

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL NO. 1020

By: Murdock

6 AS INTRODUCED

7 An Act relating to the Oklahoma Child Care Facilities
8 Licensing Act; amending 10 O.S. 2011, Section 406, as
9 last amended by Section 2, Chapter 73, O.S.L. 2018
10 (10 O.S. Supp. 2018, Section 406), which relates to
11 investigations; directing Department of Human
12 Services to investigate child care facility
13 complaints in manner prescribed; updating statutory
14 reference; defining terms; setting requirements for
15 Department to follow when taking complaints;
16 specifying information to be taken and included in
17 the complaint; mandating Department provide certain
18 information to complainant; allowing complainant to
19 remain anonymous; directing Department to take
20 specified action; differentiating between temporary
21 and indefinite confidential complainant; requiring
22 disclosure of complainant upon completion of
23 investigation if temporary; barring disclosure if
24 indefinite; prohibiting using confidential
information to substantiate allegation; providing
exception; mandating supervisor review of complaint
prior to investigation; listing criteria for
proceeding with investigation; delaying notification
of complaint; specifying when notification is
required; requiring removal and confidentiality of
unsubstantiated complaint; prescribing telephone and
online complaint gathering; mandating recording and
storing calls for specified time; excluding
Department authority over listed activities; limiting
investigative visits; providing exception; requiring
completion of Notice to Comply form; protecting child
care program from citation under certain conditions;
construing provisions; providing penalty for giving
false information; prescribing punishment and fine;
setting forth grievance policy and procedure;

1 providing for codification; and providing an
2 effective date.

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

5 SECTION 1. AMENDATORY 10 O.S. 2011, Section 406, as last
6 amended by Section 2, Chapter 73, O.S.L. 2018 (10 O.S. Supp. 2018,
7 Section 406), is amended to read as follows:

8 Section 406. A. The Department of Human Services shall have
9 authority at any reasonable time to investigate and examine the
10 conditions of any child care facility in which a licensee or
11 applicant hereunder receives and maintains children, and shall have
12 authority at any time to require the facility to provide information
13 pertaining to children in its care.

14 B. 1. The State Department of Health may visit any licensee or
15 applicant at the request of the Department to advise on matters
16 affecting the health of children and to inspect the sanitation of
17 the buildings used for their care.

18 2. The State Fire Marshal may visit any licensee or applicant
19 at the request of the Department to advise on matters affecting the
20 safety of children and to inspect the condition of the buildings
21 used for their care.

22 C. 1. Upon receipt of a complaint against any child care
23 facility alleging a violation of the provisions of the Oklahoma
24 Child Care Facilities Licensing Act, or any licensing standard
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1 promulgated by the Department, the Department shall conduct a full
2 investigation in accordance with the provisions of Section 2 of this
3 act. If upon investigation, it is determined that there are
4 reasonable grounds to believe that a facility is in violation of the
5 Oklahoma Child Care Facilities Licensing Act or of any standard or
6 rule promulgated pursuant thereto, the Department shall:

- 7 a. document the complaint,
- 8 b. provide the complaint allegations in writing to the
9 facility involved and, upon written request by the
10 child care facility, provide a summary of the facts
11 used to evaluate the completed complaint, which shall
12 include all details of the decision to substantiate or
13 unsubstantiate with names redacted as necessary. All
14 facts shall be shared with the program that the
15 Department could use in a grievance, emergency order,
16 denial of a request for license or revocation of a
17 child care program license, and
- 18 c. document the facility's plan for correcting any
19 substantiated violations.

20 2. If the Department determines there has been a violation and
21 the violation has a direct impact on the health, safety or well-
22 being of one or more of the children cared for by the facility, the
23 Department shall notify the facility and require correction of the
24 violation.

