

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 569

By: Monson of the Senate

and

Seikel of the House

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 401, as amended by Section 1, Chapter 122, O.S.L. 1993, 402, as last amended by Section 2, Chapter 122, O.S.L. 1993, 403, as amended by Section 3, Chapter 122, O.S.L. 1993, 404, 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996, 405, as amended by Section 5, Chapter 122, O.S.L. 1993, 406, as last amended by Section 2, Chapter 222, O.S.L. 1995, 407, as amended by Section 7, Chapter 122, O.S.L. 1993, 408, as amended by Section 8, Chapter 122, O.S.L. 1993, 410, 411, as amended by Section 1, Chapter 13, O.S.L. 1992, 412, 413 and 415 (10 O.S. Supp. 1996, Sections 401, 402, 403, 404.1, 405, 406, 407, 408 and 411), which relate to the Oklahoma Child Care Facilities Licensing Act; modifying certain purpose and policy of act; modifying, deleting and adding definitions; modifying certain exemptions to application of act; requiring certain facilities to be licensed by specified date; authorizing certain waivers; limiting appointment of certain

committees; modifying certain requirements; eliminating authority to enter into certain agreements; requiring promulgation of certain rules; stating certain unlawful acts; modifying certain criminal history investigations; requiring meeting of certain standards; modifying certain investigations, complaints and procedures related thereto; specifying enforcement powers of the Department of Human Services; authorizing administrative penalties; modifying certain posting requirement relating to revocations and refusal to renew licenses; defining term; providing and clarifying procedures; requiring certain inspection reports; modifying and adding certain emergency action authority; modifying certain appeals procedures; modifying certain immunization requirements and procedures; providing for exemptions; authorizing and modifying certain enforcement of immunization provisions; modifying certain exemptions and procedures related thereto; modifying provisions relating to excluding children from child care centers for reported contagious diseases; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 401, as amended by Section 1, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1996, Section 401), is amended to read as follows:

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

B. ~~It is the declared~~ 1. ~~The purpose and policy of this act, same to be known as the "Oklahoma Child Care Facilities Licensing Act", is to ensure maintenance of:~~

- a. ensure compliance with minimum standards for the care and protection of children who are away from their own homes, ~~to encourage~~
- b. encourage and assist ~~the~~ child care ~~facility toward~~ facilities to achieve maximum standards, and ~~to~~
- c. work for the development of sufficient and adequate services for child care through joint work of public and ~~voluntary~~ private agencies.

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

C. In order to provide care for children ~~in child care facilities~~, any person planning to operate or operating a child care facility shall first obtain a license ~~shall be obtained~~ from the Department of Human Services, ~~which is~~. The license shall be issued on the basis of such persons meeting and maintaining minimum standards ~~which are~~ essential for the health and welfare of ~~the~~ each child ~~or children~~ placed ~~for~~ in the care ~~with~~ of such agencies and ~~individuals~~ person, pursuant to rules promulgated by the Commission for Human Services.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 402, as last amended by Section 2, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1996, Section 402), is amended to read as follows:

Section 402. As used in the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title:~~

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

2. "Child care facility" means any public or private residential facility, child-placing agency, foster family home, ~~group home, day child~~ care center, part-day child care program, ~~or family day child~~ care home or school-age program, 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~~ an agency licensed to place children in foster family homes, group homes ~~or~~, adoptive homes, transitional or independent living programs, or family child care homes, and which approves and monitors placements and facilities based on licensing standards established by the Department of Human Services;

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 all persons living in a foster family home, other than the ~~home of a parent, stepparent, grandparent, brother, sister, uncle, or aunt, which provides full-time care for five or fewer children~~ foster child;

6. "Group ~~homes~~ home" means ~~homes~~ a home providing full-time care and community-based services for ~~more than five children but less~~ fewer than thirteen children;

7. ~~"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. "Family day child care home" means a licensed or approved family home which provides care and protection~~ supervision 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;~~

