

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1185

Introduced by Health and Human Services Committee: Howard, 9,
Chairperson; Arch, 14; Cavanaugh, 6; Hansen, B., 16;
Murman, 38; Walz, 15; Williams, 36.

Read first time January 23, 2020

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to the Department of Health and Human
2 Services; to amend section 71-1908, Reissue Revised Statutes of
3 Nebraska, and sections 68-1206 and 71-1912, Revised Statutes
4 Supplement, 2019; to change provisions relating to criminal history
5 record information checks for child care staff members and child
6 care providers; to define a term; to harmonize provisions; to
7 provide for criminal history record information checks for
8 unlicensed providers of child care participating in the federal
9 child care subsidy program; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-1206, Revised Statutes Supplement, 2019, is
2 amended to read:

3 68-1206 (1) The Department of Health and Human Services shall
4 administer the program of social services in this state. The department
5 may contract with other social agencies for the purchase of social
6 services at rates not to exceed those prevailing in the state or the cost
7 at which the department could provide those services. The statutory
8 maximum payments for the separate program of aid to dependent children
9 shall apply only to public assistance grants and shall not apply to
10 payments for social services. As part of the provision of social services
11 authorized by section 68-1202, the department shall participate in the
12 federal child care assistance program under 42 U.S.C. 618, as such
13 section existed on January 1, 2013, and provide child care assistance to
14 families with incomes up to one hundred twenty-five percent of the
15 federal poverty level for FY2013-14 and one hundred thirty percent of the
16 federal poverty level for FY2014-15 and each fiscal year thereafter.

17 (2) As part of the provision of social services authorized by this
18 section and section 68-1202, the department shall participate in the
19 federal Child Care Subsidy program. A child care provider seeking to
20 participate in the federal Child Care Subsidy program shall comply with
21 the criminal history record information check requirements of the Child
22 Care Licensing Act. In determining ongoing eligibility for this program,
23 ten percent of a household's gross earned income shall be disregarded
24 after twelve continuous months on the program and at each subsequent
25 redetermination. In determining ongoing eligibility, if a family's income
26 exceeds one hundred thirty percent of the federal poverty level, the
27 family shall receive transitional child care assistance through the
28 remainder of the family's eligibility period or until the family's income
29 exceeds eighty-five percent of the state median income for a family of
30 the same size as reported by the United States Bureau of the Census,
31 whichever occurs first. When the family's eligibility period ends, the

1 family shall continue to be eligible for transitional child care
2 assistance if the family's income is below one hundred eighty-five
3 percent of the federal poverty level. The family shall receive
4 transitional child care assistance through the remainder of the
5 transitional eligibility period or until the family's income exceeds
6 eighty-five percent of the state median income for a family of the same
7 size as reported by the United States Bureau of the Census, whichever
8 occurs first. The amount of such child care assistance shall be based on
9 a cost-shared plan between the recipient family and the state and shall
10 be based on a sliding-scale methodology. A recipient family may be
11 required to contribute a percentage of such family's gross income for
12 child care that is no more than the cost-sharing rates in the
13 transitional child care assistance program as of January 1, 2015, for
14 those no longer eligible for cash assistance as provided in section
15 68-1724. Initial program eligibility standards shall not be impacted by
16 the provisions of this subsection.

17 (3) In determining the rate or rates to be paid by the department
18 for child care as defined in section 43-2605, the department shall adopt
19 a fixed-rate schedule for the state or a fixed-rate schedule for an area
20 of the state applicable to each child care program category of provider
21 as defined in section 71-1910 which may claim reimbursement for services
22 provided by the federal Child Care Subsidy program, except that the
23 department shall not pay a rate higher than that charged by an individual
24 provider to that provider's private clients. The schedule may provide
25 separate rates for care for infants, for children with special needs,
26 including disabilities or technological dependence, or for other
27 individual categories of children. The schedule may also provide tiered
28 rates based upon a quality scale rating of step three or higher under the
29 Step Up to Quality Child Care Act. The schedule shall be effective on
30 October 1 of every year and shall be revised annually by the department.

31 Sec. 2. Section 71-1908, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 71-1908 (1) Sections 71-1908 to 71-1923 and section 4 of this act
3 shall be known and may be cited as the Child Care Licensing Act.