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

6 4. If the facility refuses to correct a violation or fails to
7 complete the plan of correction, the Department may issue an
8 emergency order, revoke the license, or deny the application for a
9 license. Nothing in this section or Section 407 of this title shall
10 be construed as preventing the Department from denying an
11 application, revoking a license, or issuing an emergency order for a
12 single violation of ~~this act~~ Section 401 et seq. of this title, or
13 the rules of the Department as provided in Section 404 of this
14 title.

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

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

9 F. The Department shall promulgate rules to establish and
10 maintain a grievance process that shall include an anonymous
11 complaint system for reporting and investigating complaints or
12 grievances about employees of the Department who retaliate against a
13 child care facility or facility employee.

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 406.2 of Title 10, unless there
16 is created a duplication in numbering, reads as follows:

17 A. As used in this section:

18 1. "Anonymous complainant" means a complainant for whom the
19 Department of Human Services does not have the minimum personal
20 identifying information necessary, including the complainant's full
21 name and verifiable contact phone number, to attempt to communicate
22 with the complainant after a complaint has been made;

23 2. "Confidential complainant" means a complainant for whom the
24 Department has the minimum personal identifying information

1 necessary, including the complainant's full name and verifiable
2 contact phone number, to attempt to communicate with the complainant
3 after a complaint has been made but who elects under paragraph 3 of
4 subsection F of this section not to be identified to the subject of
5 the complaint;

6 3. "Serious risk of harm to a child" means:

- 7 a. presence or use of illegal drugs while children are in
- 8 care,
- 9 b. distribution of drugs,
- 10 c. children left alone in a facility or in a vehicle,
- 11 d. extreme facility temperatures,
- 12 e. not complying with infant safe sleep requirements,
- 13 f. threatening or impaired behavior of a caregiver,
- 14 g. severe understaffing or over licensed capacity,
- 15 h. unlicensed facility,
- 16 i. violating an emergency order,
- 17 j. required staff without current cardiopulmonary
- 18 resuscitation and first-aid training,
- 19 k. failure to obtain background investigations, or
- 20 l. knowingly permitting access to children by persons
- 21 identified as restricted on the Child Care Restricted
- 22 Registry or subject to registration pursuant to the
- 23 Sex Offenders Registration Act; and
- 24

1 4. "Subject of the complaint" means the licensed child care
2 provider that the complaint is being made against.

3 B. If the Department receives a complaint about a child care
4 facility, the Department shall:

5 1. Solicit information from the complainant to determine
6 whether the complaint suggests actions or conditions that could pose
7 a serious risk to the safety or well-being of a child; and

8 2. As necessary:

- 9 a. encourage the complainant to disclose the minimum
10 personal identifying information, including the
11 complainant's full name and a verifiable contact phone
12 number, for the Department to attempt to subsequently
13 communicate with the complainant, and
14 b. inform the complainant that the Department shall not
15 investigate an anonymous complaint.

16 C. Information collected on a complaint shall include:

17 1. Date and time the complaint was received;

18 2. Name, address and telephone number of the child care
19 facility;

20 3. The complainant's name, address, telephone number and
21 relationship to the facility, such as an employee, parent of a child
22 in care or neighbor;

23 4. The complainant's source of information; for example,
24 personal observation or information from another person; and
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1 5. Specific information regarding the allegations, including:

- 2 a. a description of the circumstances,
- 3 b. name or identity of staff involved,
- 4 c. child or children involved or affected by the alleged
- 5 noncompliance and their ages if known,
- 6 d. dates and times the alleged noncompliance took place,
- 7 e. names of other persons with relevant information, and
- 8 f. whether the complaint has been discussed with the
- 9 child care facility director or administrator.

10 D. The Department shall inform the complainant that:

11 1. The identity of a confidential complainant may be withheld

12 from the subject of a complaint only as provided in subparagraph a

13 of paragraph 3 of subsection F of this section;

14 2. The Department may be limited in its use of information

15 provided by a confidential complainant, as provided in subparagraph

16 b of paragraph 3 of subsection F of this section; and

17 3. A person is guilty of a misdemeanor under Section 410 of

18 Title 10 of the Oklahoma Statutes if the person gives false

19 information to the Department with the purpose of inducing a change

20 in that person's or another person's licensing or certification

21 status.

