HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL 3095 By: Williams of the House

and

Johnson (Rob) of the Senate

AS INTRODUCED

[children - Oklahoma Child Care Facilities Licensing Act - providing for the transfer of authority to license child care homes or facilities to the State Department of Education - providing for the transfer of certain employees of the Department of Human Services to the State Department of Education - effective date]

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

SECTION 1. AMENDATORY 10 O.S. 2011, Section 401, is amended to read as follows:

Section 401. A. Sections 401 through 418 of this title shall be known and may be cited as the "Oklahoma Child Care Facilities Licensing Act".

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B. It is the declared purpose and policy of the Oklahoma Child Care Facilities Licensing Act, to:

1. Ensure maintenance of minimum standards for the care and protection of children away from their own homes;

2. Encourage and assist the child care facility toward maximum standards; and

3. Work for the development of sufficient and adequate services for child care through joint work of public, private and voluntary agencies. 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, a license shall be obtained from the State Department of ~~Human Services~~ Education, 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.

D. The ~~Child Care Facilities Licensing Division within the~~ State Department of ~~Human Services~~ Education shall work with representatives from municipalities to develop a single child care licensure procedure for use by state and local entities.

SECTION 2. AMENDATORY 10 O.S. 2011, Section 402, is amended to read as follows:

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

1. “Adult” means an individual eighteen (18) years of age or older;

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

3. “Child care center” means a facility which provides care and supervision for children and which operates for more than thirty (30) hours per week;

4. "Child care facility" means any public or private child care residential facility, child-placing agency, foster family home, child care center, part-day child care program, school-age program, summer day camp, family child care home, or large family child care home providing either full-time or part-time care for children away from their own homes;

5. "Child-placing agency" means an agency that arranges for or places a child in a foster family home, adoptive home, or independent living program;

6. "Foster family home" means the private residence of a family which provides foster care services to a child, and includes a specialized foster home, a therapeutic foster family home, or a kinship care home;

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7. "Foster parent eligibility assessment" includes a criminal background investigation, including, but not limited to, a national criminal history records search based upon the submission of fingerprints, a home assessment, and any other assessment required by the Department of Human Services, the Office of Juvenile Affairs, or any child-placing agency pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act. A foster parent eligibility assessment shall be similar to the procedures used by the Department of Public Safety for determining suitability of an individual for employment as a highway patrol officer;

8. ~~"Commission" means the Commission for Human Services, the policymaking and general supervisory body of the Department;~~

~~9.~~ "Department" means the State Department of ~~Human Services~~ Education;

~~10.~~ 9. "Division" means the section within the Department that is assigned responsibilities pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act;

~~11.~~ 10. "Family child care home" means a family home which provides care and supervision for seven or fewer children for part of the twenty-four-hour day. The term "family child care home" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or with caretakers in the child's own home;

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~~12.~~ 11. "Full-time care" means continuous care given to a child beyond a minimum period of twenty-four (24) hours;

~~13.~~ 12. "Large family child care home" means a residential family home which provides care and supervision for eight to twelve children for part of the twenty-four-hour day;

~~14.~~ 13. "Part-day child care program" means a facility that provides care and supervision for children and that operates for more than fifteen (15) and up to thirty (30) hours per week;

~~15.~~ 14. "Rap back" means the capability of the Oklahoma State Bureau of Investigation to notify child care facilities of subsequent criminal activity of individuals whose criminal background checks have been completed pursuant to the requirements of the Oklahoma Child Care Facilities Licensing Act; and

~~16.~~ 15. "Residential child care facility" means a twenty-four-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives.

