

LEGISLATIVE BILL 213

Approved by the Governor March 28, 2001

Introduced by Jensen, 20

AN ACT relating to child care; to amend sections 71-1914, 71-1915, and 71-1916, Revised Statutes Supplement, 2000; to change provisions relating to disciplinary actions; to change penalties; and to repeal the original sections.

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

Section 1. Section 71-1914, Revised Statutes Supplement, 2000, is amended to read:

71-1914. (1) The department shall be the state's coordinating agency for regulating programs in this state in order to (a) provide efficient services pursuant to sections 71-1908 to 71-1917, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the report to the Legislature pursuant to section 71-1917.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for providers of programs whether or not such providers are subject to licensure under section 71-1911. If a city, village, or county adopts any rules, regulations, or ordinances establishing physical well-being and safety standards for providers subject to licensure under section 71-1911, (a) such rules, regulations, or ordinances shall be identical to the department's rules and regulations for licensed providers pursuant to sections 71-1908 to 71-1917, except that 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, and (b) the city, village, or county and the department shall coordinate the inspection and supervision of licensed providers to avoid duplication of inspections. If the applicant is an individual, the application form for providers of such programs shall include the applicant's social security number. A city, village, or county shall report any violation of its rules, regulations, or ordinances regulating providers subject to licensure to the director who may cause a written charge to be brought pursuant to section 71-1915. The city, village, or county may administer and enforce its rules, regulations, and ordinances establishing physical well-being and safety standards for providers of programs, except that the exclusive ~~remedy~~ sanction for the violation of any rules, regulations, and ordinances regulating providers subject to licensure pursuant to section 71-1911 shall be by the ~~director~~ department pursuant to section 71-1915.

Sec. 2. Section 71-1915, Revised Statutes Supplement, 2000, is amended to read:

71-1915. (1) Whenever the ~~director~~ department 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~~ may be served upon each alleged violator by the department. 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. ~~On such basis, the operating license of a person may be suspended or revoked or the provisional or probationary license of a person may be suspended or revoked if periodic review or inspection by the department indicates that insufficient progress has been made toward compliance.~~ The ~~director~~ department shall provide for notice and, if requested by the alleged violator, a full and fair hearing at which each alleged violator shall answer the charges. The notice shall be delivered to each alleged violator 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, and the request shall be made within ten days after following delivery of the notice. Following the hearing, if held, or within fifteen days after delivery of the notice if no hearing is held, the director shall determine whether the charges are true or not, ~~and if true, or whether~~ periodic review or inspection by the department indicates that insufficient

progress has been made toward compliance by a provisional or probationary licensee. If the director determines that the charges are true or that periodic review or inspection by the department indicates that insufficient progress has been made toward compliance by a provisional or probationary licensee, the director may ~~(a)~~ issue a declaratory order ~~finding the charges to be true,~~ ~~(b)~~ stating such finding and (a) revoke or suspend the provisional, probationary, or operating license, ~~(c)~~ (b) issue a probationary license if the determinations of subsection (4) of section 71-1911 are applicable, ~~or~~ ~~(d)~~ (c) impose a civil penalty of up to five dollars ~~for each child in the program per child~~ based upon the license capacity of the program on the effective date of the finding of violation, for each day the program is in violation, (d) establish restrictions on new enrollment in the program, or (e) establish other limitations on the license of the licensee. The department may choose not to accept a voluntary surrender of the license of the licensee during an investigation and may proceed with a revocation or other disciplinary action. ~~after the department issues its order finding a violation.~~ If the department has initiated a license suspension or revocation disciplinary action, (i) such action may continue to finality even if the license of the licensee has been surrendered, and (ii) household members of the licensee or current staff members of such licensee shall not become the licensee of the program while such action is pending, and (iii) the department may choose not to accept voluntary surrender of the license of the licensee during the investigation.

(2) Any civil penalty assessed and unpaid under 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 a 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 71-1917 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. 3. Section 71-1916, Revised Statutes Supplement, 2000, is amended to read:

71-1916. The department shall adopt and promulgate such rules and regulations, consistent with sections 71-1908 to 71-1915, as it shall deem necessary for (1) the proper care and protection of children by providers under such sections, (2) the issuance, ~~suspension, and revocation and discipline~~ of licenses for program providers, and (3) the proper administration of such sections. Hearings conducted by the department pursuant to section 71-1915 and any other contested cases of the department shall be in accordance with the Administrative Procedure Act. An appeal may be taken from the decision of the department. The appeal shall be in accordance with the act.

Sec. 4. Original sections 71-1914, 71-1915, and 71-1916, Revised Statutes Supplement, 2000, are repealed.