~~9. 8. "Day Child care center" means a licensed or approved facility which provides care and supervision for eight or more children and which 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;~~

~~10. 9. "Part-day child care program" means a licensed facility which provides care and supervision for eight or more children and which operates for more than fifteen (15) but less than hours up to and including thirty (30) hours per week;~~

~~11. 10. "Department" means the Department of Human Services;~~

~~12. 11. "Commission" means the Commission for Human Services, the policy-making and general supervisory body of the Department; and~~

~~13. 12. "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;~~

~~13. "Independent living program" means a residential program that places children in living situations supervised by a licensed child-placing agency with the goal of preparing them for living independently without supervision;~~

~~14. "Regular school hours" means the hours that a school has established for school attendance, not to exceed seven (7) hours per day;~~

~~15. "Residential child care facility" means a twenty-four-hour facility that provides care to a specific number of unrelated children, who live together with adults other than their parents, as determined by rules promulgated by the Commission for Human~~

Services, pursuant to the Oklahoma Child Care Facilities Licensing Act;

16. "School-age child" means a child at least five (5) years of age who is attending or has completed kindergarten;

17. "School-age program" means a child care facility which provides care and supervision for school-age children only, and which operates for more than fifteen (15) hours per week but does not include private or parochial schools; and

18. "Person" means an individual, association, partnership, firm, company, corporation, political subdivision or any other legal entity.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 403, as amended by Section 3, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1996, Section 403), is amended to read as follows:

Section 403. A. The provisions of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act shall not apply to:

1. Care provided in ~~the~~ a child's own home or by relatives;

2. Informal arrangements which parents make with friends or neighbors for the occasional care of their children;

3. Programs in which ~~school-aged~~ school-age children are participating in home-schooling;

4. Programs operated only during ~~typical~~ regular school hours, for children four (4) years of age or older, by a public school district;

5. Programs operated only during ~~typical~~ regular school hours, for children four (4) years of age or older, by a private school that offers elementary education in grades kindergarten through third grade;

6. ~~Summer youth camps for children at least five (5) years of age that are accredited by the American Camping Association or other national standard-setting agency or church camp accreditation program;~~

~~7.~~ Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible;

~~8.~~ 7. Nursery schools, kindergartens or other facilities whose purpose is primarily educational, recreational or medical and which operate part-day child care programs which provide care and supervision for eight (8) or more children for fifteen (15) or less hours per week;

8. A program of specialized activity or instruction for children that is not designed or intended for child care purposes including, but not limited to, scouts, 4-H clubs and summer resident youth camps, and single-activity programs such as academics, athletics, gymnastics, hobbies, art, music, dance and craft instruction;

9. Facilities whose primary purpose is medical treatment; or

10. Day treatment programs and maternity homes operated by a licensed hospital.

B. The Commission for Human Services shall promulgate rules establishing guidelines and criteria for granting a waiver from the provisions of the Oklahoma Child Care Facilities Licensing Act.

C. The provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title,~~ shall be equally incumbent upon all private and public child care facilities; provided, that any ~~institution~~ residential child care facility 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~~ exempt 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~~ the Oklahoma Child Care Facilities Licensing Act until June 30, 1999. Effective July 1, 1999, such facilities shall apply for and obtain a license pursuant to and be subject to the provisions of the Oklahoma Child Care Facilities Licensing Act.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 404, is amended to read as follows:

Section 404. ~~(a)~~ A. The Department of Human Services shall appoint an advisory ~~committees~~ committee of representatives of child care facilities and others to ~~prepare~~ recommend minimum licensing requirements and ~~desirable~~ standards for adoption by the ~~Department,~~ provided that a Commission for Human Services; provided, however, a majority of any the members of the committee appointed to prepare recommend requirements and standards for institutions and homes child care facilities shall be representatives of voluntary, nonprofit child care institutions and homes facilities. These Such standards shall include incorporate requirements including, but not be limited to:

1. Criteria for a constructive program and services to meet the needs of each child and the child's family; ~~staff~~

2. Staff of good moral character and ability for child care; ~~adequate~~

3. Adequate and safe ~~housing~~ facilities, sanitation, and equipment; ~~good~~

4. Good health care services; ~~full~~

5. Full educational and religious opportunities; ~~good~~

6. Good community relationships; ~~essential~~

7. Essential records and administrative methods; and ~~sufficient~~

8. Sufficient funds for sound operation.

~~(b)~~ B. The ~~Department~~ Commission shall ~~prescribe and publish~~ such rules and regulations establishing review the recommendations of the advisory committee appointed pursuant to subsection A of this section and shall promulgate minimum requirements and ~~desirable~~

~~standards~~ as may be deemed necessary or advisable to ~~carry out~~
implement the provisions of ~~this act~~ the Oklahoma Child Care
Facilities Licensing Act.

~~(c) Such rules and regulations~~ C. The requirements shall not
be made, prescribed, or published until after consultation with the
~~Departments~~ State Department of Health and, the Department of
Environmental Quality, the State Department of Education, and the
~~State Bureau of Investigation or other agency performing the duties~~
~~of State Fire Marshal, provided, that, not.~~ Not less than sixty
(60) days' notice by ordinary mail shall be given to all current
licensees before any changes are made in such ~~rules and regulations~~
requirements.

~~(d) D.~~ In order to improve ~~the standards of child care~~ services
in this state, the Department shall also advise and cooperate with
the governing bodies and ~~staffs~~ staff of child care facilities and
assist ~~the staffs thereof~~ them through ~~advice of progressive methods~~
~~and procedures and suggestions for~~ consultation related to the
improvement of services.

~~(e) The Department may participate in federal programs for day~~
~~care services, and enter into agreements or plans on behalf of the~~
~~state for such purpose, in accordance with the Act of Congress,~~
~~known as the Public Welfare Amendments of 1962 (Public Law 87-543),~~
~~or other federal laws and regulations; and for such purpose, and~~
~~notwithstanding any other provisions of this act, the Department may~~
~~approve unlicensed facilities (including private homes) as meeting~~
~~the standards established for licensing of day care facilities.~~
~~Foster family homes, group homes, and day care homes which have been~~
~~selected by and which are supervised by a licensed child care~~
~~facility, and which meet the standards established for licensing~~
~~under this act, may be maintained and operated on the basis of~~
~~permits issued by such child care facility~~ E. Any standards adopted

by the Commission shall be promulgated as rules pursuant to the Administrative Procedures Act.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1), is amended to read as follows:

Section 404.1 A. ~~Every owner or administrator~~ 1. The Department of a child care facility Human Services shall arrange, prior to employment, for require a criminal history investigation, conducted by the Oklahoma State Bureau of Investigation, ~~for an applicant for employment and for any adult residing in~~ person making application to establish or operate a child care facility that is licensed or approved by a child placing agency and located in a private residence prior to the issuance of a license to operate such facility. ~~If the applicant for~~

2. a. Every child care facility shall arrange, prior to employment or resident has resided in Oklahoma for less than one (1) year, the, for a criminal history investigation shall to be obtained from conducted by the previous state of residence Oklahoma State Bureau of Investigation for any person to be employed by the child care facility.

b. In addition, any child care facility, licensed or approved pursuant to the Oklahoma Child Care Facilities Licensing Act, and located in a private residence, shall arrange for a criminal background investigation for any adult residing in a child care facility. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the private residence.

3. a. Any child care facility, contracting with any person for foster family home services or in any manner for

services for the care and supervision of children, shall also, prior to executing a contract, arrange for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for the contractor.

b. In addition, any child care facility contracting for foster family home services shall arrange for a criminal background investigation for any adult residing in the foster family home. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall be completed for any adult who subsequently moves into the residence.