SECTION 3. AMENDATORY 10 O.S. 2011, Section 404, is amended to read as follows:

Section 404. A. Effective July 1, 2013, the State Department of Education shall assume responsibility for the licensing of child care facilities. On July 1, 2013, all child care licensing records in the possession of the Department of Human Services shall be transferred to the State Department of Education. The State

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Department of Education shall assume responsibility for all existing Department of Human Services child-care-licensing-related contracts in effect on July 1, 2013. The State Department of Education shall enforce all rules in effect on July 1, 2013, until such time that new rules are promulgated by the Department pursuant to the Oklahoma Child Care Facilities Licensing Act. The Department, acting through the State Superintendent of Public Instruction, or persons authorized by law, rule or designated by the State Superintendent to perform such acts, shall have the power and duty to:

1. Advise, consult, cooperate and enter into agreements with agencies of the state, municipalities and counties, other states and the federal government, and other persons;

2. Enter into agreements for, accept, administer and use, disburse and administer grants of money, personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and carry on in this state any program within its area of responsibility;

3. Require the establishment and maintenance of records and reports;

4. Establish a system of training for personnel in order to assure uniform statewide application of law and rules;

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5. Enforce the provisions of the Oklahoma Child Care Facilities Licensing Act and rules promulgated thereunder and orders issued pursuant thereto;

6. Charge and receive fees pursuant to fee schedules promulgated by the State Department of Education;

7. Conduct studies, research and planning of programs and functions, pursuant to the authority granted by the Oklahoma Child Care Facilities Licensing Act;

8. Enter into interagency agreements;

9. Lease, from time to time, any real property which the State Superintendent of Public Instruction shall determine advisable to more fully carry into effect the requirements of the Oklahoma Child Care Facilities Licensing Act in accordance with applicable state statutes. All such leases for real property shall be subject to the provisions of Section 63 of Title 74 of the Oklahoma Statutes;

10. Purchase or lease any equipment, supplies or materials pursuant to The Oklahoma Central Purchasing Act;

11. Contract for professional services;

12. Acquire, construct, extend, and operate any and all facilities of all kinds which in the judgment of the State Superintendent of Public Instruction and the approval of the Legislature shall be necessary or convenient to carry out the duties of the State Department of Education, as authorized by law; and

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13. Exercise all incidental powers which are necessary and proper to implement and administer the purposes of the Oklahoma Child Care Facilities Licensing Act.

B. Any Department of Human Services employee involved in child care licensing on July 1, 2013, shall be eligible for transfer to the State Department of Education if the State Department of Education determines that the employee is qualified and capable of performing the duties required. Any Department of Human Services employee not hired by the State Department of Education may be retained by the Department of Human Services. The Department of Human Services shall develop a plan providing for the transfer of employees to a different division within the agency or for the termination by operation of law of any employees not to be retained. Any annual, sick and compensatory time and retirement, longevity or other benefits accrued by Department of Human Services employees who are hired by the State Department of Education shall be retained by the employee.

C. Suitable office space shall be provided by the Department of Central Services to the State Department of Education, to the extent necessary for the Department to implement its duties as required by the Oklahoma Child Care Facilities Licensing Act, and the Department may incur necessary expenses for office rent.

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D. The State Department of Education shall maintain a fair, simple and expeditious system for resolution of grievances of all persons directly affected by the State Department of Education regarding the substance or application of any written or unwritten policy, rule of the Department or of an agent or contractor of the Department or any decision, behavior or action by an employee, agent or contractor or by any other person affected by the Department.

E. The State Department of ~~Human Services~~ Education shall appoint advisory committees of representatives of child care facilities and others to prepare minimum requirements and desirable standards for promulgation by the ~~Commission for Human Services~~ Department. Committee members shall be appointed for a three-year term, with a two-consecutive-term limit. A majority of any committee appointed to prepare requirements and standards for child care facilities shall be representatives of child care facilities.

~~B.~~ F. Child care facilities shall not allow children to be left alone in the care of any person under eighteen (18) years of age.

~~C.~~ G. The ~~Commission~~ Department shall promulgate rules establishing minimum requirements and desirable standards as may be deemed necessary or advisable to carry out the provisions of the Oklahoma Child Care Facilities Licensing Act.

