

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 460

FINAL READING
(SECOND)

Introduced by Health and Human Services Committee: Howard, 9,
Chairperson; Arch, 14; Cavanaugh, 6; Hansen, B., 16;
Murman, 38; Walz, 15; Williams, 36.

Read first time January 18, 2019

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to children and families; to amend sections
2 68-1206, 68-1724, 71-1912, and 71-1924, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to transitional child care
4 assistance and cash assistance; to require background checks as
5 prescribed under the Child Care Licensing Act and Children's
6 Residential Facilities and Placing Licensure Act; to provide powers
7 and duties for the Department of Health and Human Services and the
8 Nebraska State Patrol; to define terms; to harmonize provisions; to
9 provide operative dates; to repeal the original sections; and to
10 declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 68-1206, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 68-1206 (1) The Department of Health and Human Services shall
4 administer the program of social services in this state. The department
5 may contract with other social agencies for the purchase of social
6 services at rates not to exceed those prevailing in the state or the cost
7 at which the department could provide those services. The statutory
8 maximum payments for the separate program of aid to dependent children
9 shall apply only to public assistance grants and shall not apply to
10 payments for social services. As part of the provision of social services
11 authorized by section 68-1202, the department shall participate in the
12 federal child care assistance program under 42 U.S.C. 618, as such
13 section existed on January 1, 2013, and provide child care assistance to
14 families with incomes up to one hundred twenty-five percent of the
15 federal poverty level for FY2013-14 and one hundred thirty percent of the
16 federal poverty level for FY2014-15 and each fiscal year thereafter.

17 (2) As part of the provision of social services authorized by this
18 section and section 68-1202, the department shall participate in the
19 federal Child Care Subsidy program. In determining ongoing eligibility
20 for this program, ten percent of a household's gross earned income shall
21 be disregarded after twelve continuous months on the program and at each
22 subsequent redetermination. In determining ongoing ~~At redetermination of~~
23 eligibility, if a family's income exceeds one hundred thirty percent of
24 the federal poverty level, the family shall continue to receive
25 transitional child care assistance through the remainder of the family's
26 eligibility period or for up to twenty-four consecutive months or until
27 the family's family income exceeds one hundred eighty-five percent of the
28 state median income for a family of the same size as reported by the
29 United States Bureau of the Census, whichever occurs first. When the
30 family's eligibility period ends, the family shall continue to be
31 eligible for transitional child care assistance if the family's income is

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

19 (3) In determining the rate or rates to be paid by the department
20 for child care as defined in section 43-2605, the department shall adopt
21 a fixed-rate schedule for the state or a fixed-rate schedule for an area
22 of the state applicable to each child care program category of provider
23 as defined in section 71-1910 which may claim reimbursement for services
24 provided by the federal Child Care Subsidy program, except that the
25 department shall not pay a rate higher than that charged by an individual
26 provider to that provider's private clients. The schedule may provide
27 separate rates for care for infants, for children with special needs,
28 including disabilities or technological dependence, or for other
29 individual categories of children. The schedule may also provide tiered
30 rates based upon a quality scale rating of step three or higher under the
31 Step Up to Quality Child Care Act. The schedule shall be effective on

1 October 1 of every year and shall be revised annually by the department.

2 Sec. 2. Section 68-1724, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 68-1724 (1) Cash assistance shall be provided for a period or
5 periods of time not to exceed a total of sixty months for recipient
6 families with children subject to the following:

7 (a) If the state fails to meet the specific terms of the self-
8 sufficiency contract developed under section 68-1719, the sixty-month
9 time limit established in this section shall be extended;

10 (b) The sixty-month time period for cash assistance shall begin
11 within the first month of eligibility;

12 (c) When no longer eligible to receive cash assistance, assistance
13 shall be available to reimburse work-related child care expenses even if
14 the recipient family has not achieved economic self-sufficiency. The
15 amount of such assistance shall be based on a cost-shared plan between
16 the recipient family and the state which shall provide assistance up to
17 one hundred eighty-five percent of the federal poverty level ~~for up to~~
18 ~~twenty-four months~~. A recipient family may be required to contribute up
19 to twenty percent of such family's gross income for child care. It is the
20 intent of the Legislature that transitional health care coverage be made
21 available on a sliding-scale basis to individuals and families with
22 incomes up to one hundred eighty-five percent of the federal poverty
23 level if other health care coverage is not available; and

24 (d) The self-sufficiency contract shall be revised and cash
25 assistance extended when there is no job available for adult members of
26 the recipient family. It is the intent of the Legislature that available
27 job shall mean a job which results in an income of at least equal to the
28 amount of cash assistance that would have been available if receiving
29 assistance minus unearned income available to the recipient family.

