

CHAPTER 220

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 01-014

\BY SENATOR(S) Evans, Epps, Linkhart, Nichol, Perlmutter, and Tupa;
also REPRESENTATIVE(S) Alexander, Johnson, Tochtrop, Borodkin, Boyd, Daniel, Groff, Larson, Mace, Madden, Romanoff,
and Stafford.

AN ACT

CONCERNING REGULATORY OVERSIGHT OF FOSTER CARE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 3 of title 2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

2-3-116. Performance audit of foster care program - repeal. (1) THE STATE AUDITOR SHALL CONDUCT OR CAUSE TO BE CONDUCTED A PERFORMANCE AND FINANCIAL AUDIT OF THE STATE'S FOSTER CARE PROGRAM ESTABLISHED IN THE DEPARTMENT OF HUMAN SERVICES AND ADMINISTERED BY THE DIVISION OF CHILD WELFARE SERVICES IN SAID DEPARTMENT. IN ADDITION TO SUCH OTHER ISSUES AS MAY BE IDENTIFIED BY THE STATE AUDITOR'S OFFICE, SUCH AUDIT SHALL SERVE AS A FOLLOW-UP TO THE AUGUST 1998 REPORT OF THE STATE AUDITOR ON THE DIVISION OF CHILD WELFARE SERVICES IN THE DEPARTMENT OF HUMAN SERVICES.

(2) THE STATE AUDITOR'S OFFICE SHALL SUBMIT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS IN THE FORM OF A WRITTEN REPORT TO THE MEMBERS OF THE LEGISLATIVE AUDIT COMMITTEE OF THE GENERAL ASSEMBLY AND TO THE MEMBERS OF THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE OF THE SENATE AND TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES NO LATER THAN AUGUST 1, 2002.

(3) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 1, 2002.

SECTION 2. 26-2-102.5, Colorado Revised Statutes, is amended to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

26-2-102.5. Foster care - Title IV-E of the Social Security Act. (1) Eligibility of a child for Title IV-E foster care shall be based on the AFDC rules in effect on ~~June 1, 1995~~ JULY 16, 1996.

(2) Such child shall meet all of the following conditions:

(a) The placement and care of such child are the responsibility of the state department of human services or a county department of social services;

(b) Such child has been placed in a foster home or child care institution as a result of a judicial determination or voluntary placement agreement;

~~(c) Court proceedings leading to the judicial determination were initiated in a month in which such child would have been eligible to receive AFDC under the rules in effect on June 1, 1995, or would have been eligible except that such child was not living with a caretaker relative. If such child lived with a caretaker relative within six months prior to the month in which court proceedings were initiated, such child shall be eligible. SUCH CHILD:~~

~~(I) WOULD HAVE RECEIVED AID IN OR FOR THE MONTH IN WHICH SUCH AGREEMENT OR COURT PROCEEDINGS RESULTING IN SUCH JUDICIAL DETERMINATION WERE INITIATED; OR~~

~~(II) WOULD HAVE RECEIVED THE AID DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) IF APPLICATION HAD BEEN MADE THEREFOR; OR~~

~~(III) HAD BEEN LIVING WITH A RELATIVE WITHIN THE SIX MONTHS PRIOR TO THE MONTH IN WHICH SUCH AGREEMENT OR COURT PROCEEDINGS RESULTING IN SUCH JUDICIAL DETERMINATION WERE INITIATED, AND SUCH CHILD WOULD HAVE RECEIVED THE AID DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) IF IN SUCH MONTH HE OR SHE HAD BEEN LIVING WITH SUCH RELATIVE AND APPLICATION THEREFOR HAD BEEN MADE.~~

SECTION 3. 26-6-102 (1), (2), (3), and (8), Colorado Revised Statutes, are amended to read:

26-6-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affiliate of a licensee" means:

(a) Any person or entity that owns more than five percent of the ownership interest in the business operated by the licensee or the applicant for a license; or

(b) Any person who is directly responsible for the care and welfare of children served; OR

(c) ANY EXECUTIVE, OFFICER, MEMBER OF THE GOVERNING BOARD, OR EMPLOYEE OF A LICENSEE.

(2) "Child placement agency" means any corporation, partnership, association,

firm, agency, institution, or person, ~~whatsoever~~ UNRELATED TO THE CHILD BEING PLACED, who places or who arranges for placement for care of any child under the age of eighteen years with any family, person, or institution. ~~other than persons related to said child.~~ A child placement agency may place or arrange for the placement of a child for the purpose of adoption, TREATMENT, or foster care. The natural parents or guardian of any child who places said child for care with any facility licensed as a "family child care home" or "child care center" as defined by this section shall not be deemed a child placement agency.

(3) "Department" OR "STATEDEPARTMENT" means the STATE department of human services.

(8) "Residential child care facility" means a facility licensed by the STATE department pursuant to this part 1 to provide twenty-four-hour group care and treatment for five or more children operated under private, public, or nonprofit sponsorship. A residential child care facility may be eligible for designation by the executive director of the STATE department of human services pursuant to article 10 of title 27, C.R.S.

