STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 424 By: Pugh

AS INTRODUCED

An Act relating to child care; amending 10 O.S. 2021, Section 404, which relates to minimum requirements and desirable standards; eliminating certain restriction on notice requirement; updating statutory language; amending 10 O.S. 2021, Section 404.1, which relates to child care facility license; eliminating certain restriction on rule promulgation; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2021, Section 404, is amended to read as follows:

Section 404. A. 1. The Department of Human Services, in consultation with the Oklahoma Commission on Children and Youth, shall appoint advisory committees of representatives of child care facilities and others to recommend minimum requirements and desirable standards for promulgation by the Department.

2. Committee members shall be appointed for a three-year term, with a two-consecutive-term limit. The committees shall include representation for all categories of facilities licensed by the Department and shall be comprised as follows:

...
a. the Residential Children’s Services subcommittee shall include at a minimum:

(1) a representative of a statewide organization representing children in care arrangements outside their own home,

(2) a representative of a statewide organization providing residential services to youth in state custody,

(3) a recipient or former recipient of youth services for children in state custody,

(4) a representative of a statewide organization promoting adoption services,

(5) a parent or guardian providing foster care to a child or children in state custody,

(6) a representative from a nonpublic, long-term residential care facility for children in state custody,

(7) a representative from an organization promoting the interests of Native American children in state custody,

(8) a provider of medical services for children,

(9) a practicing behavioral health services provider,

(10) a representative from an agency providing child-placing services, and
(11) other appropriate representatives at the
discretion of the Department of Human Services
and Oklahoma Commission on Children and Youth,
b. the Child Care Centers subcommittee shall include at a
minimum:
(1) a representative of a statewide organization
advocating for children in care arrangements
outside their own home,
(2) a representative of a statewide organization
conducting programs for school-age children,
(3) a parent or guardian with a child attending a
licensed child care facility,
(4) a representative of a licensed child care
facility in a rural area,
(5) a representative of a statewide organization
advocating for licensed child care facilities
owned or operated by Native Americans,
(6) a representative of a licensed child care
facility in an urban/suburban area,
(7) a representative of a statewide organization
advocating for programs provided under the Head
Start program,
(8) a representative with knowledge of child care programs offered by career technology center in this state,

(9) a representative of a statewide organization advocating for early childhood education programs,

(10) a representative of a statewide organization providing resources and referrals to child care facilities,

(11) a provider of medical services for children, and

(12) other appropriate representatives at the discretion of the Department of Human Services and Oklahoma Commission on Children and Youth,

c. the Child Care Homes subcommittee shall include at a minimum:

(1) a representative of a statewide organization advocating for children in care arrangements outside their own home,

(2) a parent or guardian with a child receiving care at a licensed child care home,

(3) a representative of a licensed child care home in a rural area,
(4) a representative of a statewide organization advocating for licensed child care facilities owned or operated by Native Americans,

(5) a representative of a licensed child care home in an urban/suburban area,

(6) a representative of a statewide organization advocating for early childhood education programs,

(7) a representative of a statewide organization providing resources and referrals to child care facilities,

(8) a provider of medical services for children, and

(9) other appropriate representatives at the discretion of the Department of Human Services and Oklahoma Commission on Children and Youth, and

d. the Quality Rating and Improvement System subcommittee shall include representatives of child care centers and child care homes currently licensed by the State and other members as determined by the Department of Human Services and the Oklahoma Commission on Children and Youth.

3. The Department shall create a Child Care Facility Peer Review Board whose purpose shall be to participate in the
Department’s grievance process. A majority of the Board shall be representatives of child care facilities. The Director of the Department shall promulgate rules specifying the duties of the Child Care Facility Peer Review Board in the grievance process.

4. The advisory committee shall designate two people to serve on the Department’s Stars Administrative Review Panel. At least one designee shall be the owner or operator of a licensed child care center.

B. Child care facilities shall not allow children to be left alone in the care of any person under eighteen (18) years of age without supervision or sixteen (16) years of age with supervision as delineated by the Department’s rules promulgated by the Director. Child care centers and family child care homes shall not:

1. Use soft or loose bedding, including, but not limited to, blankets, in sleeping equipment or in sleeping areas used only for infants;

2. Allow toys or educational devices in sleeping equipment or in a sleeping area used only for infants; or

3. Place a child in sleeping equipment or in a sleeping area which has not been previously approved for use as such by the Department.

C. The Director of the Department shall promulgate rules establishing minimum requirements and desirable standards as may be
deemed necessary or advisable to carry out the provisions of the
Oklahoma Child Care Facilities Licensing Act.