4. If the applicant planning to establish or operate a child care facility, the employees of the child care facility, or the contractor has resided in Oklahoma for less than one (1) year, the criminal history investigation shall also be obtained from such person's previous state of residence.

B. Prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services, the Department shall arrange for a criminal history investigation, conducted by the Oklahoma State Bureau of Investigation, for such foster family applicant and for any adult residing in such foster family home. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall be completed for any adult who subsequently moves into the residence.

C. The Commission shall promulgate rules to identify circumstances when a criminal history investigation for an applicant or contractor, or any adult residing in a private residence in which a child care facility is located, shall be expanded beyond the investigation conducted by the Oklahoma State Bureau of Investigation pursuant to this section.

~~B. D.~~ 1. ~~Adults~~ The following adults shall not be required to obtain a criminal history investigation are pursuant to this section:

- a. a parent volunteers volunteer who ~~transport transports~~ children on an irregular basis, and
- b. ~~a child of a foster, adoptive, group or family child care home~~ who became an adult during continuous residence at the licensed or approved facility.

2. These exemptions shall not preclude the Department from requesting a criminal history investigation or investigating criminal, abusive or harmful behavior of such persons, if warranted.

~~3. Prior to the acceptance of a foster family home for placement of any child in the custody of the Department of Human Services, the Department shall arrange for a criminal history investigation, conducted by the Oklahoma State Bureau of Investigation, for a foster family applicant and for any adult residing in such foster family home. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall be done for any adult who moves into the residence at a later time.~~

~~4. The Department of Human Services shall promulgate rules to identify circumstances when a criminal history investigation of a foster family applicant and of any adult residing in such foster family home shall be expanded beyond the investigation conducted by the Oklahoma State Bureau of Investigation.~~

~~C. E.~~ A conviction for a crime shall not be an absolute bar to employment, except as provided in subsection ~~F~~ G of this section, but shall be considered in relation to specific employment duties and responsibilities.

~~D. F.~~ 1. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner in a file that is separate from employment

records. The information may be transmitted to the Department for child care facility licensing purposes.

2. Whenever an applicant is subsequently employed by ~~the owner or administrator of~~ or contracts with a child care facility for the care and supervision of children, the information received pursuant to a criminal history investigation shall not be made a part of that individual's personnel or contract records. Such information, along with any other information relevant to the individual's ability to perform tasks that require direct contact with children, may be released to another child care facility in response to a request from ~~an owner or administrator of a~~ the child care facility ~~who~~ that is considering employing or contracting with the individual.

3. Requirements for confidentiality and record keeping with regard to the information shall be the same for the ~~owner or administrator~~ child care facility receiving the information in response to a request as those provided for in paragraph 1 of this subsection for the ~~owner or administrator~~ child care facility releasing such information.

~~E. G.~~ 1. 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.

2. a. It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or contract with, or allow continued employment of or contracting with any person who is required to register pursuant to the Sex Offenders Registration Act.

b. Upon a determination by the Department of any violation of the provisions of this section, the violator shall be subject to and the Department may pursue:

- (1) an emergency order,
- (2) license revocation, denial or nonrenewal,
- (3) injunctive proceedings,
- (4) an administrative ~~fine~~ penalty not to exceed One Thousand Dollars (\$1,000.00) , and
- (5) referral for criminal proceedings.

c. In addition to the penalties specified by this section, the violator may be liable for civil damages.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 405, as amended by Section 5, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1996, Section 405), is amended to read as follows:

Section 405. A. ~~No~~ 1. Except as otherwise provided in the Oklahoma Child Care Facilities Licensing Act, no child care facility may be operated or maintained in this state, unless licensed by the Department of Human Services; provided, that ~~the~~ a Department operated or maintained facility shall not be required to be licensed under the provisions of this act, but shall be bound by the standards it prescribes.

2. 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~~ 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~~ the Oklahoma Child Care Facilities Licensing Act.

B. 1. An application for a license shall be made on forms 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~~ the Oklahoma Child Care Facilities Licensing Act, shall issue a license ~~shall be issued~~.