~~D.~~ H. Such rules shall not be promulgated until after consultation with the State Department of Health, the State

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Department of ~~Education~~ Human Services, the Oklahoma State Bureau of Investigation, the State Fire Marshal, and any other agency deemed necessary by the ~~Commission~~ State Department of Education. Not less than sixty (60) days' notice, by regular mail, shall be given to all current licensees before any changes are made in such rules.

~~E.~~ I. In order to improve the standards of child care, the Department shall advise and cooperate with licensees, the governing bodies and staff of licensed child care facilities and assist the staff through advice of progressive methods and procedures, and suggestions for the improvement of services.

~~F.~~ J. The Department may participate in federal programs for child care services, and enter into agreements or plans on behalf of the state for that purpose, in accordance with federal laws and regulations.

SECTION 4. AMENDATORY 10 O.S. 2011, Section 404.1, is amended to read as follows:

Section 404.1

A. 1. a. Except as otherwise provided by subsection C of this section, prior to the issuance of a license, the State Department of ~~Human Services~~ Education shall require a criminal history records search, conducted by the Oklahoma State Bureau of Investigation, and a records search of the Oklahoma Child Care Restricted Registry

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established in Section 405.3 of this title for any person making application to establish or operate a child care facility.

b. Prior to the issuance of a permit or license, the Department shall conduct a records search of the Oklahoma State Courts Network for any person making application to establish or operate a child care facility.

c. Prior to the issuance of a permit or license, the Department shall conduct a records search of the Oklahoma State Courts Network for all employees and persons eighteen (18) years of age or older residing in a child care center, family child care home, large family child care home, part-day program, school-age program, or summer day camp.

2. a. Prior to the employment of any person in a child care facility, the facility shall submit to the State Department of ~~Human Services~~ Education division responsible for child care licensing:

(1) a criminal history records search conducted by the Oklahoma State Bureau of Investigation,

(2) documentation of a records search of the Oklahoma Child Care Restricted Registry, and

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(3) a request for the Department to conduct a records search of the records of the Oklahoma State Courts Network.

b. Hospitals contracting with the Oklahoma Health Care Authority and complying with the records searches required by this section shall be exempt from the requirement to submit such documentation to the Department. Documentation of records searches shall be maintained at the hospital and shall be available for review by the division of the Department responsible for child care licensing.

c. Prior to allowing any person eighteen (18) years of age or older to reside in a child care center, family child care home, large family child care home, part-day program, school-age program, or summer day camp program, the facility shall submit to the State Department of ~~Human Services~~ Education division responsible for child care licensing the following:

(1) a criminal history records search conducted by the Oklahoma State Bureau of Investigation,

(2) documentation of a records search of the Oklahoma Child Care Restricted Registry, and

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(3) a request for the Department to conduct a records search of the Oklahoma State Courts Network.

3. Once a facility has submitted an original document from the Oklahoma State Bureau of Investigation to the Department, a copy of that exact document shall be sufficient to satisfy any further request for that document. The ~~Commission for Human Services~~ State Department of Education may promulgate rules regarding the electronic submission of required documents.

4. If the following individuals have lived in Oklahoma for less than three (3) years, a criminal history records search shall also be obtained from the authorized agency in the previous states of residence for:

a. applicants for a license to operate a child care facility,

b. employees of a child care facility, and

c. individuals age eighteen (18) years or older residing in a child care center, family child care home, large family child care home, part-day program, school-age program, or summer day-camp program.

5. The Office of Juvenile Affairs may directly request national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal

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history of any employee or applicant who has resided in Oklahoma for less than three (3) years for which a search is required.

