more stringent requirement applies.

Certificate Application

The administrator will issue a certificate to operate a children's residential facility if it is determined that the applicant will be compliant with the regulations. A certificate is valid for up to one year, will designate how many children may be cared for at the facility and be posted in a conspicuous place in the facility. A facility is required to only operate in a building or premise designated by the certificate.

An administrator may deny an application for issuance or reissuance or suspend or revoke of a certificate of approval if the children's residential facility or applicant fails to comply with the health, safety, or educational

standards. The administrator is required to conduct at least one annual unannounced inspection of a children's residential facility to assess compliance with applicable requirements and standards. The inspections are to be conducted by DIA in addition to initial, renewal, and other inspections that result from complaints or self-reported incidents. DIA and DHS may examine records of a children's residential facility and may inquire into matters concerning the children's residential facility and its employees, volunteers, and subcontractors relating to requirements and standards for children's residential facilities under this chapter.

Injunctive Relief

A person that establishes or operates a facility without a certificate of approval or a facility with a certificate that is found to be in non-compliance, may be restrained by temporary injunction by the state or county attorney from providing children residential facility services or involvement in child care. A civil action, that can be multiple petitioners joining in a single action, can be brought against a facility to prevent, restrain, or remedy a violation may be brought by the following:

1. A parent or legal guardian of a child who is placed in a children's residential facility,
2. The state of Iowa,
3. DE, limited to seeking relief from violations of the education programs, or
4. The school district where the facility is located.

(Note: The amendment includes this ability by DE, and SF 2304 does not).

Notice of Hearings and Judicial Review

DHS is responsible for developing rules on the procedures for governing notice and the hearing to deny an application or suspend or revoke a certificate of approval.

Education Programs

An operating children's residential facility must provide an educational program and appropriate education services to children by contracting with the school district where the facility is located, contracting with an accredited nonpublic school, or becoming accredited as a nonpublic school through one of the six regional or national nonprofit accrediting agencies recognized by the state board of education. The facility must accurately describe their educational program and services in their publications and website. They must include in all promotional, advertising, or marketing materials, including print or internet, all fees charged by the facility for the services they offer and of their refund policies.

(Note: this section, unlike SF 2304, does NOT include broadcast information or information available by any other means).

The Iowa State Board of Education is charged with developing rules regarding the programs and educational standards include contracts of the facilities with school districts or non-public schools and public information required to be displayed. All contracts that would fail to comply with requirements would become null and void.

Reports

By January 1, 2017, DHS, DE, DPH and the State Fire Marshall, are required to submit a report to the General Assembly concerning their progress in adopting the rules for the regulation and oversight for children's residential facilities.

Reporting of Bona Fide Religious Institution Facility

An exempted bona fide religious institution facility is required to notify DHS within 30 days of the effective date of the act of their existence.

(Note: This reporting requirement is not contained in the original Senate File.)

AMENDMENTS TO THE AMENDMENT:

H-8162 to H-8154 by Gaines and Kaufmann: Inspections by the Fire Marshal and Public Health of Bona Fide Religious Institution Facility

The amendment would require Bona Fide Religious Exempt Institutions to be inspected by the Fire Marshall and Public Health for water. Currently in amendment H-8154, they are not included in the inspection of those facilities, and this would keep with the goal of inspecting these types of facilities for the health and safety of the child without addressing education.

H-8163 to H-8154 by Gaines and Lensing, Striking Bona Fide Religious Institution Exemption

The amendment would require that any rules promulgated by the Department of Human Services as the lead agency, would **NOT** address any religious education programming and certification would be restricted to protecting the health and safety of children at the facility. This would allow agencies to regulate all facilities regardless of religious affiliation or not.

The concern that this is addressing is that if a Bona Fide Religious Institution is found, they are not certified, and agencies cannot do anything to address the possible concern except similar action like what was taken with the Midwest Academy. That action would be to contact the County Sherriff and County Attorney in hopes that they would act to shut the institution down.