

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1185**

FINAL READING

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, 71-1912, and 71-1928.01, Revised  
4 Statutes Supplement, 2019; to change provisions relating to  
5 participation in the federal Child Care Subsidy program and criminal  
6 history record information checks for child care staff members and  
7 child care providers; to provide for reimbursement for criminal  
8 history record information checks as prescribed; to define a term;  
9 to provide for criminal history record information checks for  
10 unlicensed providers of child care participating in the federal  
11 Child Care Subsidy program; to harmonize provisions; and to repeal  
12 the original sections.

13 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. The department  
15 shall seek federal funds, if available, to assist child care providers  
16 and child care staff members with the costs of the fingerprinting and  
17 national criminal history record information check. If the department  
18 does not receive sufficient federal funds to assist child care providers  
19 and staff members with such costs, then the A child care staff member  
20 being screened, applicant for a license, or licensee shall pay the actual  
21 cost of the fingerprinting and national criminal history record  
22 information check, except that the department may pay all or part of the  
23 cost if funding becomes available. The department and the Nebraska State  
24 Patrol may adopt and promulgate rules and regulations concerning the  
25 costs associated with the fingerprinting and the national criminal  
26 history record information check. The department may adopt and promulgate  
27 rules and regulations implementing national criminal history record  
28 information check requirements for child care providers and child care  
29 staff members.

30 (c) A child care staff member shall also submit to the following  
31 background checks at his or her expense not less than once during each

1 five-year period:

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

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

9 (A) State criminal registries or repositories;

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

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

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

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

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

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

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

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

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

1 this subsection.

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

7 (h) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

30 (2) Beginning on the effective date of this act, an individual who  
31 is not required to be licensed under the Child Care Licensing Act but

1 seeks to participate as a provider in the federal Child Care Subsidy  
2 program shall submit a request for a national criminal history record  
3 information check for each child care staff member, including a  
4 prospective child care staff member of the child care provider, (a) prior  
5 to the child care provider being approved to participate as a child care  
6 provider in the federal Child Care Subsidy program, except as otherwise  
7 permitted under 45 C.F.R. 98.43, as such regulation existed on January 1,  
8 2020, or (b) prior to residing in a family child care home. A child care  
9 staff member who was a provider in the federal Child Care Subsidy program  
10 prior to the effective date of this act, or who resided in a family child  
11 care home prior to the effective date of this act, shall submit to a  
12 national criminal history record information check by October 1, 2021,  
13 unless the child care staff member ceases to be a child care staff member  
14 prior to such date. The child care staff member or the child care  
15 provider seeking to participate in the subsidy program shall pay the cost  
16 of such national criminal history record information check. A person who  
17 undergoes a national criminal history record information check to obtain  
18 a license under the Child Care Licensing Act or work as a child care  
19 staff member and is in good standing with the department shall not be  
20 required to undergo an additional national criminal history record  
21 information check to become a child care provider in the federal Child  
22 Care Subsidy program if the person has not been separated from employment  
23 from a child care provider within the state for a period of not more than  
24 one hundred eighty consecutive days.

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

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

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

1 section;

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

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

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

8 71-1928.01 (1) Any individual eighteen years of age or older working  
9 in a residential child-caring agency shall be required to undergo a  
10 national criminal history record information check not less than once  
11 during each five-year period that he or she is working in such an agency.  
12 The individual shall submit a complete set of his or her fingerprints to  
13 the Nebraska State Patrol. The Nebraska State Patrol shall transmit a  
14 copy of the individual's fingerprints to the Federal Bureau of  
15 Investigation for a national criminal history record information check.  
16 The national criminal history record information check shall include  
17 information concerning the individual from federal repositories of such  
18 information and repositories of such information in other states, if  
19 authorized by federal law for use by the Nebraska State Patrol. The  
20 Nebraska State Patrol shall issue a report to the department that  
21 includes the information collected from the national criminal history  
22 record information check concerning the individual. The department shall  
23 seek federal funds, if available, to assist residential child-caring  
24 agencies and individuals working in a residential child-caring agency  
25 with the costs of the fingerprinting and national criminal history record  
26 information check. If the department does not receive sufficient federal  
27 funds to assist residential child-caring agencies and individuals working  
28 in a residential child-caring agency with such costs, then the The  
29 individual being screened or the residential child-caring agency shall  
30 pay the actual cost of the fingerprinting and national criminal history  
31 record information check, except that the department may pay all or part

1 of the cost if funding becomes available. The department and the Nebraska  
2 State Patrol may adopt and promulgate rules and regulations concerning  
3 the costs associated with the fingerprinting and the national criminal  
4 history record information check. The department may adopt and promulgate  
5 rules and regulations implementing national criminal history record  
6 information check requirements for residential child-caring agencies.

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

- 13 (a) State criminal registries or repositories;
- 14 (b) State sex offender registries or repositories; and
- 15 (c) State-based child abuse and neglect registries and data bases.

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