B. On and after November 1, 2013:

1. Prior to the issuance of a permit or license, individuals making application to establish or operate a child care facility shall have:

a. an Oklahoma State Courts Network search conducted by the Department,

b. a Child Care Restricted Registry search conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection;

2. Prior to the employment of employees:

a. an Oklahoma State Court Network search, conducted by the Department, shall be requested by the facility,

b. a Child Care Restricted Registry search shall be conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection shall be submitted to the Department;

3. Prior to allowing unsupervised access to children by employees or individuals, including contract employees and volunteers:

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a. Oklahoma State Courts Network search results, conducted by the Department, shall be received by the facility,

b. a Child Care Restricted Registry search shall be conducted by the facility, and

c. national criminal history records search results shall be received by the facility;

4. Prior to the issuance of a permit or license and prior to the residence of adults who subsequently move into a facility, adults living in the facility shall have:

a. an Oklahoma State Court Network search conducted by the Department and the facility shall be in receipt of the search results,

b. a Child Care Restricted Registry search conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection;

5. Children who reside in the facility and turn eighteen (18) years of age shall have:

a. an Oklahoma State Court Network search conducted by the Department,

b. a Child Care Restricted Registry search conducted by the facility, and

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c. a national criminal history records search pursuant to paragraph 10 of this subsection;

6. Prior to review of and access to fingerprint results, owners, directors, and other employees who have review of and access to fingerprint results shall have a national criminal history records search pursuant to paragraph 10 of this subsection;

7. Provisions specified in paragraphs 4 and 5 of this subsection shall not apply to residents who are receiving services from a residential child care facility;

8. A national criminal history records search pursuant to paragraph 10 of this subsection shall not be required for parent volunteers who transport children on an irregular basis when a release for each event is signed by the parents noting their understanding that the parent volunteer does not have a completed national criminal history records search. This exemption shall not preclude the Department from requesting a national fingerprint or an Oklahoma State Bureau of Investigation name-based criminal history records search or investigating criminal, abusive, or harmful behavior of such individuals, if warranted;

9. A national criminal history records search pursuant to paragraph 10 of this subsection shall be required on or before November 1, 2016, for existing employees, individuals with unsupervised access to children, and adults living in the facility;

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10. The Department shall require a national criminal history records search based upon submission of fingerprints that shall:

a. be conducted by the Oklahoma State Bureau of Investigation and the Federal Bureau of Investigation pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and the federal National Child Protection Act and the federal Volunteers for Children Act with the Department as the authorized agency,

b. be submitted and have results received between the Department and the Oklahoma State Bureau of Investigation through secure electronic transmissions,

c. include Oklahoma State Bureau of Investigation rap back, requiring the Oklahoma State Bureau of Investigation to immediately notify the Department upon receipt of subsequent criminal history activity, and

d. be paid by the individual or the facility; and

11. The ~~Commission for Human Services~~ State Department of Education shall promulgate rules that may authorize an exception to the fingerprinting requirements for individuals who have a severe physical condition which precludes such individuals from being fingerprinted.

C. 1. a. On and after September 1, 1998:

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(1) any child-placing agency contracting with a 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, complete:

(a) a foster parent eligibility assessment for the foster care provider except as otherwise provided by divisions (2) and (4) of this subparagraph, and

(b) a national criminal history records search based upon submission of fingerprints for any adult residing in the foster family home through the Department of Human Services pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act, except as otherwise provided by divisions (2) and (4) of this subparagraph,

(2) the child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at

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least five (5) years immediately preceding such placement,

(3) a national criminal history records search based upon submission of fingerprints to the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the foster family home,

(4) provided, however, the ~~Director of Human Services~~ State Department of Education or the Director of the Office of Juvenile Affairs, or a designee, may authorize an exception to the fingerprinting requirement for a person residing in the home who has a severe physical condition which precludes such person's being fingerprinted, and

(5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Affairs to conduct a juvenile justice information system review, pursuant to the provisions of Sections 2-7-905 and 2-7-308 of Title 10A of the Oklahoma Statutes, for any child over the age of thirteen (13) years residing in the foster family home, other than a foster child, or who subsequently

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moves into the foster family home. As a condition of contract, the child care facility shall obtain the consent of the parent or legal guardian of the child for such review.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Office of Juvenile Affairs prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of this section, until otherwise provided by rules of the ~~Commission for Human Services~~ State Department of Education or by law.