D. Such rules shall not be promulgated until after consultation
with the State Department of Health, the State Department of
Education, the Oklahoma State Bureau of Investigation, the State
Fire Marshal, the Oklahoma Commission on Children and Youth, the
Oklahoma Department of Mental Health and Substance Abuse Services
and any other agency deemed necessary by the Department. Not less
than sixty (60) days’ notice, by regular mail, shall be given to all
current licensees before any changes are made in such rules.

E. In order to improve the standards of child care, the
Department shall advise and cooperate with licensees, the governing
bodies and staff of licensed child care facilities and assist the
staff through advice of progressive methods and procedures, and
suggestions for the improvement of services.

F. The Department may participate in federal programs for child
care services, and enter into agreements or plans on behalf of the
state for that purpose, in accordance with federal laws and
regulations.

SECTION 2. AMENDATORY 10 O.S. 2021, Section 404.1, is
amended to read as follows:

Section 404.1. A. On and after November 1, 2013:
1. Prior to the issuance of a permit or license, owners and responsible entities making a request to establish or operate a child care facility shall have:

   a. an Oklahoma State Courts Network search conducted by the Department,

   b. a Restricted Registry search conducted by the facility,

   c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection,

   d. a criminal history records and sex offender registry search conducted by an authorized source, when the individual has lived outside this state within the last five (5) years,

   e. a search of the Department of Corrections’ files maintained pursuant to the Sex Offenders Registration Act and conducted by the Department of Human Services,

   f. a search of any available child abuse and neglect registry within a state the individual has resided in within the last five (5) years,

   g. search of the nontechnical services worker abuse registry maintained by the State Department of Health pursuant to Section 1-1950.7 of Title 63 of the Oklahoma Statutes, and

   ...
h. a search of the community services worker registry
   maintained by the Department of Human Services
   pursuant to Section 1025.3 of Title 56 of the Oklahoma
   Statutes;

2. Prior to the employment of an individual:
   a. an Oklahoma State Courts Network search, conducted by
      the Department, shall be requested and received by the
      facility; provided however, if twenty-four (24) hours
      has passed from the time the request to the Department
      was made, the facility may initiate employment,
      notwithstanding the provisions of this paragraph,
   b. a Restricted Registry search shall be conducted by the
      facility with notification of the search submitted to
      the Department,
   c. a national criminal history records search pursuant to
      paragraph 10 of this subsection shall be submitted,
   d. a criminal history records and sex offender registry
      search conducted by an authorized source, when the
      individual has lived outside this state within the
      last five (5) years, shall be submitted to the
      Department,
   e. a search of the Department of Corrections’ files
      maintained pursuant to the Sex Offenders Registration
Act shall be conducted by the Department and received by the facility,

f. a search of any available child abuse and neglect registry within a state the individual has resided in within the last five (5) years,

g. search of the nontechnical services worker abuse registry maintained by the State Department of Health pursuant to Section 1-1950.7 of Title 63 of the Oklahoma Statutes, and

h. a search of the community services worker registry maintained by the Department of Human Services pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;

3. Prior to allowing unsupervised access to children by employees or individuals, including contract employees and volunteers and excluding the exceptions in paragraph 8 of this subsection:

   a. Oklahoma State Courts Network search results, conducted by the Department, shall be received by the facility,

   b. a Child Care child care Restricted Registry search shall be conducted by the facility with notification of the search submitted to the Department,
c. national criminal history records search results pursuant to paragraph 10 of this subsection shall be received by the facility,

d. a criminal history records and sex offender registry search conducted by an authorized source, when the individual has lived outside this state within the last five (5) years shall be submitted to the Department,

e. a search of the Department of Corrections’ files maintained pursuant to the Sex Offenders Registration Act shall be conducted by the Department and received by the facility,

f. a search of any available child abuse and neglect registry within a state the individual has resided in within the last five (5) years,

g. search of the nontechnical services worker abuse registry maintained by the State Department of Health pursuant to Section 1-1950.7 of Title 63 of the Oklahoma Statutes, and

h. a search of the community services worker registry maintained by the Department of Human Services pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;
4. Prior to the issuance of a permit or license and prior to the residence of adults who subsequently move into a facility, adults living in the facility excluding the exception in paragraph 7 of this subsection shall have:

   a. an Oklahoma State Courts Network search conducted by the Department and the facility shall be in receipt of the search results,

   b. a Restricted Registry search conducted by the facility with notification of the search submitted to the Department,

   c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection,

   d. a criminal history records and sex offender registry search conducted by an authorized source, when the individual has lived outside this state within the last five (5) years,

   e. a search of the Department of Corrections’ files maintained pursuant to the Sex Offenders Registration Act conducted by the Department and received by the facility,

   f. a search of any available child abuse and neglect registry within a state the individual has resided in within the last five (5) years,
g. search of the nontechnical services worker abuse registry maintained by the State Department of Health pursuant to Section 1-1950.7 of Title 63 of the Oklahoma Statutes, and

h. a search of the community services worker registry maintained by the Department of Human Services pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;

