

1 **SENATE FLOOR VERSION**

2 February 24, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1020

5 By: Scott and Murdock

6
7 **[Oklahoma Child Care Facilities Licensing Act -**
8 **investigate child care facility complaints - certain**
9 **information to complainant - anonymous - supervisor**
10 **review of complaint - unsubstantiated complaint -**
11 **codification - effective date]**

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

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

16 Section 406. A. The Department of Human Services shall have
17 authority at any reasonable time to investigate and examine the
18 conditions of any child care facility in which a licensee or
19 applicant hereunder receives and maintains children, and shall have
20 authority at any time to require the facility to provide information
21 pertaining to children in its care.

22 B. 1. The State Department of Health may visit any licensee or
23 applicant at the request of the Department to advise on matters
24

1 affecting the health of children and to inspect the sanitation of
2 the buildings used for their care.

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

7 C. 1. Upon receipt of a complaint against any child care
8 facility alleging a violation of the provisions of the Oklahoma
9 Child Care Facilities Licensing Act, or any licensing standard
10 promulgated by the Department, the Department shall conduct a full
11 investigation in accordance with the provisions of Section 2 of this
12 act. If upon investigation, it is determined that there are
13 reasonable grounds to believe that a facility is in violation of the
14 Oklahoma Child Care Facilities Licensing Act or of any standard or
15 rule promulgated pursuant thereto, the Department shall:

- 16 a. document the complaint,
- 17 b. provide the complaint allegations in writing to the
18 facility involved and, upon written request by the
19 child care facility, provide a summary of the facts
20 used to evaluate the completed complaint, which shall
21 include all details of the decision to substantiate or
22 unsubstantiate with names redacted as necessary. All
23 facts shall be shared with the program that the
24 Department could use in a grievance, emergency order,

1 denial of a request for license or revocation of a
2 child care program license, and

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

5 2. If the Department determines there has been a violation and
6 the violation has a direct impact on the health, safety or well-
7 being of one or more of the children cared for by the facility, the
8 Department shall notify the facility and require correction of the
9 violation.

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

15 4. If the facility refuses to correct a violation or fails to
16 complete the plan of correction, the Department may issue an
17 emergency order, revoke the license, or deny the application for a
18 license. Nothing in this section or Section 407 of this title shall
19 be construed as preventing the Department from denying an
20 application, revoking a license, or issuing an emergency order for a
21 single violation of ~~this act~~ Section 401 et seq. of this title, or
22 the rules of the Department as provided in Section 404 of this
23 title.

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

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

19 F. The Department shall promulgate rules to establish and
20 maintain a grievance process that shall include an anonymous
21 complaint system for reporting and investigating complaints or
22 grievances about employees of the Department who retaliate against a
23 child care facility or facility employee.

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

4 A. As used in this section:

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

10 2. "Confidential complainant" means a complainant for whom the
11 Department has the minimum personal identifying information
12 necessary, including the complainant's full name and verifiable
13 contact phone number, to attempt to communicate with the complainant
14 after a complaint has been made but who elects under paragraph 3 of
15 subsection F of this section not to be identified to the subject of
16 the complaint;

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

- 18 a. presence or use of illegal drugs while children are in
19 care,
20 b. distribution of drugs,
21 c. children left alone in a facility or in a vehicle,
22 d. extreme facility temperatures,
23 e. not complying with infant safe sleep requirements,
24 f. threatening or impaired behavior of a caregiver,

- 1 g. severe understaffing or over licensed capacity,
- 2 h. unlicensed facility,
- 3 i. violating an emergency order,
- 4 j. required staff without current cardiopulmonary
- 5 resuscitation and first-aid training,
- 6 k. failure to obtain background investigations, or
- 7 l. knowingly permitting access to children by persons
- 8 identified as restricted on the Child Care Restricted
- 9 Registry or subject to registration pursuant to the
- 10 Sex Offenders Registration Act; and

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

13 B. If the Department receives a complaint about a child care
14 facility, the Department shall:

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

18 2. As necessary:

- 19 a. encourage the complainant to disclose the minimum
- 20 personal identifying information, including the
- 21 complainant's full name and a verifiable contact phone
- 22 number, for the Department to attempt to subsequently
- 23 communicate with the complainant, and

1 b. inform the complainant that the Department shall not
2 investigate an anonymous complaint.

3 C. Information collected on a complaint shall include:

4 1. Date and time the complaint was received;

5 2. Name, address and telephone number of the child care
6 facility;

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

10 4. The complainant's source of information; for example,
11 personal observation or information from another person; and

12 5. Specific information regarding the allegations, including:

13 a. a description of the circumstances,

14 b. name or identity of staff involved,

15 c. child or children involved or affected by the alleged
16 noncompliance and their ages if known,

17 d. dates and times the alleged noncompliance took place,

18 e. names of other persons with relevant information, and

19 f. whether the complaint has been discussed with the
20 child care facility director or administrator.