2. 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~~ requirements of the Department, as provided in Section 404 of this title.

3. All licenses shall be in force for two (2) years from the month of issuance, unless revoked as authorized by Section 408 of this title, and may be reissued biennially ~~on~~ upon application, ~~except that; provided, however,~~ a provisional license may be in force for not more than one (1) year from the date of issuance, unless ~~such~~ an emergency exists ~~as, in which,~~ at the discretion of the Department, necessitates an extension ~~thereof~~.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 406, as last amended by Section 2, Chapter 222, O.S.L. 1995 (10 O.S. Supp. 1996, Section 406), is amended to read as follows:

Section 406. A. The Department of Human Services shall have authority at any reasonable time to investigate and examine 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 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 Fire Marshal may visit any licensee 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 a violation of ~~the provisions~~ any provision of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title,~~ or of any licensing standard promulgated by the ~~Department~~ Commission for Human Services pursuant thereto, 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 or rule promulgated pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act,~~ the Department shall:

- ~~a. document the complaint,~~
- ~~b. provide a written copy of the complaint to the facility involved, and~~
- ~~c. document the facility's plan for correcting the alleged violations.~~

2. ~~When the Department determines that there has been a violation and 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 Upon completion of the investigation of a complaint against any child care facility alleging a violation of any provision of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Commission thereto, the Department shall provide to the facility a written report of its findings. The report shall include, but not be limited to:

- a. a summary of the complaint,
- b. any comments regarding the inspection,
- c. any findings of the Department, and
- d. any corrective action required of the facility.

~~3. The notice shall include notice that failure to correct the violation 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.~~

~~4. If the facility refuses to correct the violation, complete the plan of correction, the Department may initiate proceedings to revoke the license of the facility, request an injunction, or both.~~

~~D. Upon the completion of the investigation of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Department, the Department shall clearly designate its findings on the first page of the report of the investigation. The findings shall state whether the complaint was substantiated or unsubstantiated.~~

~~E. Information obtained by the Department or the Office of Child Care from any licensee regarding children or, their parents or other relatives shall be:~~

~~1. Be deemed confidential and privileged communications and shall be;~~

~~2. Be properly safeguarded; and shall not~~

~~3. Not be accessible to anyone except as herein provided, unless upon order of a court of competent jurisdiction provided in the Oklahoma Child Care Facilities Licensing Act, or as otherwise provided by the Oklahoma Children's Code or the Oklahoma Juvenile Code.~~

SECTION 8. AMENDATORY 10 O.S. 1991, Section 407, as amended by Section 7, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1996, Section 407), is amended to read as follows:

Section 407. A. The Department of Human Services may revoke the license of any child care facility found to be in violation of any provision of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act or the rules of the Department, as provided in Section

~~404 of this title promulgated by the Commission for Human Services pursuant thereto.~~

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

2. At the time the facility is given the notice ~~in writing of the revocation of license or refusal to renew~~ specified by this subsection, the Department shall also:

a. advise parents of children attending the facility of such action by:

(1) written notification, ~~and the~~

(2) prominent posting of an announcement in the facility, and

b. enforce a ban on future admissions to the child care facility.

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

4. Notice of such hearing shall be given to ~~said~~ the 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~~ action is not so protested, the ~~license may thereupon be revoked or renewal thereof refused~~ action will stand.

C. 1. Nothing in ~~this section or Section 406 of this title~~ the Oklahoma Child Care Facilities Licensing Act shall be construed as preventing the Department from taking emergency action as provided by this subsection.

2. Whenever the Department finds, after an investigation, that an emergency exists requiring immediate action to protect the health, safety, or welfare of any child cared for by a facility licensed or required to be licensed pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title,~~ the Department may without notice or hearing issue an order stating the existence of such an emergency and ~~requiring~~ require 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 the~~ the order immediately, ~~but on~~ and, upon application to the Department, shall be afforded a hearing within ten (10) days of receipt of ~~said~~ such 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 the~~ the district court docket, except criminal cases.

