

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1491

By: Monson

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 401, 402, as amended by Section 1, Chapter 228, O.S.L. 1992, 403, 404.1, 405, 406, 407 and 408 (10 O.S. Supp. 1992, Section 402), which relate to child care facilities; providing for short title; modifying terms; providing for and modifying certain exclusions from licensure; requiring the Department of Human Services and certain administrators to obtain certain documentation; clarifying language; modifying the time period for the effectiveness of certain licenses; authorizing the Department to take certain actions under certain conditions; providing procedures; providing for violations; providing for notice and hearing; authorizing certain emergency actions; providing procedures and restrictions; authorizing appeals; modifying certain appeal process; authorizing certain orders; authorizing the Department to make certain requirements of certain persons and facilities; repealing 10 O.S. 1991, Sections 416 and 417, which relate to orphanages; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 401, is amended to read as follows:

A. Sections 401 through 410 of this title shall be known and may be cited as the "Oklahoma Child Care Facilities Licensing Act".

~~(a)~~ B. It is the declared purpose and policy of this act, same to be known as the "Oklahoma Child Care Facilities Licensing Act," to ~~insure~~ ensure maintenance of minimum standards for the care and protection of children away from their own homes, to encourage and assist the child care facility toward maximum standards, and to work for the development of sufficient and adequate services for child care through joint work of public and

voluntary agencies. Whenever possible, child care facilities should help to preserve and restore family life for children.

~~(b)~~ C. In order to provide care for children in child care facilities, a license shall be obtained from the Department of Public Welfare, which is issued on the basis of meeting minimum standards which are essential for the health and welfare of the child or children placed for care with such agencies and individuals.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 402, as amended by Section 1, Chapter 228, O.S.L. 1992 (10 O.S. Supp. 1992, Section 402), is amended to read as follows:

Section 402. As used in ~~this act~~ the Oklahoma Child Care Facilities Licensing Act:

1. "Child" or "minor" means any person who has not attained the age of eighteen (18) ~~;~~ ;

2. "Child care facility" means any public or private institution, child placing agency, foster family home, group home, day care center, part-day child care program, or family day care home, providing either full-time or part-time care for children away from their own homes, and which is owned or controlled by a political subdivision, a corporation, an unincorporated organization or association, or individual ~~;~~ ;

3. "Child placing agency" means a child welfare agency licensed to place children in foster family homes, group homes or adoptive homes ~~;~~ ;

4. "Full-time care" means continuous care given to a child beyond a minimum period of twenty-four (24) hours ~~;~~ ;

5. "Foster family home" means a family home other than the home of a parent, stepparent, grandparent, brother, sister, uncle, or aunt, who provides full-time care for five or ~~less~~ fewer children ~~;~~ ;

6. "Group homes" means homes providing full-time care and community-based services for more than five (5) children ~~;~~ but less than thirteen (13) ;

7. "Institution" means a twenty-four-hour residential facility with five (5) or more unrelated children living together

with adults other than their parents, and which is a specialized service to be selectively and appropriately used for certain children whose needs cannot be adequately met in their own homes;

~~7.~~ 8. "Day care" means the provision of care and supervision of a child who resides in its own home or with relatives but is in the care of another person for part of the day who is conducting a family day care home or persons conducting a day care center. ~~;~~

~~8.~~ 9. "Family day care home" means a licensed or approved family home which provides care and protection for seven or fewer children for part of the twenty-four-hour day. The term "day care home" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or caretakers in the child's own home, ~~and shall not include nursery schools, kindergartens, or other facilities of which the purpose is primarily educational, recreational, or medical treatment.;~~

~~9.~~ 10. "Day care center" means a licensed or approved facility which provides care and ~~protection of~~ supervision for eight or more children ~~for a part of the twenty-four-hour day and that operates for more than thirty (30) hours per week.~~ The term "day care center" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or caretakers in the child's own home, ~~and shall not include nursery schools, kindergartens, or other facilities of which the purpose is primarily educational, recreational, or medical treatment.;~~

11. "Part-day child care program" means a licensed facility which provides care and supervision for eight (8) or more children that operates for more than fifteen (15) but less than thirty (30) hours per week;

~~10.~~ 12. "Department" means the Department of Human Services. ~~;~~

~~11.~~ 13. "Commission" means the Oklahoma Public Welfare Commission, the policy-making and general supervisory body of the Department. ~~;~~ and

~~12.~~ 14. "Division" means the division of the Department of Human Services of the State of Oklahoma assigned responsibilities pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 403, is amended to read as follows:

Section 403. ~~(a) A.~~ A. The provisions of this act shall not apply to ~~licensed hospitals, maternity homes, to schools under the supervision of the Department of Education, the home of a child maintained by his parent, stepparent, grandparent, brother, sister, uncle or aunt:~~

1. Care provided in the child's own home or by relatives;
2. Informal arrangements with friends or neighbors for the occasional care of children;
3. Programs in which school-aged children are participating in home-schooling;
4. Programs operated during typical school hours by a public school district;
5. Programs operated during typical school hours by a private school that offers elementary education in grades kindergarten through third grade;
6. Summer youth camps regulated by the State Department of Health;
7. Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible and "Mothers Day Out" programs sponsored by a church or civic organization;
8. Facilities whose primary purpose is medical treatment; or
9. Day treatment programs and maternity homes operated by a licensed hospital.

~~(b) B.~~ B. The provisions of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act shall be equally incumbent upon all private and public child care facilities. ~~Provided; provided,~~ that any institution furnishing full-time care for children for ten (10) years prior to the effective date of this act shall, upon written notification to the Department of Human Services, be exempted from the provisions of this act, if it is not receiving any state or federal funds for furnishing food, clothing, shelter, or upkeep for such children; and provided, further, that any institution being operated by a war veterans' organization and furnishing full-time care for children on the effective date of

this act shall be exempted from the provisions of this act, regardless of whether it is receiving state or federal funds.

SECTION 4. AMENDATORY 10 O.S. 1981, Section 404.1, is amended to read as follows:

Section 404.1 A. The owner or administrator of a child care facility, ~~other than a foster family home or a day care center, providing full-time care or twenty-four-hour supervised care shall arrange, prior to employment, for~~ shall obtain documentation of a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment.

B. ~~Every owner or administrator of a day care center, other than a family day care home, may arrange, prior to employment, for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment~~ The Department shall obtain a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for family day care home applicants, other caregivers and all adults living in the home.

C. A conviction for a crime shall not be an absolute bar to employment, but shall be considered in relation to specific employment duties and responsibilities.

D. Information received by an owner or administrator of a child care facility or a day care center shall be maintained in a confidential manner. Whenever an applicant is employed by said owner or administrator, said information shall not be made a part of that individual's personnel records.

E. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 405, is amended to read as follows:

Section 405. ~~(a)~~ A. No child care facility may be operated or maintained ~~after June 30, 1964 in this state,~~ unless licensed by the Department of Human Services; provided, that the Department shall not be required to be licensed, but shall be bound by the

standards it prescribes. No new child care facility may be established without the prior approval of the Department, which shall be granted only after the Department is satisfied that such facility will meet known needs for the services proposed to be provided and that the facility will meet minimum standards for a license to operate. The incorporation or domestication of a corporation organized for the purpose of operating a child care facility shall not exempt such corporation from compliance with the provisions of this act.

~~(b)~~ B. An application for a license shall be made on terms provided by the Department and in the manner prescribed. Before issuing such license, the Department shall investigate the activities and standards of care of the applicant and if satisfied that the applicant meets the requirements as provided in this act, a license shall be issued. A provisional license may be issued to any applicant whose services are needed but which is temporarily unable to conform to all the rules and regulations of said Department, as provided in Section ~~4 hereof~~ 404 of this title. All licenses shall be in force for ~~one (1) year~~ two (2) years from ~~date~~ month of issuance unless revoked as authorized by Section ~~8~~ 408 of this ~~act~~ title, and ~~shall~~ may be reissued annually on application, except that a provisional license may be in force for not more than one (1) year from the date of issuance, unless such emergency exists as, in the discretion of the Department, necessitates an extension thereof.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 406, is amended to read as follows:

Section 406. A. The Department shall have authority at any reasonable time to investigate and examine ~~into~~ the conditions of any child care facility in which a licensee hereunder receives and maintains children, and shall have authority at any time to require the facility to provide information pertaining to children in its care.

B. 1. The State Department of Health may visit any ~~licensee~~ facility at the request of the Department to advise on matters

affecting the health of children and to inspect the sanitation of the buildings used for their care.

2. ~~The State Bureau of Investigation, or other agency performing the duties of State Fire Marshal,~~ may visit any licensee facility at the request of the Department to advise on matters affecting the safety of children and to inspect the condition of the buildings used for their care.

