

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 55th Legislature (2015)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1280

By: Cockroft of the House

and

Brooks of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to children; amending 10 O.S. 2011,
12 Section 406, as amended by Section 9, Chapter 308,
13 O.S.L. 2013 (10 O.S. Supp. 2014, Section 406), which
14 relates to the Oklahoma Child Care Facilities
15 Licensing Act; directing Department of Human Services
16 to investigate child care facility complaints in
17 manner prescribed; defining terms; setting
18 requirements for Department to follow when taking
19 complaints; specifying information to be taken and
20 included in the complaint; mandating Department
21 provide certain information to complainant; allowing
22 complainant to remain anonymous; directing Department
23 to take specified action; differentiating between
24 temporary and indefinite confidential complainant;
 requiring disclosure of complainant upon completion
 of investigation if temporary; barring disclosure if
 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; excluding Department
 authority over listed activities; limiting
 investigative visits; providing exception; requiring
 completion of Notice to Comply form; construing

1 provisions; providing penalty for giving false
2 information; prescribing punishment and fine;
3 providing for codification; and providing an
4 effective date.

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

7 SECTION 1. AMENDATORY 10 O.S. 2011, Section 406, as
8 amended by Section 9, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2014,
9 Section 406), is amended to read as follows:

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

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

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

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

- 10 a. document the complaint,
11 b. provide the complaint allegations in writing to the
12 facility involved and, upon written request by the
13 child care facility, provide a summary of the facts
14 used to evaluate the completed complaint, and
15 c. document the facility's plan for correcting any
16 substantiated violations.

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

22 3. The Department shall notify the facility that failure to
23 correct the confirmed violation can result in the revocation of the
24 license, the denial of an application for a license, the issuance of

1 an emergency order or the filing of an injunction pursuant to the
2 provisions of Section 409 of this title.

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

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

18 E. Information obtained by the Department or Oklahoma Child
19 Care Services concerning a report of a violation of a licensing
20 requirement, or from any licensee regarding children or their
21 parents or other relatives shall be deemed confidential and
22 privileged communications, shall be properly safeguarded, and shall
23 not be accessible to anyone except as herein provided, unless upon
24 order of a court of competent jurisdiction. Provided, however, this

1 provision shall not prohibit the Department from providing a summary
2 of allegations and findings of an investigation involving a child
3 care facility that does not disclose identities but that permits
4 parents to evaluate the facility.

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

8 A. As used in this section:

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

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

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

22 a. presence or use of illegal drugs while children are in
23 care,

24 b. distribution of drugs,

- c. children left alone in a facility or in a vehicle,
- d. extreme facility temperatures,
- e. an infant placed on stomach for sleeping,
- f. threatening or impaired behavior of a caregiver,
- g. severe understaffing or over licensed capacity,
- h. unlicensed facility,
- i. violating an emergency order,
- j. required staff without current cardiopulmonary resuscitation and first-aid training,
- k. failure to obtain background investigations, or
- l. knowingly permitting access to children by persons identified as restricted on the Child Care Restricted Registry or subject to registration pursuant to the Sex Offenders Registration Act; and

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

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

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

2. As necessary:

- a. encourage the complainant to disclose the minimum personal identifying information, including the

1 complainant's full name and a verifiable contact phone
2 number, for the Department to attempt to subsequently
3 communicate with the complainant, and

4 b. inform the complainant that the Department shall not
5 investigate an anonymous complaint.

6 C. Information collected on a complaint shall include:

7 1. Date and time the complaint was received;

8 2. Name, address and telephone number of the child care
9 facility;

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

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

15 5. Specific information regarding the allegations, including:

16 a. a description of the circumstances,

17 b. name or identity of staff involved,

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

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

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

22 f. whether the complaint has been discussed with the
23 child care facility director or administrator.

24 D. The Department shall inform the complainant that:

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

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

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

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

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

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

23 3. May, during a regularly scheduled licensing visit and for
24 informational purposes only, inform the child care facility that it

1 is the subject of the complaint of allegations or concerns raised
2 by:

- 3 a. the anonymous complainant, or
- 4 b. the complainant who reported events more than six (6)
5 weeks after the events occurred.

6 F. 1. If the complainant elects to be a confidential
7 complainant, the Department shall determine whether the complainant
8 wishes to remain confidential:

- 9 a. only until the investigation of the complaint has been
10 completed, or
- 11 b. indefinitely.

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

17 3. If the complainant elects to remain confidential
18 indefinitely, the Department:

- 19 a. notwithstanding Section 2004.1 of Title 12 of the
20 Oklahoma Statutes, shall not disclose the name of the
21 complainant, including to the subject of the
22 complaint, and
- 23 b. shall not use information provided by the complainant
24 to substantiate an alleged violation of state law or

1 Department rule unless the Department independently
2 corroborates the information.

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

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

7 a. the supervisor determines the complaint is credible,

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

9 and

10 c. prior to the investigation, the investigator informs

11 the subject of the complaint of:

12 (1) except as provided in paragraph 2 or subparagraph

13 a of paragraph 3 of subsection F of this section,

14 the name of the complainant, and

15 (2) except as provided in paragraph 3 of this

16 subsection, the substance of the complaint.

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

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1 H. If the Department is unable to substantiate a complaint, any
2 record related to the complaint or the investigation of the
3 complaint:

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

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

6 I. 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 J. 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 K. 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 L. Nothing in this section modifies or removes the mandate for
22 reporting child abuse or neglect through the statewide child abuse
23 hotline.

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

7 SECTION 3. This act shall become effective November 1, 2015.
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9 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH, AND FAMILY
10 SERVICES, dated 02/25/2015 - DO PASS, As Amended and Coauthored.
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