2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions (2) and (4) of this subparagraph, prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services or the Office of Juvenile Affairs, each Department shall complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant.

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In addition, except as otherwise provided by divisions (2) and (4) of this subparagraph, the Department shall complete a national criminal history records search based upon submission of fingerprints for any adult residing in such foster family home.

(2) The Department of Human Services and Office of Juvenile Affairs may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least (5) years immediately preceding such placement.

(3) A national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the foster family home.

(4) The ~~Director of Human Services~~ Superintendent of the State Department of Education or the Director of the Office of Juvenile Affairs or designee may authorize an exception to the fingerprinting requirement for any person residing in the home

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who has a severe physical condition which precludes such person's being fingerprinted.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Office of Juvenile Affairs prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of this section, until otherwise provided by rules of the Commission for Human Services or by law.

3. Each Department shall provide for a juvenile justice information system review pursuant to Section 2-7-308 of Title 10A of the Oklahoma Statutes for any child over the age of thirteen (13) years residing in a foster family home, other than the foster child, or who subsequently moves into the foster family home.

D. The ~~Commission for Human Services~~ State Department of Education or the Board of Juvenile Affairs shall promulgate rules to identify circumstances when a criminal history records search or foster parent eligibility assessment for an applicant or contractor, or any person over the age of thirteen (13) years residing in a private residence in which a child care facility is located, shall be expanded beyond the records search conducted by the Oklahoma

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State Bureau of Investigation or as otherwise provided pursuant to this section.

E. 1. The following individuals shall not be required to obtain a criminal history records search or a national criminal history records search based upon submission of fingerprints pursuant to this section:

a. a parent volunteer who transports children on an irregular basis, and

b. a child residing in a child care center, family child care home, or large 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 records search or requesting a national criminal history records search based upon submission of fingerprints or investigating criminal, abusive or harmful behavior of such individuals, if warranted.

F. Except as otherwise provided by the Oklahoma Children's Code and subsection H of this section, 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.

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G. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner pursuant to applicable state and federal laws.

H. 1. A criminal history records search conducted by the Oklahoma State Bureau of Investigation and a national criminal history records search based upon submission of fingerprints shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act.

2. a. It shall be unlawful for individuals who are 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 individuals who are required to register pursuant to the Sex Offenders Registration Act. Individuals required to register pursuant to the Sex Offenders Registration Act who violate any provision of Section 401 et seq. of this title shall, upon conviction, be guilty of a felony punishable by incarceration in a correctional facility for a period of not more than five (5) years and a fine of not more than Five

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Thousand Dollars ($5,000.00) or both such fine and imprisonment.

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 or denial,

(3) injunctive proceedings,

(4) an administrative penalty not to exceed Ten Thousand Dollars ($10,000.00), 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 5. AMENDATORY 10 O.S. 2011, Section 404.3, is amended to read as follows:

Section 404.3 A. A child care facility shall maintain liability insurance coverage of at least Two Hundred Thousand Dollars ($200,000.00) for each occurrence of negligence. An insurance policy or contract required under this section shall cover injury to a child due to negligence that occurs while the child is in the care of the child care facility.

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B. The State Department of ~~Human Services~~ Education shall promulgate rules providing for a standard form to be signed and dated by an insurance agent licensed in this state stating that the child care facility has an unexpired and uncancelled insurance policy or contract of at least Two Hundred Thousand Dollars ($200,000.00) that meets the requirements of this section. This form shall be completed annually and shall be maintained by the child care facility. Upon request, the form shall be made available to the Department to determine compliance with licensing requirements.

C. Should the child care facility for financial reasons or for lack of availability of an underwriter willing to issue a policy be unable to secure the insurance required under subsection A of this section, should the policy limits be exhausted, or if the child care facility reports self-insurance in accordance with state law the child care facility shall:

1. Post a notice at the facility indicating the facility does not have liability insurance coverage pursuant to this section or reports self-insurance in accordance with state law; and

2. Notify the Department that coverage is not provided or that the facility reports self-insurance in accordance with state law.

