

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB460

Hearing Date: Thursday March 07, 2019
Committee On: Health and Human Services
Introducer: Health and Human Services
One Liner: Change criminal background check provisions under the Children's Residential Facilities and Placing Licensure Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 7 Senators Arch, Cavanaugh, Hansen, B., Howard, Murman, Walz, Williams

Nay:

Absent:

Present Not Voting:

Oral Testimony:

Proponents:

Senator Sara Howard
Matthew Wallen
Tim Hruza

Representing:

Introducer
Dept. of Health and Human Services
Children and Families Coalition of Nebraska

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 460 amends the Children's Residential Facilities and Placing Licensure Act with new federally mandated criminal background check requirements.

Any individual over the age of 18 who is employed by a residential child-caring agency is required to:

- undergo a national criminal history record information check at least once every five years.
- submit to four other types of background checks.

To conduct a national criminal history record information check:

- the individual being screened must submit a complete set of fingerprints to the Nebraska State Patrol (Sec. 2(1), page 2, lines 9-10);
- the Nebraska State Patrol will transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record information check (Sec. 2, page 2(1), lines 10-13); and
- the State Patrol must then issue a report to the Department of Health and Human Services with the information collected during the criminal history record information check (Sec. 2(1), page 2, lines 17-19).

The four additional background checks include:

- A search of the National Crime Information Center's National Sex Offender Registry
- A search of three different registries, repositories or databases in the state where the individual resides and in each state where the individual resided during the last five years:
 - State criminal registries and repositories
 - State sex offender registries or repositories
 - State-based child abuse and neglect registries

(Sec. 2(2), page 2, lines 28-31 and page 3, lines 1-7.)

The individual being screened must pay the actual cost of the fingerprinting and national criminal history record information check and the actual cost of the additional background checks. (Sec. 2(1), page 2, lines 19-21 and Sec. 2(2), page 2, lines 28-30.)

Explanation of amendments:

AM 1211 revises some language in LB 460 and incorporates LB 341 and LB 459 into LB 460.

LB 460 is amended to replace the term "employed by" with "working in" to reflect the language in the federal law. (AM 1211, pg. 9, line 20 and pg. 10, line 13.) In addition, the language regarding who pays the cost for the criminal history record information check is amended. The language from the original bill remains which requires the individual to pay for the cost of fingerprinting and the criminal history record information check, but the amendment adds that the Department of Health and Human Services (DHHS) may pay for all or part of the cost if funding becomes available. (AM 1211, pg. 10, lines 3-6.)

AM 1211, section 9, provides an emergency clause for LB 460. But section 6 carves out sections 1 and 2 (LB 341), section 3 (LB 459), and section 7 which will become operative three calendar months after the adjournment of this legislative session. All other sections become operative on their effective date.

LB 341 (Arch) Change provisions relating to a determination of ongoing eligibility for a child care subsidy

The provisions of LB 341 appear in Sections 1 and 2 of AM 1211.

The original provisions of LB 341 amend Neb. Rev. Stat. 68-1206 to reflect the changes in federal law regarding the child care subsidy program and the eligibility and duration of transitional child care assistance.

Families may receive child care assistance in Nebraska if their income is less than 130% of the federal poverty guidelines. When determining ongoing eligibility, if a family's income exceeds 130% of the federal poverty guidelines, the family may receive transitional child care assistance for the remainder of the family's eligibility period or until the family income exceeds 85% of the state's median income for a family of the same size, whichever occurs first. (AM 1211, sec. 1(2), pg. 1, lines 24-27 and pg. 2, lines 1-4.)

In addition, the family will continue to be eligible for transitional child care assistance through the next eligibility period if the family's income is below 185% of the federal poverty guidelines, as long as the family's income does not exceed 85% of the state median income for a family of the same size. (AM 1211, sec. 1(2), pg. 2, lines 4-12.)

The language limiting transitional child care assistance to 24 months is struck. (AM 1211, pg. 2, line 1.) The language in existing law which would end a family's transitional child care assistance and move the family back onto regular child care subsidy assistance if the family's income falls back below 130% of the federal poverty guidelines is struck. (AM 1211, sec. 1(2), pg. 2, lines 12-16.)