5. Children who reside in the facility and turn eighteen (18) years of age excluding the exception in paragraph 7 of this subsection shall have:

   a. an Oklahoma State Courts Network search conducted by the Department,

   b. a Restricted Registry search conducted by the facility with notification of the search submitted to the Department,

   c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection, and

   d. a search of the Department of Corrections’ files pursuant to the Sex Offenders Registration Act conducted by the Department and received by the facility;

6. Prior to review of or access to fingerprint results, owners, responsible entities, directors, and other individuals who have
review of or access to fingerprint results shall have a national
criminal history records search pursuant to paragraph 10 of this
subsection;

7. Provisions specified in paragraphs 4 and 5 of this
subsection shall not apply to residents who are receiving services
from a residential child care facility;

8. A national criminal history records search pursuant to
paragraph 10 of this subsection shall not be required for volunteers
who transport children on an irregular basis when a release is
signed by the parent or legal guardian noting their understanding
that the volunteer does not have a completed national criminal
history records search. The provisions in paragraph 3 of this
subsection shall not be required for specialized service
professionals who are not employed by the program and have
unsupervised access to a child when a release is signed by the
parent or legal guardian noting his or her understanding of this
exception. These exceptions shall not preclude the Department from
requesting a national fingerprint or an Oklahoma State Bureau of
Investigation name-based criminal history records search or
investigating criminal, abusive, or harmful behavior of such
individuals, if warranted;

9. A national criminal history records search pursuant to
paragraph 10 of this subsection shall be required on or before
November 1, 2016, for existing owners, responsible entities,
employees, individuals with unsupervised access to children, and
adults living in the facility, as of November 1, 2013, unless
paragraph 6 of this subsection applies;

10. The Department shall require a national criminal history
records search based upon submission of fingerprints that shall:

a. be conducted by the Oklahoma State Bureau of
   Investigation and the Federal Bureau of Investigation
   pursuant to Section 150.9 of Title 74 of the Oklahoma
   Statutes and the federal National Child Protection Act
   and the federal Volunteers for Children Act with the
   Department as the authorized agency,

b. be submitted and have results received between the
   Department and the Oklahoma State Bureau of
   Investigation through secure electronic transmissions,

c. include Oklahoma State Bureau of Investigation Rap
   Back Rap Back, requiring the Oklahoma State Bureau of
   Investigation to immediately notify the Department
   upon receipt of subsequent criminal history activity,
   and

d. be paid by the individual or the facility;

11. The Director of the Department, or designee, shall
   promulgate rules that may authorize an exception to the
   fingerprinting requirements for individuals who have a severe
physical condition which precludes such individuals from being fingerprinted;

12. The Director of the Department, or designee, shall promulgate rules that ensure individuals obtain a criminal history records search, not to include the re-submission of fingerprints, not less than once during each five (5) year period;

13. Any individual who refuses to consent to the criminal background check or knowingly makes a materially-false statement in connection with such criminal background check shall be ineligible for ownership of, employment of or residence in a child care facility; and

14. The Office of Juvenile Affairs shall require national criminal history records searches, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes, which shall be provided by the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal history records search, including Rap Back notification of and through direct request by the Office of Juvenile Affairs on behalf of any:

a. operator or responsible entity making a request to establish or operate a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs,
b. employee or applicant of a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs, or
c. persons allowed unsupervised access to children, including contract employees or volunteers, of a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs.