D. The ~~Commission for Human Services~~ State Department of Education shall promulgate rules providing for a standard form for

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the facility to post which indicates the facility does not carry liability insurance or reports self-insurance in accordance with state law. In no case shall the inability to secure coverage serve to indemnify the child care facility due to negligence.

E. The insurance policy or contract shall be maintained at all times in an amount as required by this section, except as provided for in subsection C of this section.

F. The requirements for posting shall not apply to:

1. Licensed child-placing agencies;

2. Licensed residential child care facilities; or

3. Department-certified child care facilities.

G. The ~~Commission~~ Department may promulgate rules requiring liability insurance for facilities listed in subsection F of this section.

H. Failure by a child care facility to comply with the provisions of this section is grounds for suspension or revocation of the child care facility license under the Oklahoma Child Care Facilities Licensing Act.

SECTION 6. AMENDATORY 10 O.S. 2011, Section 405, is amended to read as follows:

Section 405. A. No child care facility may be operated or maintained in this state, unless licensed or temporarily authorized by the State Department of ~~Human Services~~ Education, except for the

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shelters certified by the Oklahoma Commission on Children and Youth pursuant to Section 601.3 of this title; provided, that the Department of Human Services shall not be required to be licensed, but shall be bound by the standards ~~it prescribes~~ prescribed by the State Department of Education. No new child care facility may be established without the prior approval of the State Department of Education, which shall be granted only after the Department is satisfied that the facility will meet minimum standards for a license to operate.

B. The State Department of Education shall not grant approval for a permit, or a license for a new child care facility to receive and care for children until:

1. All background investigation requirements are met pursuant to Section 404.1 of this title; and

2. All required training including, but not limited to, cardiopulmonary resuscitation (CPR), first aid, health and safety training, and minimum education requirements pursuant to licensing requirements have been completed for any person left alone with children.

C. 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 Sections 401 through 418 of this title.

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D. An application for a license shall be made on forms provided by the State Department of Education and in the manner prescribed. Temporary authorization may be granted to allow the Department to investigate the activities and standards of care of the applicant. The Department may issue a license once it is satisfied that the applicant meets the requirements as provided in Sections 401 through 418 of this title. All licenses shall be in force unless revoked as authorized by Section 407 of this title.

SECTION 7. AMENDATORY 10 O.S. 2011, Section 405.1, is amended to read as follows:

Section 405.1 A. The State Department of ~~Human Services~~ Education shall collaborate with other appropriate agencies to develop a comprehensive Oklahoma state plan for child care.

B. The comprehensive plan shall:

1. Meet all requirements for child care state plans as periodically determined by the United States Department of Health and Human Services Administration for Children and Families Child Care Bureau; and

2. Be submitted to the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate on a biannual basis.

SECTION 8. AMENDATORY 10 O.S. 2011, Section 405.2, is amended to read as follows:

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Section 405.2 A. The ~~Commission for Human Services~~ State Department of Education shall promulgate rules to establish and maintain an online database accessible to the public that contains information including, but not limited to:

1. The name, address, and phone number of all child care centers licensed by the Department ~~of Human Services~~, and the name, address, and phone number of all child care homes licensed by the Department; and

2. A summary of substantiated complaint records and inspection reports generated by the Department.

B. Child care licensing records and inspection reports shall be maintained by the facility and be posted or made available to individuals pursuant to the licensing requirements promulgated by the ~~Commission~~ Department.

