

E AND R AMENDMENTS TO LB 1185

Introduced by Slama, 1, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 68-1206, Revised Statutes Supplement, 2019, is
4 amended to read:

5 68-1206 (1) The Department of Health and Human Services shall
6 administer the program of social services in this state. The department
7 may contract with other social agencies for the purchase of social
8 services at rates not to exceed those prevailing in the state or the cost
9 at which the department could provide those services. The statutory
10 maximum payments for the separate program of aid to dependent children
11 shall apply only to public assistance grants and shall not apply to
12 payments for social services. As part of the provision of social services
13 authorized by section 68-1202, the department shall participate in the
14 federal child care assistance program under 42 U.S.C. 618, as such
15 section existed on January 1, 2013, and provide child care assistance to
16 families with incomes up to one hundred twenty-five percent of the
17 federal poverty level for FY2013-14 and one hundred thirty percent of the
18 federal poverty level for FY2014-15 and each fiscal year thereafter.

19 (2) As part of the provision of social services authorized by this
20 section and section 68-1202, the department shall participate in the
21 federal Child Care Subsidy program. A child care provider seeking to
22 participate in the federal Child Care Subsidy program shall comply with
23 the criminal history record information check requirements of the Child
24 Care Licensing Act. In determining ongoing eligibility for this program,
25 ten percent of a household's gross earned income shall be disregarded
26 after twelve continuous months on the program and at each subsequent
27 redetermination. In determining ongoing eligibility, if a family's income

1 exceeds one hundred thirty percent of the federal poverty level, the
2 family shall receive transitional child care assistance through the
3 remainder of the family's eligibility period or until the family's income
4 exceeds eighty-five percent of the state median income for a family of
5 the same size as reported by the United States Bureau of the Census,
6 whichever occurs first. When the family's eligibility period ends, the
7 family shall continue to be eligible for transitional child care
8 assistance if the family's income is below one hundred eighty-five
9 percent of the federal poverty level. The family shall receive
10 transitional child care assistance through the remainder of the
11 transitional eligibility period or until the family's income exceeds
12 eighty-five percent of the state median income for a family of the same
13 size as reported by the United States Bureau of the Census, whichever
14 occurs first. The amount of such child care assistance shall be based on
15 a cost-shared plan between the recipient family and the state and shall
16 be based on a sliding-scale methodology. A recipient family may be
17 required to contribute a percentage of such family's gross income for
18 child care that is no more than the cost-sharing rates in the
19 transitional child care assistance program as of January 1, 2015, for
20 those no longer eligible for cash assistance as provided in section
21 68-1724. Initial program eligibility standards shall not be impacted by
22 the provisions of this subsection.

23 (3) In determining the rate or rates to be paid by the department
24 for child care as defined in section 43-2605, the department shall adopt
25 a fixed-rate schedule for the state or a fixed-rate schedule for an area
26 of the state applicable to each child care program category of provider
27 as defined in section 71-1910 which may claim reimbursement for services
28 provided by the federal Child Care Subsidy program, except that the
29 department shall not pay a rate higher than that charged by an individual
30 provider to that provider's private clients. The schedule may provide
31 separate rates for care for infants, for children with special needs,

1 including disabilities or technological dependence, or for other
2 individual categories of children. The schedule may also provide tiered
3 rates based upon a quality scale rating of step three or higher under the
4 Step Up to Quality Child Care Act. The schedule shall be effective on
5 October 1 of every year and shall be revised annually by the department.

6 Sec. 2. Section 71-1908, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 71-1908 (1) Sections 71-1908 to 71-1923 and section 4 of this act
9 shall be known and may be cited as the Child Care Licensing Act.

10 (2) The Legislature finds that there is a present and growing need
11 for quality child care programs and facilities. There is a need to
12 establish and maintain licensure of persons providing such programs to
13 ensure that such persons are competent and are using safe and adequate
14 facilities. The Legislature further finds and declares that the
15 development and supervision of programs are a matter of statewide concern
16 and should be dealt with uniformly on the state and local levels. There
17 is a need for cooperation among the various state and local agencies
18 which impose standards on licensees, and there should be one agency which
19 coordinates the enforcement of such standards and informs the Legislature
20 about cooperation among the various agencies.