Section 2 of AM 1211 strikes the 24 month limit on work related child care assistance to harmonize provisions. (AM 1211, sec. 2(1)(c), pg. 3, lines 23-24.)

Testifiers for LB 341 (February 8, 2019)

Proponents: Senator John Arch, Introducer
Matthew Wallen, Department of Health and Human Services
Adam Feser, First Five Nebraska

Opponents: None

Neutral: None

LB 459 (HHS Committee) Change criminal background check provisions under the Child Care Licensing Act

The provisions of LB 459 appear in section 3 of AM 1211.

The original provisions of LB 459 relate to fingerprinting and criminal history record information checks for child care programs under the Child Care Development Block Grant.

Persons applying for a license as a child care provider, or persons who are already licensed child care providers, must submit a request for a national criminal history record information check for each child care staff member, including prospective child care staff members, at the applicant's or licensee's expense. (AM 1211, sec. 3(5)(a), pg. 6, lines 24-31.)

Child care staff member is defined as an individual who is not related to the children receiving care, who is employed by a child care provider for compensation, and whose activities involve the care or supervision of the children for the child care provider or unsupervised access to the children being served. In addition, persons 18 years of age or older who reside in a family child care home are considered child care staff members for purposes of the criminal background checks. (AM 1211, sec. 3(h)(ii), pg. 9, lines 6-14.)

Beginning September 1, 2019, all prospective child care staff members must submit to a criminal history record information check before they can be employed. Similarly, beginning on September 1, 2019, persons over 18 years of age residing in a family child care home must submit to a criminal history record information check. For child care staff members that are already employed before September 1, 2019, they will have until September 1, 2021 to submit to a national criminal history record information check unless they cease to be a child care staff member prior to that date. (AM 1211, sec. 3(5)(a), pg. 6, lines 29-31 and pg. 7, lines 1-7.)

To conduct a national criminal history record information check, a child care staff member must submit a complete set of fingerprints to the Nebraska State Patrol. The Nebraska State Patrol will transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. (AM 1211, sec. 3 (5)(b), pg. 7, lines 10-18.) The State Patrol must then issue a report to the DHHS with the information collected during the criminal history record information check. (AM 1211, sec. 3(5)(b), pg. 7, lines 18-21.)

A child care staff member is required to undergo a national criminal history record information check at least once every five year period. (AM 1211, sec. 3(5)(b), pg. 7, lines 8-10.)

The child care staff member being screened must pay the actual cost of the fingerprinting and national criminal history record information check. (AM 1211, sec. 3(5)(b), pg. 7, lines 21-23.)

Child care staff members must also submit to several other background checks at their expense, such as the National Crime Information Center's National Sex Offender Registry, a search of a variety of registries and data bases regarding criminal history, sex offenses, and child abuse and neglect in each state in which the staff member resides or has resided in the last five years. (AM 1211, sec. 3(5)(c), pg. 8, lines 1-10.) Any person who refuses to consent to the national criminal history record information check , knowingly makes false statements in connection with the background check, is a registered sex offender, has been convicted of a crime of violence, moral turpitude, or dishonesty may not be employed by a child care center. (AM 1211, sec. 3(5)(d), pg. 8, lines 11-20.)

DHHS and the Nebraska State Patrol may promulgate rules and regulations regarding the implementation of national criminal history record information checks, including the costs associated. (AM 1211, sec. 3(5)(b), pg. 7, lines 23-29.)

In addition, DHHS may also promulgate rules and regulations regarding the employment of child care staff members with criminal records. (AM 1211, sec. 3(5)(e), pg. 8, lines 21-24.) A child care provider will not be eligible for a license if they employ a staff member who is not eligible under these rules and regulations. (AM 1211, sec. 3(5)(f), pg. 8, lines 25-29.)

These provisions do not apply to child care providers licensed as family child care home I. (AM 1211, sec. 3(5)(h)(i), pg. 9, lines 4-5.) A family child care home means a program in the licensee's residence which may serve at least four but not more than eight children. (391 NAC 1-002.)

Testifiers for LB 459 (February 8, 2019)

Proponents: Senator Sara Howard, Introducer
Matthew Wallen, Department of Health and Human Services
Adam Feser, First Five Nebraska
Nick Juliano, Children and Families Coalition of Nebraska

Opponents: None

Neutral: None

Sara Howard, Chairperson