SECTION 9. AMENDATORY 10 O.S. 2011, Section 405.3, is amended to read as follows:

Section 405.3 A. On or before July 1, ~~2010~~ 2013, the ~~Commission for Human Services~~ State Department of Education shall promulgate rules to establish and maintain the Child Care Restricted Registry, accessible to the public through an online database, to address:

1. A procedure for recording individuals on the restricted registry resulting from:

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a. a finding of abuse or neglect, as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, by an individual when the abuse or neglect occurred to children while in the care of a child care facility licensed by the Department,

b. a revocation or denial of a child care facility license, and

c. a specified criminal history of an individual, as defined by rules promulgated by the ~~Oklahoma Commission for Human Services~~ Department;

2. A procedure to provide notice and an opportunity for review prior to recording an individual on the restricted registry;

3. Disclosure requirements for information on the restricted registry; and

4. A procedure to prohibit licensure, ownership, employment, or residence in a child care facility licensed by the Department of individuals recorded on the restricted registry.

B. The Child Care Restricted Registry shall include, but not be limited to:

1. The full name of the individual;

2. Information necessary to identify the individual; and

3. The date the individual was recorded on the restricted registry.

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SECTION 10. AMENDATORY 10 O.S. 2011, Section 406, is amended to read as follows:

Section 406. A. The State Department of ~~Human Services~~ Education shall have authority at any reasonable time to investigate and examine the conditions of any child care facility in which a licensee or applicant 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 or applicant 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 or applicant 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 of the Oklahoma Child Care Facilities Licensing Act, or any licensing standard promulgated by the ~~Commission for Human Services~~ State Department of Education, 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

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Child Care Facilities Licensing Act or of any standard or rule promulgated pursuant thereto, the Department shall:

a. document the complaint,

b. provide the complaint allegations in writing to the facility involved and, upon written request by the child care facility, provide a summary of the facts used to evaluate the completed complaint, and

c. document the facility's plan for correcting any substantiated violations.

2. If the Department determines there has been a violation and 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 notify the facility and require correction of the violation.

3. The Department shall notify the facility that failure to correct the confirmed violation can result in the revocation of the license, the denial of an application for a license, the issuance of an emergency order or the filing of an injunction pursuant to the provisions of Section 409 of this title.

4. If the facility refuses to correct a violation or fails to complete the plan of correction, the Department may issue an emergency order, revoke the license, or deny the application for a license. Nothing in this section or Section 407 of this title shall

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be construed as preventing the Department from denying an application, revoking a license, or issuing an emergency order for a single violation of this act, or the rules of the ~~Commission for Human Services~~ Department as provided in Section 404 of this title.

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 thereto by the ~~Commission~~ 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 Oklahoma Child Care Services concerning a report of a violation of a licensing requirement, or from any licensee regarding children or their parents or other relatives shall be deemed confidential and privileged communications, shall be properly safeguarded, and shall not be accessible to anyone except as herein provided, unless upon order of a court of competent jurisdiction. Provided, however, this provision shall not prohibit the Department from providing a summary of allegations and findings of an investigation involving a child care facility that does not disclose identities but that permits parents to evaluate the facility.

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SECTION 11. AMENDATORY 10 O.S. 2011, Section 406.1, is amended to read as follows:

Section 406.1 A. If an Indian tribe in this state that operates a child care facility elects to apply for a license for the facility pursuant to the Oklahoma Child Care Facilities Licensing Act, the State Department of ~~Human Services~~ Education, the State Department of Health, and the State Fire Marshal may enter into an agreement with the Indian tribe to allow the state to conduct any inspections of the facility necessary to comply with the licensing provisions of the Oklahoma Child Care Facilities Licensing Act.

B. As part of the agreement authorizing the state to conduct inspections as provided in this section, the state and the Indian tribe may agree to a payment of a fee by the Indian tribe to the state in an amount not to exceed the reasonable cost to the state to conduct the inspections.

SECTION 12. AMENDATORY 10 O.S. 2011, Section 407, is amended to read as follows:

Section 407. A. The State Department of ~~Human Services~~ Education may revoke or deny issuance of the license of any child care facility found to be in violation of any provision of this act or the rules of the ~~Commission for Human Services~~ Department, as provided in Section 404 of this title.

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B. 1. No license shall be revoked or issuance denied unless and until such time as the licensee or applicant shall have been given at least thirty (30) days' notice in writing of the grounds of the proposed revocation or denial.