B. 1. a. On and after September 1, 1998:

(1) any child-placing agency contracting with a person for foster family home services or in any manner for services for the care and supervision of children shall also, prior to executing a contract, complete:

(a) a foster parent eligibility assessment for the foster care provider except as otherwise provided by divisions (2) and (4) of this subparagraph, and

(b) a national criminal history records search based upon submission of fingerprints for any adult residing in the foster family home through the Department of Human Services.
pursuant to the provisions of Section 1-7-106 of Title 10A of the Oklahoma Statutes, except as otherwise provided by divisions (2) and (4) of this subparagraph,

(2) the child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement,

(3) a national criminal history records search based upon submission of fingerprints to the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the foster family home,

(4) provided, however, the Director of Human Services or the Director of the Office of Juvenile Affairs, or a designee, may authorize an exception to the fingerprinting requirement for a person residing in the home who has a severe physical condition which precludes such person’s being fingerprinted, and
(5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Affairs to conduct a juvenile justice information system review, pursuant to the provisions of Sections 2-7-905 and 2-7-308 of Title 10A of the Oklahoma Statutes, for any child over the age of thirteen (13) years residing in the foster family home, other than a foster child, or who subsequently moves into the foster family home. As a condition of contract, the child care facility shall obtain the consent of the parent or legal guardian of the child for such review.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Office of Juvenile Affairs prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of this section, until otherwise provided by rules of the Department promulgated by the Director or by law.

2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions (2) and (4) of this subparagraph, prior to contracting with a
foster family home for placement of any child who is in the custody of the Department of Human Services or the Office of Juvenile Affairs, each Department shall complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant. In addition, except as otherwise provided by divisions (2) and (4) of this subparagraph, the Department shall complete a national criminal history records search based upon submission of fingerprints for any adult residing in such foster family home.

(2) The Department of Human Services and Office of Juvenile Affairs may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement.

(3) A national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall also
be completed for any adult who subsequently moves into the foster family home.

(4) The Director of Human Services or the Director of the Office of Juvenile Affairs or their designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person’s being fingerprinted.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Office of Juvenile Affairs prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of this section, until otherwise provided by rules of the Department promulgated by the Director or by law.

3. The Department of Human Services or the Office of Juvenile Affairs shall provide for a juvenile justice information system review pursuant to Section 2-7-308 of Title 10A of the Oklahoma Statutes for any child over the age of thirteen (13) years residing in a foster family home, other than the foster child, or who subsequently moves into the foster family home.

C. The Director of the Department or the Board of Juvenile Affairs shall promulgate rules to identify circumstances when a
criminal history records search or foster parent eligibility assessment for an applicant or contractor, or any person over the age of thirteen (13) years residing in a private residence in which a child care facility is located, shall be expanded beyond the records search conducted by the Oklahoma State Bureau of Investigation or as otherwise provided pursuant to this section.

D. Except as otherwise provided by the Oklahoma Children’s Code and subsection F of this section, a conviction for a crime shall not be an absolute bar to employment, but shall be considered in relation to specific employment duties and responsibilities.

E. 1. Information received pursuant to this section by an owner, administrator, or responsible entity of a child care facility, shall be maintained in a confidential manner pursuant to applicable state and federal laws.

2. The information, along with any other information relevant to the ability of the individual to perform tasks that require direct contact with children, may be released to another child care facility in response to a request from the child care facility that is considering employing or contracting with the individual unless deemed confidential by state and federal laws.

3. Requirements for confidentiality and recordkeeping with regard to the information shall be the same for the child care facility receiving the information in response to a request as those
provided for in paragraph 1 of this subsection for the child care facility releasing such information.

4. Information received by any facility certified by the Office of Juvenile Affairs may be released to another facility certified by the Office if an individual is being considered for employment or contract, along with any other relevant information, unless the information is deemed confidential by state or federal law. Any information received by the Office shall be maintained in a confidential manner pursuant to applicable state and federal law.

F. 1. It shall be unlawful for individuals who are required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or contract with, or allow continued employment of or contracting with individuals who are required to register pursuant to the Sex Offenders Registration Act. Individuals required to register pursuant to the Sex Offenders Registration Act who violate any provision of Section 401 et seq. of this title shall, upon conviction, be guilty of a felony punishable by incarceration in a correctional facility for a period of not more than five (5) years and a fine of not more than Five Thousand Dollars ($5,000.00) or both such fine and imprisonment.

2. It shall be unlawful for an individual who is the perpetrator of a substantiated finding by the Department of heinous
and shocking abuse by a person responsible for a child’s health, safety, or welfare, as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, to work with or provide services to children or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or contract with, or allow continued employment of or contracting with such individual.

3. Upon a determination by the Department of any violation of the provisions of this section, the violator shall be subject to and the Department may pursue:

   a. an emergency order,
   b. license revocation or denial,
   c. injunctive proceedings,
   d. an administrative penalty not to exceed Ten Thousand Dollars ($10,000.00), and
   e. referral for criminal proceedings.

4. In addition to the penalties specified by this section, the violator may be liable for civil damages.

   SECTION 3. This act shall become effective November 1, 2023.