3. 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~~ a facility.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. 1. The Department of Human Services may request from a child care facility a consent agreement for compliance with rules promulgated by the Department prior to license denial, revocation or refusal to renew, in an effort to avoid such action. The consent agreement shall cite the violations in writing, be signed by the facility owner or director, and be in effect for an established period of time, which may be extended by agreement of the parties.

2. The Department shall advise parents of children attending the facility of the existence of the consent agreement by written notification and by prominent posting of an announcement of the existence of such agreement in the affected facility. The agreement may include, but need not be limited to, a ban on future admissions of children to the child care facility, a reduction in the number of children attending the facility, a requirement for specific staff training, drug testing, medical or psychological evaluation, or any other requirement deemed necessary by the Department in an effort to avoid license denial, revocation or refusal to renew.

B. 1. A violation of the terms of the consent agreement shall be additional grounds that may be used in a license denial, revocation or refusal to renew.

2. The child care facility shall not be entitled to an appeal of the terms of the consent agreement.

C. Nothing in this section shall be interpreted to require the Department to enter into a consent agreement with a child care facility prior to denial or revocation of a license or refusal to renew a license.

SECTION 10. AMENDATORY 10 O.S. 1991, Section 408, as amended by Section 8, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1996, Section 408), is amended to read as follows:

Section 408. A. Any applicant or licensee aggrieved by the decision of the Department of Human Services ~~under Sections 405 or 407 of this title~~ pursuant to the Oklahoma Child Care Facilities

Licensing Act may, within ten (10) days after the denial, revocation or refusal to issue or renew the license, 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 pursuant to Sections 318 through 323 of Title 75 of the Oklahoma Statutes. ~~Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.~~

B. The Department shall, within ten (10) days of the service of such notice, file with the clerk of ~~said~~ such court a transcript of the proceedings had before it or the case record. The district court shall thereupon be vested with jurisdiction to 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 applicant or 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 denying, revoking or refusing renewal of the license or the granting thereof shall be stayed; 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 11. AMENDATORY 10 O.S. 1991, Section 410, is amended to read as follows:

Section 410. A. Any person or agent, representative, or officer of any child care facility who violates any of the provisions of ~~this act~~ the Oklahoma Child Care Facilities Licensing Act shall, upon conviction thereof, be deemed guilty of a misdemeanor and punished in accordance with the provisions of ~~21 O.S. 1961~~, Section 10 of Title 21 of the Oklahoma Statutes. Whenever any agent, representative, or officer of any child care facility

~~shall be~~ is convicted under authority pursuant to the provisions of
~~this act~~ the Oklahoma Child Care Facilities Licensing Act, such
conviction shall be sufficient ground for the revocation of the
license of ~~said~~ such licensee.

B. Any license holder who has been determined by the Department
of Human Services to have repeatedly violated any provision of the
Oklahoma Child Care Facilities Licensing Act or any requirement
promulgated pursuant to the provisions of the Oklahoma Child Care
Facilities Licensing Act, may also be liable for an administrative
penalty of not more than One Thousand Dollars (\$1,000.00) for each
day that such violation or violations continue to exist. The
facility shall be given prior written notice before a penalty is
assessed.

C. The amount of the penalty shall be assessed by the
Department pursuant to the provisions of subsection B of this
section, after notice and opportunity for hearing. Within ten (10)
working days of the inspection documenting the violation, the
facility may appeal such decision pursuant to Article II of the
Administrative Procedures Act. In determining the amount of the
penalty, the Department shall include, but not be limited to,
consideration of the nature, circumstances and gravity of the
violation, the repetitive nature of the violation at such facility
or others operated by the same entity, the previous degree of
difficulty in obtaining compliance with the rules, and, with respect
to the person found to have committed the violation, the degree of
culpability, the facility's financial condition and substantial show
of good faith in attempting to achieve compliance with the
provisions of the Oklahoma Child Care Facilities Licensing Act. The
Commission shall promulgate policies on administrative penalties
following consultation with the appointed advisory committee and
other affected associations.