2. At the time the facility is given notice in writing of the revocation or denial of a license, the Department shall also advise parents of children attending the facility and the child care resource and referral organization within one (1) business day of such action by verbal, electronic, or written notification and the posting of an announcement in the facility.

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

4. Notice of the hearing shall be given to the licensee or applicant by personal service or by delivery to the proper address by certified mail, return receipt requested, at least two (2) weeks prior to the date thereof.

5. If notice of the proposed revocation or denial of a license is not protested, the license shall be revoked or denied.

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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. For the purposes of this subsection, "emergency" means a situation that poses a direct and serious threat to the health, safety, or welfare of any child cared for by the facility.

3. 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, authorized, or providing unlicensed care except as exempted by the provisions of the Oklahoma Child Care Facilities Licensing Act, the Department may without notice or hearing issue an emergency 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. An emergency order shall be effective immediately. Any person to whom an emergency order is directed shall comply with the emergency order immediately but, upon written request to the Department on or before the tenth day after receipt of the emergency order,

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shall be afforded a hearing on or before the tenth day after receipt of the request by the Department.

b. On the basis of such hearing, the Department shall continue the order in effect, revoke it, or modify it.

c. Any person aggrieved by the order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within ten (10) days. The appeal when docketed shall have priority over all cases pending on the docket, except criminal cases.

D. The Department shall establish a process to review the initial determination of the closure of a facility due to an emergency pursuant to the licensing requirements promulgated by the ~~Commission~~ Department.

E. The Department shall continue to monitor any facility whose license has been revoked, denied, or who has had an emergency order issued for a period of thirty (30) days after the action becomes final.

F. In addition to any other remedy authorized by this act, a CLEET-certified officer may issue a citation for a violation of any provision of this act or rules of the ~~Commission for Human Services~~ Department as provided in Section 404 of this title. The fine shall not be less than One Hundred Dollars ($100.00) nor more than Five

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Hundred Dollars ($500.00) for every day the facility maintains and receives children after:

1. An emergency order has been issued; or

2. An application for a license has been denied or the license has been revoked.

G. One-half (1/2) of the funds collected pursuant to subsection F of this section shall be deposited in the Quality of Care Development Fund established in Section ~~10~~ 410.1 of this ~~act~~ title and one-half (1/2) shall be retained by the law enforcement agency represented by the CLEET-certified officer.

SECTION 13. AMENDATORY 10 O.S. 2011, Section 408, is amended to read as follows:

Section 408. A. Any licensee or applicant aggrieved by the decision of the State Department of ~~Human Services~~ Education under Section 407 of this title may, within ten (10) days after the revocation or denial of 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. Notice of such appeal shall be served on the ~~Director~~ Superintendent of the Department within five (5) days of the date of its filing.

B. The licensee or applicant shall, within twenty (20) days of the filing of the appeal, file with the clerk of such court a transcript of the proceedings held pursuant to Section 407 of this

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title. 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 licensee or applicant 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 denying 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 14. AMENDATORY 10 O.S. 2011, Section 410.1, is amended to read as follows:

Section 410.1 There is established in the State Treasury a revolving fund to be known as the "Quality of Care Development Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all fines collected by the State Department of ~~Human Services~~ Education pursuant to Section 407 of ~~Title 10 of the Oklahoma Statutes~~ this title and shall, in addition to any other monies made available for such purpose, be available to the Director solely to support the continued improvement of the child care facilities in this state.

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Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.

SECTION 15. AMENDATORY 10 O.S. 2011, Section 412, is amended to read as follows:

Section 412. A. The immunizations required by this 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 State Department of ~~Human Services~~ Education shall render reasonable assistance to the State Department of Health in the enforcement of the provisions of this act. This assistance shall be in the form of revocation or denial of the license of any facility not in compliance with this act.

SECTION 16. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 02/28/2012 - DO PASS, As Amended and Coauthored.

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