

LEGISLATIVE BILL 1013

Approved by the Governor April 7, 1988

Introduced by Health & Human Services Committee,
Wesely, 26, Chairperson; Beyer, 3;
Bernard-Stevens, 42; Morehead, 30;
Schellpeper, 18; Lynch, 13

AN ACT relating to the care of children; to amend sections 71-1911 and 79-444, Reissue Revised Statutes of Nebraska, 1943, and sections 71-1912 and 71-1915, Revised Statutes Supplement, 1987; to provide for additional licensing specialists; to provide requirements for rules and regulations on child care; to require hearings on rules and regulations as prescribed; to change a provision requiring a hearing; to authorize schools to provide and charge for certain programs; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 71-1911, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1911. No person shall furnish, or offer to furnish, a program for four or more children from different families without having in full force and effect a written license issued by the department; upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs furnished for two or three children from different families may continue to license providers of such programs. Any provider not covered by sections 71-1908 to 71-1918 may voluntarily subject himself, herself, or itself to coverage. All licenses issued under sections 71-1908 to 71-1918 shall expire two years from the date of issuance and shall be subject to renewal under such terms as may be prescribed by the rules and regulations of the department in effect at the time of the renewal. There shall be a twenty-five-dollar fee charged for the issuance or renewal of each license for providers with a daily average of less than thirty children and a fifty-dollar

fee charged for the issuance or renewal of each license for providers with a daily average of thirty or more children.

The license fee shall be paid to the department which shall retain the fee, except that when a city, village, or county has adopted any rule, regulation, or ordinance which establishes standards for licensed providers pursuant to subsection (2) of section 71-1914 and conducts all necessary inspections of any licensed provider pursuant to such subsection, the department shall transmit the license fee paid by such provider to the city, village, or county conducting the inspections.

A license may be denied for cause, after notice and hearing, in accordance with such rules and regulations as may be ~~prescribed~~ adopted and promulgated by the department.

In order to assist the department in the performance of the duties prescribed in this section, the Legislature shall appropriate such funds as are necessary to the department to enable the department to employ four additional licensing specialists.

Sec. 2. That section 71-1912, Revised Statutes Supplement, 1987, be amended to read as follows:

71-1912. (1) The department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children pursuant to the licensing of providers. Such standards shall insure that the provider of a program is providing proper care for and treatment of the children served and that such care and treatment is consistent with the children's physical well-being, safety, and protection. Such standards shall not require the use of any specific instructional materials or affect the contents of any course of instruction which may be offered by a program. Before issuance or renewal 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. The department may investigate the character of prospective or existing licensees, any member of the licensee's household, and the staff and employees of early childhood programs by making a national criminal records check. 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) The rules and regulations adopted and promulgated pursuant to subsection (1) of this section shall contain provisions which encourage the involvement of parents in child care for their children and insure the availability, accessibility, and high quality of services for children in day care homes. The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act, except that the department shall hold a public hearing in each geographic area of the state prior to the adoption, amendment, or repeal of any rule or regulation. A review of the rules and regulations for day care homes as such rules and regulations existed on January 1, 1988, shall be conducted by the department and shall be completed on or before January 1, 1989.

Sec. 3. That section 71-1915, Revised Statutes Supplement, 1987, be amended to read as follows:

71-1915. (1) Whenever the director has reason to believe that a violation of any provision of sections 71-1908 to 71-1914 or of any rule, regulation, or order of the department has occurred, he or she may cause a written charge to be served upon each alleged violator. The charge shall specify the provision of sections 71-1908 to 71-1914 or the rule, regulation, or order alleged to be violated and the facts alleged to constitute a violation of such section, rule, regulation, or order. The director shall provide for notice and, if requested by the alleged violator, a full and fair hearing at a time and place specified in such notice at which each alleged violator shall answer the charges. The notice shall be delivered to each alleged violator not less than ten days before the time set for the hearing by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. The alleged violator may request a hearing within ten days of delivery of the notice. Following the hearing if held or within fifteen days of delivery of the notice if no hearing is held, the director shall determine whether the charges are true or not, and if true, the director may (a) issue a declaratory order finding the charges to be true, (b) revoke or suspend a license, or (c) impose a civil penalty of five dollars for each child in the program for each day in violation after the department issues its order finding a

violation.

(2) Any civil penalty assessed and unpaid under the provisions of subsection (1) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in an early childhood program, the director may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (1) of this section, such order shall be effective immediately. Any person to whom the order is directed shall comply immediately, except that upon application to the director, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the director shall continue to enforce his or her order or revoke or modify it.

(4) In addition to the powers provided to the director in this section, he or she may petition the appropriate district court for an injunction whenever he or she believes that any person is violating any provision of sections 71-1908 to 71-1918 or any rule, regulation, or order adopted and promulgated pursuant to such sections. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with such sections, rules, regulations, and orders.

Sec. 4. That section 79-444, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-444. (1) The district board or the board of education, in all classes of school districts, shall not admit any child to the first grade of any school of such school district unless such child has reached the age of six years or will reach such age on or before October 15 of the current year, except that in the event any child has successfully completed the kindergarten or beginner grade such child may enter the first grade of any such school regardless of age.

(2) The board in all classes of school districts shall not admit any child into the kindergarten or beginner grade of any school of such school district unless (a) such child has reached the age of five years or will reach such age on or before October 15 of the current year or (b) such child has demonstrated through recognized testing procedures approved by the State Board of Education that he or she is capable of carrying the work of those grades.

(3) The school board or board of education may require a birth certificate prior to entrance of a child into the beginner grade and shall require evidence of a physical examination by a qualified physician within six months prior to the entrance of a child into the beginner grade and the seventh grade, or, in the case of a transfer from out of state, to any other grade of the local school, except that no such physical examination shall be required of any child whose parent or guardian ~~shall object~~ objects thereto in writing. The cost of such physical examination shall be borne by the parent or guardian of each child who is examined.

Any district board or board of education in its discretion may establish and financially support programs, including programs providing before-and-after-school or preschool services, to which attendance shall be voluntary and which the board may deem beneficial to the education of prekindergarten or school-age children. The board may charge a fee for providing ~~before-and-after-school~~ such programs and services but may waive such fee on the basis of need. This section shall not be construed to allow any school district to fail to meet its responsibilities under the Special Education Act.

Sec. 5. Sections 1 and 6 of this act shall become operative on July 1, 1989, and the remaining sections shall become operative on their effective date.

Sec. 6. That original section 71-1911, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 7. That original section 79-444, Reissue Revised Statutes of Nebraska, 1943, and sections 71-1912 and 71-1915, Revised Statutes Supplement, 1987, are repealed.