21 Sec. 3. Section 71-1912, Revised Statutes Supplement, 2019, is
22 amended to read:

23 71-1912 (1) Before issuance of a license, the department shall
24 investigate or cause an investigation to be made, when it deems
25 necessary, to determine if the applicant or person in charge of the
26 program meets or is capable of meeting the physical well-being, safety,
27 and protection standards and the other rules and regulations of the
28 department adopted and promulgated under the Child Care Licensing Act.
29 The department may investigate the character of applicants and licensees,
30 any member of the applicant's or licensee's household, and the staff and
31 employees of programs. The department may at any time inspect or cause an

1 inspection to be made of any place where a program is operating to
2 determine if such program is being properly conducted.

3 (2) All inspections by the department shall be unannounced except
4 for initial licensure visits and consultation visits. Initial licensure
5 visits are announced visits necessary for a provisional license to be
6 issued to a family child care home I, family child care home II, child
7 care center, or school-age-only or preschool program. Consultation visits
8 are announced visits made at the request of a licensee for the purpose of
9 consulting with a department specialist on ways of improving the program.

10 (3) An unannounced inspection of any place where a program is
11 operating shall be conducted by the department or the city, village, or
12 county pursuant to subsection (2) of section 71-1914 at least annually
13 for a program licensed to provide child care for fewer than thirty
14 children and at least twice every year for a program licensed to provide
15 child care for thirty or more children.

16 (4) Whenever an inspection is made, the findings shall be recorded
17 in a report designated by the department. The public shall have access to
18 the results of these inspections upon a written or oral request to the
19 department. The request must include the name and address of the program.
20 Additional unannounced inspections shall be performed as often as is
21 necessary for the efficient and effective enforcement of the Child Care
22 Licensing Act.

23 (5)(a) A person applying for a license as a child care provider or a
24 licensed child care provider under the Child Care Licensing Act shall
25 submit a request for a national criminal history record information check
26 for each child care staff member, including a prospective child care
27 staff member of the child care provider, at the applicant's or licensee's
28 expense, as set forth in this section. Beginning on October 1, 2019, a
29 prospective child care staff member shall submit to a national criminal
30 history record information check (i) prior to employment, except as
31 otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on

1 January 1, 2019, or (ii) prior to residing in a family child care home. A
2 child care staff member who was employed by a child care provider prior
3 to October 1, 2019, or who resided in a family child care home prior to
4 October 1, 2019, shall submit to a national criminal history record
5 information check by October 1, 2021, unless the child care staff member
6 ceases to be a child care staff member prior to such date.

7 (b) A child care staff member shall be required to undergo a
8 national criminal history record information check not less than once
9 during each five-year period. A child care staff member shall submit a
10 complete set of his or her fingerprints to the Nebraska State Patrol. The
11 Nebraska State Patrol shall transmit a copy of the child care staff
12 member's fingerprints to the Federal Bureau of Investigation for a
13 national criminal history record information check. The national criminal
14 history record information check shall include information concerning
15 child care staff members from federal repositories of such information
16 and repositories of such information in other states, if authorized by
17 federal law for use by the Nebraska State Patrol. The Nebraska State
18 Patrol shall issue a report to the department that includes the
19 information collected from the national criminal history record
20 information check concerning child care staff members. The department
21 shall seek federal funds, if available, to assist child care providers
22 and child care staff members with the costs of the fingerprinting and
23 national criminal history record information check. If the department
24 does not receive sufficient federal funds to assist child care providers
25 and staff members with such costs, then the A child care staff member
26 being screened, applicant for a license, or licensee shall pay the actual
27 cost of the fingerprinting and national criminal history record
28 information check, except that the department may pay all or part of the
29 cost if funding becomes available. The department and the Nebraska State
30 Patrol may adopt and promulgate rules and regulations concerning the
31 costs associated with the fingerprinting and the national criminal

1 history record information check. The department may adopt and promulgate
2 rules and regulations implementing national criminal history record
3 information check requirements for child care providers and child care
4 staff members.

