

LEGISLATIVE BILL 472

Approved by the Governor February 27, 1987

Introduced by Health & Human Services Committee, Wesely,
26, Chairperson; Beyer, 3; Lynch, 13;
Morehead, 30; Schellpeper, 18

AN ACT relating to care of children; to amend sections 71-1910 and 71-1915, Reissue Revised Statutes of Nebraska, 1943; to provide for information concerning immunization; to provide for reports and audits of such reports; to provide powers and duties for the Department of Social Services and the Department of Health; to provide for rules and regulations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-1910, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1910. As used in sections 71-1908 to 71-1918 and sections 2 to 4 of this act, unless the context otherwise requires:

(1) Department shall mean the Department of Social Services;

(2) Director shall mean the Director of Social Services; and

(3) Early childhood program or program shall mean the provision of services in lieu of parental supervision for children under twelve years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and shall include any employer-sponsored day care, day care home, day care center, before-and-after-school day care program, before-and-after-school services pursuant to section 79-444, or preschool or nursery school, but shall not include casual care at irregular intervals, a recreation camp, classes or services provided by a religious organization other than day care or preschool or nursery schools, a preschool program conducted in a school approved pursuant to section 79-328, or child care as defined in section 71-1901.

Sec. 2. (1) Each early childhood program shall require the parent or guardian of each child

enrolled in such program to present within thirty days of enrollment (a) proof that the child is protected by immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and haemophilus influenzae type B or (b) a written statement that he or she does not wish to have such child so immunized. At the time the parent or guardian is notified that such information is required, he or she shall be notified in writing of his or her right to submit a written statement refusing immunization for his or her child.

(2) Each early childhood program shall keep a written record of immunization or the written statement of the parent or guardian that he or she does not wish to have the child immunized. Such record or statement shall be kept by the early childhood program as part of the child's file and shall be available to the Department of Social Services and the Department of Health for review and inspection. Each early childhood program shall report to the Department of Health by November 1 of each year the status of immunization for children enrolled as of September 30 of that year.

Sec. 3. (1) The Department of Health shall perform annually a random audit of such reports to check for compliance with section 2 of this act on an annual basis and such other audits and inspections as are necessary to prevent the introduction or spread of disease. Audit results shall be reported to the Department of Social Services.

(2) If the Department of Health discovers noncompliance with section 2 of this act, the Department of Health shall allow early childhood programs thirty days to correct deficiencies. If deficiencies are not corrected, the Department of Health shall notify the Department of Social Services in writing within five working days. The Department of Social Services shall notify the Department of Health of any action taken as a result of such report.

(3) The Department of Health shall develop and provide educational and other materials to the early childhood programs and the public as may be necessary to implement section 2 of this act.

Sec. 4. The Department of Health shall adopt and promulgate rules and regulations relating to the required levels of protection and the reporting of each child's immunization status. The Department of Health shall furnish each early childhood program with copies of such rules and regulations and any other material which will assist in carrying out section 2 of this act.

Sec. 5. That section 71-1915, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1915. (1) Whenever the director has reason to believe that a violation of any provision of sections 71-1908 to 71-1914 and sections 2 to 4 of this act or of any rule, regulation, or order of the department has occurred, he or she may cause a written charge to be served upon each alleged violator. The charge shall specify the provision of sections 71-1908 to 71-1914 and sections 2 to 4 of this act or the rule, regulation, or order alleged to be violated and the facts alleged to constitute a violation of such section, rule, regulation, or order. The director shall provide for notice and a full and fair hearing at a time and place specified in such notice at which each alleged violator shall answer the charges. The notice shall be delivered to each alleged violator not less than ten days before the time set for the hearing by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. Following the hearing the director shall determine whether the charges are true or not, and if true, the director may (a) issue a declaratory order finding the charges to be true, (b) revoke or suspend a license, or (c) impose a civil penalty of five dollars for each child in the program for each day in violation after the department issues its order finding a violation.

(2) Any civil penalty assessed and unpaid under the provisions of subsection (1) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in an early childhood program, the director may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (1) of this section, such order shall be effective immediately. Any person to whom the order is directed shall comply immediately, except that upon

application to the director, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the director shall continue to enforce his or her order or revoke or modify it.

(4) In addition to the powers provided to the director in this section, he or she may petition the appropriate district court for an injunction whenever he or she believes that any person is violating any provision of sections 71-1908 to 71-1918, and sections 2 to 4 of this act or any rule, regulation, or order adopted and promulgated pursuant to such sections. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with such sections, rules, regulations, and orders.

Sec. 6. That original sections 71-1910 and 71-1915, Reissue Revised Statutes of Nebraska, 1943, are repealed.