22 E. If the complainant elects to be an anonymous complainant, or

23 if the complaint concerns events which occurred more than six (6)

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1 weeks before the complainant contacted the Department, the
2 Department:

3 1. Shall refer the information in the complaint to Child
4 Welfare Services, law enforcement or any other appropriate agency,
5 if the complaint suggests actions or conditions which could pose a
6 serious risk to the safety or well-being of a child;

7 2. Shall not investigate or substantiate the complaint except
8 as provided in subparagraph b of paragraph 3 of subsection F of this
9 section; and

10 3. May, during a regularly scheduled licensing visit and for
11 informational purposes only, inform the child care facility that it
12 is the subject of the complaint of allegations or concerns raised
13 by:

14 a. the anonymous complainant, or

15 b. the complainant who reported events more than six (6)
16 weeks after the events occurred.

17 F. 1. If the complainant elects to be a confidential
18 complainant, the Department shall determine whether the complainant
19 wishes to remain confidential:

20 a. only until the investigation of the complaint has been
21 completed, or

22 b. indefinitely.

23 2. If the complainant elects to remain confidential only until
24 the investigation of the complaint has been completed, the
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1 Department shall disclose the name of the complainant to the subject
2 of the complaint at the completion of the investigation, but no
3 sooner.

4 3. If the complainant elects to remain confidential
5 indefinitely, the Department:

6 a. notwithstanding Section 2004.1 of Title 12 of the
7 Oklahoma Statutes, shall not disclose the name of the
8 complainant, including to the subject of the
9 complaint, and

10 b. shall not use information provided by the complainant
11 to substantiate an alleged violation of state law or
12 Department rule unless the Department independently
13 corroborates the information.

14 G. 1. Prior to conducting an investigation of a child care
15 facility in response to a complaint, a Department investigator shall
16 review the complaint with the investigator's supervisor.

17 2. The investigator may proceed with the investigation only if:

18 a. the supervisor determines the complaint is credible,
19 b. the complaint is not from an anonymous complainant,
20 and

21 c. prior to the investigation, the investigator informs
22 the subject of the complaint of:
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1 (1) except as provided in paragraph 2 or subparagraph
2 a of paragraph 3 of subsection F of this section,
3 the name of the complainant, and

4 (2) except as provided in paragraph 3 of this
5 subsection, the substance of the complaint.

6 3. An investigator is not required to inform the subject of a
7 complaint of the substance of the complaint prior to an
8 investigation if doing so would jeopardize the investigation and
9 would involve a serious risk of harm to a child. However, the
10 investigator shall inform the subject of the complaint of the
11 substance of the complaint as soon as doing so will no longer
12 jeopardize the investigation.

13 H. If the Department is unable to substantiate a complaint, any
14 record related to the complaint or the investigation of the
15 complaint:

- 16 1. Shall be kept as a confidential and protected record; and
17 2. Shall be removed from the public online database.

18 I. All complaint calls shall be made to a centralized statewide
19 number or entered through an online complaint submission process.
20 All calls shall be recorded and kept for ninety (90) days.

21 J. The Department has no authority:

22 1. Over areas such as the operational policies of a child care
23 facility about payment, hours or days of operation, educational
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1 curriculum, whether a facility chooses not to administer medication,
2 or enrollment or termination policies; and

3 2. To contact enrolled parents of children for interview unless
4 the complaint involves a serious risk of harm to a child, or the
5 child was named specifically as a witness or a victim in the
6 complaint or revealed in an investigation.

7 K. Visits to the child care facility to investigate a complaint
8 are limited to one visit unless there is serious risk of harm to a
9 child.