5 (c) A child care staff member shall also submit to the following
6 background checks at his or her expense not less than once during each
7 five-year period:

8 (i) A search of the National Crime Information Center's National Sex
9 Offender Registry; and

10 (ii) A search of the following registries, repositories, or data
11 bases in the state where the child care provider is located or where the
12 child care staff member resides and each state where the child care
13 provider was located or where the child care staff member resided during
14 the preceding five years:

15 (A) State criminal registries or repositories;

16 (B) State sex offender registries or repositories; and

17 (C) State-based child abuse and neglect registries and data bases.

18 (d) Any individual shall be ineligible for employment by a child
19 care provider if such individual:

20 (i) Refuses to consent to the national criminal history record
21 information check or a background check described in this subsection;

22 (ii) Knowingly makes a materially false statement in connection with
23 the national criminal history record information check or a background
24 check described in this subsection;

25 (iii) Is registered, or required to be registered, on a state sex
26 offender registry or repository or the National Sex Offender Registry; or

27 (iv) Has been convicted of a crime of violence, a crime of moral
28 turpitude, or a crime of dishonesty.

29 (e) The department may adopt and promulgate rules and regulations
30 for purposes of this section ~~prohibiting the employment of any child care~~
31 ~~staff member with one or more criminal convictions as the department~~

1 ~~deems necessary to protect the health and safety of children receiving~~
2 ~~child care.~~

3 (f) A child care provider shall be ineligible for a license under
4 the Child Care Licensing Act and shall be ineligible to participate in
5 the child care subsidy program if the provider employs a child care staff
6 member who is ineligible for employment under subdivisions (d) or (e) of
7 this subsection.

8 (g) National criminal history record information and information
9 from background checks described in this subsection subject to state or
10 federal confidentiality requirements may only be used for purposes of
11 granting a child care license or approving a child care provider for
12 participation in the child care subsidy program.

13 (h) For purposes of this subsection:

14 (i) Child care provider means a child care program required to be
15 licensed under the Child Care Licensing Act; and

16 (ii) Child care staff member means an individual who is not related
17 to all of the children for whom child care services are provided and:

18 (A) Who is employed by a child care provider for compensation,
19 including contract employees or self-employed individuals;

20 (B) Whose activities involve the care or supervision of children for
21 a child care provider or unsupervised access to children who are cared
22 for or supervised by a child care provider; or

23 (C) Who is residing in a family child care home and who is eighteen
24 years of age or older.

25 Sec. 4. (1) For purposes of this section, child care staff member
26 means an individual who is not related to all of the children for whom
27 child care services are provided and:

28 (a) Who is employed for compensation by a child care provider not
29 required to be licensed under the Child Care Licensing Act, including
30 contract employees or self-employed individuals;

31 (b) Whose activities involve the care or supervision of children for

1 a child care provider or unsupervised access to children who are cared
2 for or supervised by a child care provider; or

3 (c) Who is residing in a family child care home and who is eighteen
4 years of age or older.

5 (2) Beginning on October 1, 2020, an individual who is not required
6 to be licensed under the Child Care Licensing Act but seeks to
7 participate as a provider in the federal Child Care Subsidy program shall
8 submit a request for a national criminal history record information check
9 for each child care staff member, including a prospective child care
10 staff member of the child care provider, (a) prior to the child care
11 provider being approved to participate as a child care provider in the
12 federal Child Care Subsidy program, except as otherwise permitted under
13 45 C.F.R. 98.43, as such regulation existed on January 1, 2020, or (b)
14 prior to residing in a family child care home. A child care staff member
15 who was a provider in the federal Child Care Subsidy program prior to
16 October 1, 2020, or who resided in a family child care home prior to
17 October 1, 2020, shall submit to a national criminal history record
18 information check by October 1, 2021, unless the child care staff member
19 ceases to be a child care staff member prior to such date. The child care
20 staff member or the child care provider seeking to participate in the
21 subsidy program shall pay the cost of such national criminal history
22 record information check. A person who undergoes a national criminal
23 history record information check to obtain a license under the Child Care
24 Licensing Act or work as a child care staff member and is in good
25 standing with the department shall not be required to undergo an
26 additional national criminal history record information check to become a
27 child care provider in the federal Child Care Subsidy program if the
28 person has not been separated from employment from a child care provider
29 within the state for a period of not more than one hundred eighty
30 consecutive days.