C. 1. Upon receipt of a complaint against any child care facility alleging violations of the provisions of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Department, the Department shall conduct a full investigation. If upon investigation, it is determined that there are reasonable grounds to believe that a facility is in violation of the Oklahoma Child Care Facilities Licensing Act or of any standard, rule, or regulation promulgated pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, the Department shall give written notice to the alleged violator specifying the cause of complaint and require the facility to submit a plan for correcting the violations within a specified period of time. When the Department determines that the violation has a direct impact on the health, safety or well-being of one or more of the children cared for by the facility, the Department shall require immediate correction of the violation.

2. The notice shall include notice that failure to correct the violations can result in the revocation of the license of the facility or the filing of an injunction pursuant to Section 409 of this title, or both.

3. If the facility refuses to correct the violation or fails to complete the plan of correction, the Department shall initiate proceedings to revoke the license of the facility, request an injunction, or both.

D. Information obtained by the Department or Division from any licensee regarding children or their parents or other relatives shall be deemed confidential and privileged communications and shall be properly safeguarded and shall not be

accessible to anyone except as herein provided unless upon order of a court of competent jurisdiction.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 407, is amended to read as follows:

Section 407. A. The Department of Human Services may revoke ~~any the~~ license of ~~a any~~ child care facility, ~~in case the licensee shall have violated~~ found to be in violation of any provision of this act or the rules and regulations of ~~said the~~ Department, as provided in Section ~~4 hereof~~ 404 of this title.

B. 1. No license shall be revoked or renewal refused unless and until such time as the holder of such license shall have been given at least thirty (30) days' notice in writing of the grounds of such proposed revocation or refusal.

2. At the time the facility is given notice in writing of the revocation of license or refusal to renew, the Department shall also advise parents of children attending the facility of such action by written notification and the posting of an announcement in the facility.

3. If such revocation or refusal is protested within thirty (30) days of receipt of said notice, by writing addressed to the Human Services Commission, said the Commission, or its authorized agency, shall conduct a hearing at which an opportunity ~~is~~ shall be given to said licensee to present testimony and confront witnesses.

4. Notice of such hearing shall be given to said licensee by personal service or by delivery to the proper address by registered mail, at least two (2) weeks prior to the date thereof.

5. If notice of the proposed revocation or refusal is not so protested, the license may thereupon be revoked or renewal thereof refused.

C. 1. Nothing in this section or Section 406 of this title shall be construed as preventing the Department from taking emergency action as provided by this subsection.

2. Whenever the Department finds that an emergency exists requiring immediate action to protect the health, safety, or welfare of any child cared for by a facility licensed pursuant to

the provisions of the Oklahoma Child Care Facilities Licensing Act, the Department may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency including, when necessary, removing children from the facility and prohibiting the facility from providing services to children pending a hearing on the matter.

- a. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately, but on application to the Department, shall be afforded a hearing within ten (10) days of receipt of said notice.
- b. On the basis of such hearing, the Department shall continue such order in effect, revoke it, or modify it.
- c. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases. For the purposes of this subsection, the term "emergency" shall mean a situation that poses a direct and serious hazard to the health, safety or welfare of any child cared for by the facility.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 408, is amended to read as follows:

Section 408. ~~(a)~~ A. Any licensee aggrieved by the decision of the Department under Sections ~~5 or 7~~ 405 or 407 of this ~~act~~ title may, within ten (10) days after the revocation or refusal to issue or renew the license, ~~take an appeal de novo~~ appeal to the district court of the county in which the child care facility is maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the

Director of the Department within five (5) days of the date of its filing.

~~(b) B.~~ The Department shall, within ten (10) days of the service of such notice, file with the clerk of said court a transcript of the proceedings had before it. The district court shall thereupon be vested with jurisdiction to ~~hear and determine the questions of law and fact involved, as in an appeal de novo review the proceedings of the Department;~~ provided that, if the Department prevails, the judgment of the district court shall be that the decision of the Department be affirmed, and if the licensee prevails, the judgment of the court shall be that the revocation be set aside or the license issued or renewed, as the case may be. Pending the hearing of the appeal, the action of the Department revoking or refusing renewal of the license or the granting thereof shall be stayed. ~~In any action, suit, or proceeding under the act, the Department shall be represented by the Attorney General of the State of Oklahoma;~~ provided, after the filing of an appeal, the district court, upon application by the Department and after an appropriate hearing, may grant a restraining order to enforce the decision of the Department.

SECTION 9. REPEALER 10 O.S. 1991, Sections 416 and 417, are hereby repealed.

SECTION 10. This act shall become effective September 1, 1993.

44-1-6509 KSM