10 L. Upon the substantiation of a complaint involving a serious
11 risk of harm to a child, a Notice to Comply form is required to be
12 completed by the facility.

13 M. A child care program shall not be cited for the actions
14 taken by an employee that are outside the direction of the program's
15 policies and procedures if the program can demonstrate that the
16 employee:

- 17 1. Was provided training over that policy; or
- 18 2. Negligently ignored the policy and training.

19 N. Nothing in this section modifies or removes the mandate for
20 reporting child abuse or neglect through the statewide child abuse
21 hotline.

22 O. A person is guilty of a misdemeanor under Section 410 of
23 Title 10 of the Oklahoma Statutes if the person gives false
24 information to the Department with the purpose of inducing a change
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1 in that person's or another person's licensing or certification
2 status and shall be subject to a fine not to exceed Two Hundred
3 Dollars (\$200.00).

4 P. 1. The owner, director or administrator of a licensed child
5 care program or agency may file a grievance regarding the
6 enforcement of any written or unwritten policy or rule of the Child
7 Care Services (CCS) or decision by a CCS employee affecting the
8 program. Grievances shall be requested within ninety (90) calendar
9 days of the documented noncompliance or substantiated complaint
10 allegation. A grievance shall not be accepted concerning an
11 emergency order, denial of request for license or revocation of a
12 child care program license. The procedure for requesting a review
13 of this action shall be the procedure set forth in Section 407 of
14 Title 10 of the Oklahoma Statutes. This policy and procedure shall
15 be included in all publications that contain requirements that
16 centers must follow.

17 2. Individuals wanting to file a grievance are encouraged to
18 seek informal resolution of his or her concerns by contacting the
19 programs manager, who attempts to resolve the matter.

20 3. When a resolution cannot be reached at the local level or
21 through verbal conversation with CCS office staff, the grievant is
22 requested to file a written request with the programs manager within
23 ninety (90) calendar days of such conversation.
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1 4. The programs manager shall notify the statewide licensing
2 coordinator that a formal grievance was filed and efforts were made
3 to resolve the issue. The programs manager shall respond to written
4 grievances within ten (10) business days of receipt. The grievant
5 shall be informed that the request for additional reviews must be
6 submitted within sixty (60) calendar days of the date correspondence
7 is received by the licensed program.

8 5. When the grievant is not satisfied with the proposed
9 resolution, he or she may request review to the statewide licensing
10 coordinator. The grievant shall be informed that he or she may
11 request review by the Peer Review Board of the Child Care Advisory
12 Committee, prior to review by the statewide licensing coordinator.
13 The statewide licensing coordinator forwards information to the Peer
14 Review Board, when applicable or proceeds with the review.

15 6. When applicable, the Peer Review Board responds to the
16 statewide licensing coordinator with advisement for resolution
17 within fifteen (15) business days of receipt.

18 7. The statewide licensing coordinator shall notify the
19 grievant of the CCS decision within thirty (30) business days or
20 when applicable thirty (30) business days of receipt of the Peer
21 Review Board advisement. The grievant is informed the request for
22 additional reviews must be submitted within sixty (60) calendar days
23 of the date correspondence is received by the licensed program.
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1 8. When the grievant is not satisfied with the proposed
2 resolution, he or she may request review to the CCS director, Adult
3 and Family Service (AFS) director and Director of Human Services,
4 respectively. The CCS director, AFS director and the Director of
5 Human Services shall each respond within thirty (30) business days
6 of receipt. The grievant shall be informed that the request for
7 additional reviews must be submitted within thirty (30) calendar
8 days of the date correspondence is received by the licensed program.
9 Upon decision by the Director of Human Services, licensed child care
10 programs may request an administrative hearing with the Department
11 of Human Services where they may subpoena information, witnesses and
12 cross examine witnesses.

13 SECTION 3. This act shall become effective November 1, 2019.

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