31 (3) Any individual, entity, or provider shall be ineligible to

1 participate in the federal Child Care Subsidy program if such individual,
2 entity, or provider:

3 (a) Refuses to consent to the national criminal history record
4 information check described in this section;

5 (b) Knowingly makes a materially false statement in connection with
6 the national criminal history record information check described in this
7 section;

8 (c) Is registered, or required to be registered, on a state sex
9 offender registry or repository or the National Sex Offender Registry; or

10 (d) Has been convicted of a crime of violence, a crime of moral
11 turpitude, or a crime of dishonesty.

12 Sec. 5. Section 71-1928.01, Revised Statutes Supplement, 2019, is
13 amended to read:

14 71-1928.01 (1) Any individual eighteen years of age or older working
15 in a residential child-caring agency shall be required to undergo a
16 national criminal history record information check not less than once
17 during each five-year period that he or she is working in such an agency.
18 The individual shall submit a complete set of his or her fingerprints to
19 the Nebraska State Patrol. The Nebraska State Patrol shall transmit a
20 copy of the individual's fingerprints to the Federal Bureau of
21 Investigation for a national criminal history record information check.
22 The national criminal history record information check shall include
23 information concerning the individual from federal repositories of such
24 information and repositories of such information in other states, if
25 authorized by federal law for use by the Nebraska State Patrol. The
26 Nebraska State Patrol shall issue a report to the department that
27 includes the information collected from the national criminal history
28 record information check concerning the individual. The department shall
29 seek federal funds, if available, to assist residential child-caring
30 agencies and individuals working in a residential child-caring agency
31 with the costs of the fingerprinting and national criminal history record

1 information check. If the department does not receive sufficient federal
2 funds to assist residential child-caring agencies and individuals working
3 in a residential child-caring agency with such costs, then the The
4 individual being screened or the residential child-caring agency shall
5 pay the actual cost of the fingerprinting and national criminal history
6 record information check, except that the department may pay all or part
7 of the cost if funding becomes available. The department and the Nebraska
8 State Patrol may adopt and promulgate rules and regulations concerning
9 the costs associated with the fingerprinting and the national criminal
10 history record information check. The department may adopt and promulgate
11 rules and regulations implementing national criminal history record
12 information check requirements for residential child-caring agencies.

13 (2) An individual eighteen years of age or older working in a
14 residential child-caring agency shall also submit to the following
15 background checks not less than once during each five-year period: A
16 search of the following registries, repositories, or data bases in the
17 state where the individual resides and each state where the individual
18 resided during the preceding five years:

- 19 (a) State criminal registries or repositories;
- 20 (b) State sex offender registries or repositories; and
- 21 (c) State-based child abuse and neglect registries and data bases.

22 Sec. 6. Original section 71-1908, Reissue Revised Statutes of
23 Nebraska, and sections 68-1206, 71-1912, and 71-1928.01, Revised Statutes
24 Supplement, 2019, are repealed.

25 2. On page 1, line 3, strike "and 71-1912" and insert ", 71-1912,
26 and 71-1928.01"; and strike beginning with the first "to" in line 4
27 through line 9 and insert "to change provisions relating to participation
28 in the federal Child Care Subsidy program and criminal history record
29 information checks for child care staff members and child care providers;
30 to provide for reimbursement for criminal history record information
31 checks as prescribed; to define a term; to provide for criminal history

1 record information checks for unlicensed providers of child care
2 participating in the federal Child Care Subsidy program; to harmonize
3 provisions; and to repeal the original sections."