21 D. The Department shall inform the complainant that:

22 1. The identity of a confidential complainant may be withheld
23 from the subject of a complaint only as provided in subparagraph a
24 of paragraph 3 of subsection F of this section;

1 2. The Department may be limited in its use of information
2 provided by a confidential complainant, as provided in subparagraph
3 b of paragraph 3 of subsection F of this section; and

4 3. A person is guilty of a misdemeanor under Section 410 of
5 Title 10 of the Oklahoma Statutes if the person gives false
6 information to the Department with the purpose of inducing a change
7 in that person's or another person's licensing or certification
8 status.

9 E. If the complainant elects to be an anonymous complainant, or
10 if the complaint concerns events which occurred more than six (6)
11 weeks before the complainant contacted the Department, the
12 Department:

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

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

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

24 a. the anonymous complainant, or

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

3 F. 1. If the complainant elects to be a confidential
4 complainant, the Department shall determine whether the complainant
5 wishes to remain confidential:

6 a. only until the investigation of the complaint has been
7 completed, or

8 b. indefinitely.

9 2. If the complainant elects to remain confidential only until
10 the investigation of the complaint has been completed, the
11 Department shall disclose the name of the complainant to the subject
12 of the complaint at the completion of the investigation, but no
13 sooner.

14 3. If the complainant elects to remain confidential
15 indefinitely, the Department:

16 a. notwithstanding Section 2004.1 of Title 12 of the
17 Oklahoma Statutes, shall not disclose the name of the
18 complainant, including to the subject of the
19 complaint, and

20 b. shall not use information provided by the complainant
21 to substantiate an alleged violation of state law or
22 Department rule unless the Department independently
23 corroborates the information.

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

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

5 a. the supervisor determines the complaint is credible,

6 b. the complaint is not from an anonymous complainant,

7 and

8 c. prior to the investigation, the investigator informs
9 the subject of the complaint of:

10 (1) except as provided in paragraph 2 or subparagraph
11 a of paragraph 3 of subsection F of this section,
12 the name of the complainant, and

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

15 3. An investigator is not required to inform the subject of a
16 complaint of the substance of the complaint prior to an
17 investigation if doing so would jeopardize the investigation and
18 would involve a serious risk of harm to a child. However, the
19 investigator shall inform the subject of the complaint of the
20 substance of the complaint as soon as doing so will no longer
21 jeopardize the investigation.

22 H. If the Department is unable to substantiate a complaint, any
23 record related to the complaint or the investigation of the
24 complaint:

1 1. Shall be kept as a confidential and protected record; and

2 2. Shall be removed from the public online database.

3 I. All complaint calls shall be made to a centralized statewide
4 number or entered through an online complaint submission process.

5 All calls shall be recorded and kept for ninety (90) days.

6 J. The Department has no authority:

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

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

15 K. Visits to the child care facility to investigate a complaint
16 are limited to one visit unless there is serious risk of harm to a
17 child.

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

21 M. A child care program shall not be cited for the actions
22 taken by an employee that are outside the direction of the program's
23 policies and procedures if the program can demonstrate that the
24 employee:

1 1. Was provided training over that policy; or

2 2. Negligently ignored the policy and training.

3 N. Nothing in this section modifies or removes the mandate for
4 reporting child abuse or neglect through the statewide child abuse
5 hotline.

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

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

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

4 3. When a resolution cannot be reached at the local level or
5 through verbal conversation with CCS office staff, the grievant is
6 requested to file a written request with the programs manager within
7 ninety (90) calendar days of such conversation.

8 4. The programs manager shall notify the statewide licensing
9 coordinator that a formal grievance was filed and efforts were made
10 to resolve the issue. The programs manager shall respond to written
11 grievances within ten (10) business days of receipt. The grievant
12 shall be informed that the request for additional reviews must be
13 submitted within sixty (60) calendar days of the date correspondence
14 is received by the licensed program.

15 5. When the grievant is not satisfied with the proposed
16 resolution, he or she may request review to the statewide licensing
17 coordinator. The grievant shall be informed that he or she may
18 request review by the Peer Review Board of the Child Care Advisory
19 Committee, prior to review by the statewide licensing coordinator.
20 The statewide licensing coordinator forwards information to the Peer
21 Review Board, when applicable or proceeds with the review.

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

1 7. The statewide licensing coordinator shall notify the
2 grievant of the CCS decision within thirty (30) business days or
3 when applicable thirty (30) business days of receipt of the Peer
4 Review Board advisement. The grievant is informed the request for
5 additional reviews must be submitted within sixty (60) calendar days
6 of the date correspondence is received by the licensed program.

7 8. When the grievant is not satisfied with the proposed
8 resolution, he or she may request review to the CCS director, Adult
9 and Family Service (AFS) director and Director of Human Services,
10 respectively. The CCS director, AFS director and the Director of
11 Human Services shall each respond within thirty (30) business days
12 of receipt. The grievant shall be informed that the request for
13 additional reviews must be submitted within thirty (30) calendar
14 days of the date correspondence is received by the licensed program.
15 Upon decision by the Director of Human Services, licensed child care
16 programs may request an administrative hearing with the Department
17 of Human Services where they may subpoena information, witnesses and
18 cross examine witnesses.

19 SECTION 3. This act shall become effective November 1, **2020**.

20 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
21 February 24, 2020 - DO PASS AS AMENDED
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