4 (2) The Legislature finds that there is a present and growing need
5 for quality child care programs and facilities. There is a need to
6 establish and maintain licensure of persons providing such programs to
7 ensure that such persons are competent and are using safe and adequate
8 facilities. The Legislature further finds and declares that the
9 development and supervision of programs are a matter of statewide concern
10 and should be dealt with uniformly on the state and local levels. There
11 is a need for cooperation among the various state and local agencies
12 which impose standards on licensees, and there should be one agency which
13 coordinates the enforcement of such standards and informs the Legislature
14 about cooperation among the various agencies.

15 Sec. 3. Section 71-1912, Revised Statutes Supplement, 2019, is
16 amended to read:

17 71-1912 (1) Before issuance of a license, the department shall
18 investigate or cause an investigation to be made, when it deems
19 necessary, to determine if the applicant or person in charge of the
20 program meets or is capable of meeting the physical well-being, safety,
21 and protection standards and the other rules and regulations of the
22 department adopted and promulgated under the Child Care Licensing Act.
23 The department may investigate the character of applicants and licensees,
24 any member of the applicant's or licensee's household, and the staff and
25 employees of programs. The department may at any time inspect or cause an
26 inspection to be made of any place where a program is operating to
27 determine if such program is being properly conducted.

28 (2) All inspections by the department shall be unannounced except
29 for initial licensure visits and consultation visits. Initial licensure
30 visits are announced visits necessary for a provisional license to be
31 issued to a family child care home I, family child care home II, child

1 care center, or school-age-only or preschool program. Consultation visits
2 are announced visits made at the request of a licensee for the purpose of
3 consulting with a department specialist on ways of improving the program.

4 (3) An unannounced inspection of any place where a program is
5 operating shall be conducted by the department or the city, village, or
6 county pursuant to subsection (2) of section 71-1914 at least annually
7 for a program licensed to provide child care for fewer than thirty
8 children and at least twice every year for a program licensed to provide
9 child care for thirty or more children.

10 (4) Whenever an inspection is made, the findings shall be recorded
11 in a report designated by the department. The public shall have access to
12 the results of these inspections upon a written or oral request to the
13 department. The request must include the name and address of the program.
14 Additional unannounced inspections shall be performed as often as is
15 necessary for the efficient and effective enforcement of the Child Care
16 Licensing Act.

17 (5)(a) A person applying for a license as a child care provider or a
18 licensed child care provider under the Child Care Licensing Act shall
19 submit a request for a national criminal history record information check
20 for each child care staff member, including a prospective child care
21 staff member of the child care provider, at the applicant's or licensee's
22 expense, as set forth in this section. Beginning on October 1, 2019, a
23 prospective child care staff member shall submit to a national criminal
24 history record information check (i) prior to employment, except as
25 otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on
26 January 1, 2019, or (ii) prior to residing in a family child care home. A
27 child care staff member who was employed by a child care provider prior
28 to October 1, 2019, or who resided in a family child care home prior to
29 October 1, 2019, shall submit to a national criminal history record
30 information check by October 1, 2021, unless the child care staff member
31 ceases to be a child care staff member prior to such date.

1 (b) A child care staff member shall be required to undergo a
2 national criminal history record information check not less than once
3 during each five-year period. A child care staff member shall submit a
4 complete set of his or her fingerprints to the Nebraska State Patrol. The
5 Nebraska State Patrol shall transmit a copy of the child care staff
6 member's fingerprints to the Federal Bureau of Investigation for a
7 national criminal history record information check. The national criminal
8 history record information check shall include information concerning
9 child care staff members from federal repositories of such information
10 and repositories of such information in other states, if authorized by
11 federal law for use by the Nebraska State Patrol. The Nebraska State
12 Patrol shall issue a report to the department that includes the
13 information collected from the national criminal history record
14 information check concerning child care staff members. A child care staff
15 member being screened shall pay the actual cost of the fingerprinting and
16 national criminal history record information check. The department and
17 the Nebraska State Patrol may adopt and promulgate rules and regulations
18 concerning the costs associated with the fingerprinting and the national
19 criminal history record information check. The department may adopt and
20 promulgate rules and regulations implementing national criminal history
21 record information check requirements for child care providers and child
22 care staff members.

23 (c) A child care staff member shall also submit to the following
24 background checks at his or her expense not less than once during each
25 five-year period:

26 (i) A search of the National Crime Information Center's National Sex
27 Offender Registry; and

28 (ii) A search of the following registries, repositories, or data
29 bases in the state where the child care provider is located or where the
30 child care staff member resides and each state where the child care
31 provider was located or where the child care staff member resided during

1 the preceding five years:

2 (A) State criminal registries or repositories;

3 (B) State sex offender registries or repositories; and

4 (C) State-based child abuse and neglect registries and data bases.