D. Any license holder may elect to surrender the license in lieu of such fine but may be barred from obtaining a reissuance of the license or any other license issued pursuant to the Oklahoma Child Care Facilities Licensing Act.

SECTION 12. AMENDATORY 10 O.S. 1991, Section 411, as amended by Section 1, Chapter 13, O.S.L. 1992 (10 O.S. Supp. 1996, Section 411), is amended to read as follows:

Section 411. A. No person, firm, corporation, partnership or other legal entity operating a ~~day~~ child care center ~~or day, family child care home, part-day child care program or school-age program~~ in this state shall cause or permit a minor child two (2) months of age or older to be admitted to such facility unless the parent or guardian of ~~said~~ the child presents ~~certification~~ documentation from a licensed physician or authorized representative of any state or local department of public health that such child has received or will receive immunization at the medically appropriate time against diphtheria, pertussis, tetanus, haemophilus influenzae type B (HIB), measles (rubeola), rubella, mumps, polio, and ~~poliomyelitis~~ any other immunization subsequently required for children by the State Board of Health; or presents ~~such certification~~ documentation that the child is likely to be immune as a result of the disease.

~~Provided, however, that in~~

B. In the event the parent, guardian, or other person presenting a child for admission to a ~~day~~ child care ~~center or day care home~~ facility certifies in writing that a family emergency exists, the requirement imposed by this section may be waived for a period not to exceed thirty (30) days. ~~Such certification~~ The documentation shall be made prior to the provision of care. No ~~such~~ waiver shall be knowingly permitted more than once for any child.

C. Immunization records for children attending school-age programs shall not be required if such records are maintained by a

school, pursuant to rules promulgated by the State Board of Health, and are readily available.

SECTION 13. AMENDATORY 10 O.S. 1991, Section 412, is amended to read as follows:

Section 412. A. The immunizations required by ~~this act~~ the Oklahoma Child Care Facilities Licensing Act, and the manner and frequency of their administration, as prescribed by the State Board of Health, shall conform to recognized standard medical practices in this state. The State Department of Health shall supervise and secure the enforcement of the required immunization program.

B. The Department of ~~Institutions, Social and Rehabilitative Human Services~~ shall render reasonable assistance to the State Department of Health in the enforcement of the provisions of ~~this act.~~ This assistance shall the Oklahoma Child Care Facilities Licensing Act which may be in the form of an administrative penalty, revocation of the license, or the refusal to renew the license of any child care facility not in compliance with this act the provisions of the Oklahoma Child Care Facilities Licensing Act.

SECTION 14. AMENDATORY 10 O.S. 1991, Section 413, is amended to read as follows:

Section 413. Any minor child who, through ~~his parent~~ a parent or guardian, ~~may submit~~ of the child, submits to the health authority charged with the enforcement of the immunization laws, a certificate ~~of~~ from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child, ~~or upon receipt of~~ a written statement ~~by~~ from the parent or guardian objecting to such immunizations ~~because of~~ for religious or other reasons, ~~then said child~~ shall be exempt from the provisions of ~~this act~~ Section 411 of this title.

SECTION 15. AMENDATORY 10 O.S. 1991, Section 415, is amended to read as follows:

Section 415. Any child afflicted with a reportable contagious disease as determined by the State Department of Health shall be excluded from attending a ~~day~~ child care center ~~or day,~~ family child care home, part-day child care program or school-age program until such time as the period of communicability has elapsed as determined by a licensed physician or health department official. ~~Such~~ The exclusion shall be reported by the child care facility to a local health department official who shall determine further notification of parents and treatment recommendations of other staff and children, if needed.

SECTION 16. This act shall become effective July 1, 1997.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-7285

KSM