30 The department shall develop policy guidelines to allow for cash
31 assistance to persons who have received the maximum cash assistance

1 provided by this section and who face extreme hardship without additional
2 assistance. For purposes of this section, extreme hardship means a
3 recipient family does not have adequate cash resources to meet the costs
4 of the basic needs of food, clothing, and housing without continuing
5 assistance or the child or children are at risk of losing care by and
6 residence with their parent or parents.

7 (2) Cash assistance conditions under the Welfare Reform Act shall be
8 as follows:

9 (a) Adults in recipient families shall mean individuals at least
10 nineteen years of age living with and related to a child eighteen years
11 of age or younger and shall include parents, siblings, uncles, aunts,
12 cousins, or grandparents, whether the relationship is biological,
13 adoptive, or step;

14 (b) The payment standard shall be based upon family size;

15 (c) The adults in the recipient family shall ensure that the minor
16 children regularly attend school. Education is a valuable personal
17 resource. The cash assistance provided to the recipient family may be
18 reduced when the parent or parents have failed to take reasonable action
19 to encourage the minor children of the recipient family ages sixteen and
20 under to regularly attend school. No reduction of assistance shall be
21 such as may result in extreme hardship. It is the intent of the
22 Legislature that a process be developed to insure communication between
23 the case manager, the parent or parents, and the school to address issues
24 relating to school attendance;

25 (d) Two-parent families which would otherwise be eligible under
26 section 43-504 or a federally approved waiver shall receive cash
27 assistance under this section;

28 (e) For minor parents, the assistance payment shall be based on the
29 minor parent's income. If the minor parent lives with at least one
30 parent, the family's income shall be considered in determining
31 eligibility and cash assistance payment levels for the minor parent. If

1 the minor parent lives independently, support shall be pursued from the
2 parents of the minor parent. If the absent parent of the minor's child is
3 a minor, support from his or her parents shall be pursued. Support from
4 parents as allowed under this subdivision shall not be pursued when the
5 family income is less than three hundred percent of the federal poverty
6 guidelines; and

7 (f) For adults who are not biological or adoptive parents or
8 stepparents of the child or children in the family, if assistance is
9 requested for the entire family, including the adults, a self-sufficiency
10 contract shall be entered into as provided in section 68-1719. If
11 assistance is requested for only the child or children in such a family,
12 such children shall be eligible after consideration of the family's
13 income and if (i) the family cooperates in pursuing child support and
14 (ii) the minor children of the family regularly attend school.

15 Sec. 3. Section 71-1912, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 71-1912 (1) Before issuance of a license, the department shall
18 investigate or cause an investigation to be made, when it deems
19 necessary, to determine if the applicant or person in charge of the
20 program meets or is capable of meeting the physical well-being, safety,
21 and protection standards and the other rules and regulations of the
22 department adopted and promulgated under the Child Care Licensing Act.
23 The department may investigate the character of applicants and licensees,
24 any member of the applicant's or licensee's household, and the staff and
25 employees of programs ~~by making a national criminal history record~~
26 ~~information check~~. The department may at any time inspect or cause an
27 inspection to be made of any place where a program is operating to
28 determine if such program is being properly conducted.

29 (2) All inspections by the department shall be unannounced except
30 for initial licensure visits and consultation visits. Initial licensure
31 visits are announced visits necessary for a provisional license to be

1 issued to a family child care home I, family child care home II, child
2 care center, or school-age-only or preschool program. Consultation visits
3 are announced visits made at the request of a licensee for the purpose of
4 consulting with a department specialist on ways of improving the program.

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

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

18 (5)(a) A person applying for a license as a child care provider or a
19 licensed child care provider under the Child Care Licensing Act shall
20 submit a request for a national criminal history record information check
21 for each child care staff member, including a prospective child care
22 staff member of the child care provider, at the applicant's or licensee's
23 expense, as set forth in this section. Beginning on October 1, 2019, a
24 prospective child care staff member shall submit to a national criminal
25 history record information check (i) prior to employment, except as
26 otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on
27 January 1, 2019, or (ii) prior to residing in a family child care home. A
28 child care staff member who was employed by a child care provider prior
29 to October 1, 2019, or who resided in a family child care home prior to
30 October 1, 2019, shall submit to a national criminal history record
31 information check by October 1, 2021, unless the child care staff member

1 ceases to be a child care staff member prior to such date.

