

LEGISLATIVE BILL 1185

Approved by the Governor August 07, 2020

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

A BILL FOR AN ACT relating to the Department of Health and Human Services; to amend section 71-1908, Reissue Revised Statutes of Nebraska, and sections 68-1206, 71-1912, and 71-1928.01, Revised Statutes Supplement, 2019; to change provisions relating to participation in the federal Child Care Subsidy program and criminal history record information checks for child care staff members and child care providers; to provide for reimbursement for criminal history record information checks as prescribed; to define a term; to provide for criminal history record information checks for unlicensed providers of child care participating in the federal Child Care Subsidy program; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

(2) As part of the provision of social services authorized by this section and section 68-1202, the department shall participate in the federal Child Care Subsidy program. A child care provider seeking to participate in the federal Child Care Subsidy program shall comply with the criminal history record information check requirements of the Child Care Licensing Act. In determining ongoing eligibility for this program, ten percent of a household's gross earned income shall be disregarded after twelve continuous months on the program and at each subsequent redetermination. In determining ongoing eligibility, if a family's income exceeds one hundred thirty percent of the federal poverty level, the family shall receive transitional child care assistance through the remainder of the family's eligibility period or until the family's income exceeds eighty-five percent of the state median income for a family of the same size as reported by the United States Bureau of the Census, whichever occurs first. When the family's eligibility period ends, the family shall continue to be eligible for transitional child care assistance if the family's income is below one hundred eighty-five percent of the federal poverty level. The family shall receive transitional child care assistance through the remainder of the transitional eligibility period or until the family's income exceeds eighty-five percent of the state median income for a family of the same size as reported by the United States Bureau of the Census, whichever occurs first. The amount of such child care assistance shall be based on a cost-shared plan between the recipient family and the state and shall be based on a sliding-scale methodology. A recipient family may be required to contribute a percentage of such family's gross income for child care that is no more than the cost-sharing rates in the transitional child care assistance program as of January 1, 2015, for those no longer eligible for cash assistance as provided in section 68-1724. Initial program eligibility standards shall not be impacted by the provisions of this subsection.

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

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

to read:

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

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

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

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

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

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

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

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

(b) A child care staff member shall be required to undergo a national criminal history record information check not less than once during each five-year period. A child care staff member shall submit a complete set of his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall transmit a copy of the child care staff member's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The national criminal history record information check shall include information concerning child care staff members from federal repositories of such information and repositories of such information in other states, if authorized by federal law for use by the Nebraska State Patrol. The Nebraska State Patrol shall issue a report to the department that includes the information collected from the national criminal history record information check concerning child care staff members. The department shall seek federal funds, if available, to assist child care providers and child care staff members with the costs of the fingerprinting and national criminal history record information check. If the department does not receive sufficient federal funds to assist child care providers and staff members with such costs, then the A child care staff member being screened, applicant for a license, or licensee shall pay the actual cost of the fingerprinting and national criminal history record information check, except that the department may pay all or part of the cost if funding becomes available. The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning the costs associated with the fingerprinting and the national criminal history record information check. The department may adopt and promulgate rules and regulations implementing national criminal history record information check requirements for child care providers and child care staff members.

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

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

(ii) A search of the following registries, repositories, or data bases in the state where the child care provider is located or where the child care staff member resides and each state where the child care provider was located or where the child care staff member resided during the preceding five years:

(A) State criminal registries or repositories;

(B) State sex offender registries or repositories; and

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

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

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

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

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

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

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

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

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

(h) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

(2) Beginning on the effective date of this act, an individual who is not required to be licensed under the Child Care Licensing Act but seeks to participate as a provider in the federal Child Care Subsidy program shall submit a request for a national criminal history record information check for each child care staff member, including a prospective child care staff member of the child care provider, (a) prior to the child care provider being approved to participate as a child care provider in the federal Child Care Subsidy program, except as otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on January 1, 2020, or (b) prior to residing in a family child care home. A child care staff member who was a provider in the federal Child Care Subsidy program prior to the effective date of this act, or who resided in a family child care home prior to the effective date of this act, shall submit to a national criminal history record information check by October 1, 2021, unless the child care staff member ceases to be a child care staff member prior to such date. The child care staff member or the child care provider seeking to participate in the subsidy program shall pay the cost of such national criminal history record information check. A person who undergoes a national criminal history record information check to obtain a license under the Child Care Licensing Act or work as a child care staff member and is in good standing with the department shall not be required to undergo an additional national criminal history record information check to become a child care provider in the federal Child Care Subsidy program if the person has not been separated from employment from a child care provider within the state for a period of not more than one hundred eighty consecutive days.

(3) Any individual, entity, or provider shall be ineligible to participate in the federal Child Care Subsidy program if such individual, entity, or provider:

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

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

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

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

Sec. 5. Section 71-1928.01, Revised Statutes Supplement, 2019, is amended to read:

71-1928.01 (1) Any individual eighteen years of age or older working in a residential child-caring agency shall be required to undergo a national criminal history record information check not less than once during each five-year period that he or she is working in such an agency. The individual shall submit a complete set of his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall transmit a copy of the individual's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The national criminal history record information check shall include information concerning the individual from federal repositories of such information and repositories of such information in other states, if authorized by federal law for use by the Nebraska State Patrol. The Nebraska State Patrol shall issue a report to the department that includes the information collected from the national criminal history record information check concerning the individual. The department shall seek federal funds, if available, to assist residential child-caring agencies and individuals working in a residential child-caring agency with the costs of the fingerprinting and national criminal history record information check. If the department does not receive sufficient federal funds to assist residential child-caring agencies and individuals working in a residential child-caring agency with such costs, then the ~~The~~ individual being screened or the residential child-caring agency shall pay the actual cost of the fingerprinting and national criminal history record information check, except that the department may pay all or part of the cost if funding becomes available. The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning the costs associated with the fingerprinting and the national criminal history record information check. The department may adopt and promulgate rules and regulations implementing national criminal history record information check requirements for residential child-caring agencies.

(2) An individual eighteen years of age or older working in a residential child-caring agency shall also submit to the following background checks not less than once during each five-year period: A search of the following registries, repositories, or data bases in the state where the individual resides and each state where the individual resided during the preceding five years:

(a) State criminal registries or repositories;

(b) State sex offender registries or repositories; and

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

Sec. 6. Original section 71-1908, Reissue Revised Statutes of Nebraska, and sections 68-1206, 71-1912, and 71-1928.01, Revised Statutes Supplement, 2019, are repealed.