5 (d) Any individual shall be ineligible for employment by a child
6 care provider if such individual:

7 (i) Refuses to consent to the national criminal history record
8 information check or a background check described in this subsection;

9 (ii) Knowingly makes a materially false statement in connection with
10 the national criminal history record information check or a background
11 check described in this subsection;

12 (iii) Is registered, or required to be registered, on a state sex
13 offender registry or repository or the National Sex Offender Registry; or

14 (iv) Has been convicted of a crime of violence, a crime of moral
15 turpitude, or a crime of dishonesty.

16 (e) The department may adopt and promulgate rules and regulations
17 ~~for purposes of this section prohibiting the employment of any child care~~
18 ~~staff member with one or more criminal convictions~~ as the department
19 deems necessary to protect the health and safety of children receiving
20 ~~child care.~~

21 (f) A child care provider shall be ineligible for a license under
22 the Child Care Licensing Act and shall be ineligible to participate in
23 the child care subsidy program if the provider employs a child care staff
24 member who is ineligible for employment under subdivisions (d) or (e) of
25 this subsection.

26 (g) National criminal history record information and information
27 from background checks described in this subsection subject to state or
28 federal confidentiality requirements may only be used for purposes of
29 granting a child care license or approving a child care provider for
30 participation in the child care subsidy program.

31 (h) For purposes of this subsection:

1 (i) Child care provider means a child care program required to be
2 licensed under the Child Care Licensing Act; and

3 (ii) Child care staff member means an individual who is not related
4 to all of the children for whom child care services are provided and:

5 (A) Who is employed by a child care provider for compensation,
6 including contract employees or self-employed individuals;

7 (B) Whose activities involve the care or supervision of children for
8 a child care provider or unsupervised access to children who are cared
9 for or supervised by a child care provider; or

10 (C) Who is residing in a family child care home and who is eighteen
11 years of age or older.

12 Sec. 4. (1) For purposes of this section, child care staff member
13 means an individual who is not related to all of the children for whom
14 child care services are provided and:

15 (a) Who is employed for compensation by a child care provider not
16 required to be licensed under the Child Care Licensing Act, including
17 contract employees or self-employed individuals;

18 (b) Whose activities involve the care or supervision of children for
19 a child care provider or unsupervised access to children who are cared
20 for or supervised by a child care provider; or

21 (c) Who is residing in a family child care home and who is eighteen
22 years of age or older.

23 (2) Beginning on October 1, 2020, an individual who is not required
24 to be licensed under the Child Care Licensing Act but seeks to
25 participate as a provider in the federal Child Care Subsidy program shall
26 submit a request for a national criminal history record information check
27 for each child care staff member, including a prospective child care
28 staff member of the child care provider, (i) prior to the child care
29 provider being approved to participate as a child care provider in the
30 federal Child Care Subsidy program, except as otherwise permitted under
31 45 C.F.R. 98.43, as such regulation existed on January 1, 2020, or (ii)

1 prior to residing in a family child care home. A child care staff member
2 who was a provider in the federal Child Care Subsidy program prior to
3 October 1, 2020, or who resided in a family child care home prior to
4 October 1, 2020, shall submit to a national criminal history record
5 information check by October 1, 2021, unless the child care staff member
6 ceases to be a child care staff member prior to such date. The child care
7 staff member or the child care provider seeking to participate in the
8 subsidy program shall pay the cost of such national criminal history
9 record information check. A person who undergoes a national criminal
10 history record information check to obtain a license under the Child Care
11 Licensing Act or work as a child care staff member and is in good
12 standing with the department shall not be required to undergo an
13 additional national criminal history record information check to become a
14 child care provider in the federal Child Care Subsidy program if the
15 person has not been separated from employment from a child care provider
16 within the state for a period of not more than one hundred eighty
17 consecutive days.

18 (3) Any individual, entity, or provider shall be ineligible to
19 participate in the federal child care subsidy program if such individual,
20 entity, or provider:

21 (a) Refuses to consent to the national criminal history record
22 information check described in this section;

23 (b) Knowingly makes a materially false statement in connection with
24 the national criminal history record information check described in this
25 section;

26 (c) Is registered, or required to be registered, on a state sex
27 offender registry or repository or the National Sex Offender Registry; or

28 (d) Has been convicted of a crime of violence, a crime of moral
29 turpitude, or a crime of dishonesty.

30 Sec. 5. Original section 71-1908, Reissue Revised Statutes of
31 Nebraska, and sections 68-1206 and 71-1912, Revised Statutes Supplement,

1 2019, are repealed.