2 (b) A child care staff member shall be required to undergo a
3 national criminal history record information check not less than once
4 during each five-year period. A child care staff member shall submit a
5 complete set of his or her fingerprints to the Nebraska State Patrol. The
6 Nebraska State Patrol shall transmit a copy of the child care staff
7 member's fingerprints to the Federal Bureau of Investigation for a
8 national criminal history record information check. The national criminal
9 history record information check shall include information concerning
10 child care staff members from federal repositories of such information
11 and repositories of such information in other states, if authorized by
12 federal law for use by the Nebraska State Patrol. The Nebraska State
13 Patrol shall issue a report to the department that includes the
14 information collected from the national criminal history record
15 information check concerning child care staff members. A child care staff
16 member being screened shall pay the actual cost of the fingerprinting and
17 national criminal history record information check. The department and
18 the Nebraska State Patrol may adopt and promulgate rules and regulations
19 concerning the costs associated with the fingerprinting and the national
20 criminal history record information check. The department may adopt and
21 promulgate rules and regulations implementing national criminal history
22 record information check requirements for child care providers and child
23 care staff members.

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

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

29 (ii) A search of the following registries, repositories, or data
30 bases in the state where the child care provider is located or where the
31 child care staff member resides and each state where the child care

1 provider was located or where the child care staff member resided during
2 the preceding five years:

3 (A) State criminal registries or repositories;

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

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

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

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

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

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

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

17 (e) The department may adopt and promulgate rules and regulations
18 prohibiting the employment of any child care staff member with one or
19 more criminal convictions as the department deems necessary to protect
20 the health and safety of children receiving child care.

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

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

31 (h) For purposes of this subsection:

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

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

5 (A) who is employed by a child care provider for compensation,
6 including contract employees or self-employed individuals;

7 (B) whose activities involve the care or supervision of children for
8 a child care provider or unsupervised access to children who are cared
9 for or supervised by a child care provider; or

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

12 Sec. 4. Section 71-1924, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 71-1924 Sections 71-1924 to 71-1951 and section 5 of this act shall
15 be known and may be cited as the Children's Residential Facilities and
16 Placing Licensure Act.

17 Sec. 5. (1) Any individual eighteen years of age or older working
18 in a residential child-caring agency shall be required to undergo a
19 national criminal history record information check not less than once
20 during each five-year period that he or she is working in such an agency.
21 The individual shall submit a complete set of his or her fingerprints to
22 the Nebraska State Patrol. The Nebraska State Patrol shall transmit a
23 copy of the individual's fingerprints to the Federal Bureau of
24 Investigation for a national criminal history record information check.
25 The national criminal history record information check shall include
26 information concerning the individual from federal repositories of such
27 information and repositories of such information in other states, if
28 authorized by federal law for use by the Nebraska State Patrol. The
29 Nebraska State Patrol shall issue a report to the department that
30 includes the information collected from the national criminal history
31 record information check concerning the individual. The individual being

1 screened shall pay the actual cost of the fingerprinting and national
2 criminal history record information check, except that the department may
3 pay all or part of the cost if funding becomes available. The department
4 and the Nebraska State Patrol may adopt and promulgate rules and
5 regulations concerning the costs associated with the fingerprinting and
6 the national criminal history record information check. The department
7 may adopt and promulgate rules and regulations implementing national
8 criminal history record information check requirements for residential
9 child-caring agencies.

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

16 (a) State criminal registries or repositories;

17 (b) State sex offender registries or repositories; and

18 (c) State-based child abuse and neglect registries and data bases.

19 Sec. 6. Sections 1, 2, 3, and 7 of this act become operative three
20 calendar months after the adjournment of this legislative session. The
21 other sections of this act become operative on their effective date.

22 Sec. 7. Original sections 68-1206, 68-1724, and 71-1912, Reissue
23 Revised Statutes of Nebraska, are repealed.

24 Sec. 8. Original section 71-1924, Reissue Revised Statutes of
25 Nebraska, is repealed.

26 Sec. 9. Since an emergency exists, this act takes effect when
27 passed and approved according to law.