SECTION 4. 26-6-104 (7), Colorado Revised Statutes, is amended, and the said 26-6-104 is further amended BY THE ADDITION OF NEW SUBSECTION, to read:

26-6-104. Licenses - out-of-state notices and consent. (7) (a) (I) No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued by the STATE department, a county department or a child placement agency licensed under the provisions of this part 1 if the person applying for such a license or certificate has been convicted of:

(A) Felony child abuse, as specified in section 18-6-401, C.R.S.;

(B) A crime of violence, as defined in section 16-11-309, C.R.S.;

(C) Any felony offenses involving unlawful sexual behavior, as defined in section 18-3-412.5, C.R.S.;

(D) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(D.5) ANY FELONY INVOLVING PHYSICAL ASSAULT, BATTERY, OR A DRUG-RELATED OFFENSE WITHIN THE FIVE YEARS PRECEDING THE DATE OF APPLICATION FOR A LICENSE OR CERTIFICATE; OR

(E) Any felony offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in sub-subparagraphs (A) to ~~(D)~~ (D.5) of this subparagraph (I).

(II) For purposes of this paragraph (a), "convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a

deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(b) The convictions identified in paragraph (a) of this subsection (7) shall be determined according to the records of the Colorado bureau of investigation or any other source. A certified copy of the judgment of a court of competent jurisdiction of such conviction, deferred judgment and sentence agreement, deferred prosecution agreement, or deferred adjudication agreement shall be prima facie evidence of such conviction or agreement. No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued if the STATE department has a certified court order from another state indicating that the person applying for such a license or certificate has been convicted of felony child abuse or any unlawful sexual offense against a child under a law of any other state or the United States or the STATE department has a certified court order from another state that the person applying for the license or certificate has entered into a deferred judgment or deferred prosecution agreement in another state as to felony child abuse or any sexual offense against a child.

(8) THE STATE DEPARTMENT IS STRONGLY ENCOURAGED TO EXAMINE AND REPORT TO THE GENERAL ASSEMBLY ON THE BENEFITS OF LICENSING ANY PRIVATE, NONPROFIT CHILD PLACEMENT AGENCY THAT IS DEDICATED TO SERVING THE SPECIAL NEEDS OF FOSTER CARE CHILDREN THROUGH SERVICES DELIVERED BY SPECIALIZED FOSTER CARE PARENTS IN CONJUNCTION WITH AND SUPPORTED BY STAFF OF THE CHILD PLACEMENT AGENCY. SUCH CHILD PLACEMENT AGENCIES EXAMINED SHALL BE ABLE TO:

(a) OFFER THE FOLLOWING SERVICES:

(I) PROVISION OF EDUCATED, SKILLED, AND EXPERIENCED FOSTER CARE PARENTS;

(II) SOCIAL WORK SUPPORT FOR THE FOSTER CARE CHILD AND FOSTER CARE FAMILY;

(III) TWENTY-FOUR-HOUR, ON-CALL AVAILABILITY;

(IV) MONTHLY FOSTER CARE PARENT SUPPORT GROUP MEETINGS;

(V) ON-GOING EDUCATIONAL AND NETWORKING OPPORTUNITIES FOR ANY FOSTER CARE FAMILY;

(VI) INDIVIDUALIZED TREATMENT PLANS DEVELOPED THROUGH TEAM COLLABORATION;

(VII) PROFESSIONAL AND FAMILY NETWORKING OPPORTUNITIES; AND

(VIII) RESPITE SUPPORT AND REIMBURSEMENT.

(b) PROVIDE A FORM OF SPECIALIZED FOSTER CARE INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING TYPES OF CARE:

(I) TREATMENT FOSTER CARE;

(II) MEDICAL FOSTER CARE;

(III) RESPITE FOSTER CARE; AND

(IV) INTENSIVE TREATMENT FOSTER CARE.

SECTION 5. 26-6-105.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-6-105.5. Application forms - criminal sanctions for perjury. (3) EVERY APPLICATION FOR CERTIFICATION OR LICENSURE AS A FOSTER CARE HOME SHALL PROVIDE NOTICE TO THE APPLICANT THAT THE APPLICANT MAY BE SUBJECT TO IMMEDIATE REVOCATION OF CERTIFICATION OR LICENSURE OR OTHER NEGATIVE LICENSING ACTION AS SET FORTH IN THIS SECTION, SECTION 26-6-107.7, AND AS DESCRIBED BY RULE OF THE STATE BOARD.

SECTION 6. Part 1 of article 6 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-6-107.7. Revocation of certification of foster care home - emergency procedures - due process. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A COUNTY DEPARTMENT MAY ACT IMMEDIATELY TO REVOKE THE CERTIFICATION OF A COUNTY-CERTIFIED FOSTER CARE HOME WHEN THE COUNTY DEPARTMENT HAS REASON TO BELIEVE THAT A CHILD RESIDING IN SUCH FOSTER CARE HOME IS SUBJECT TO AN IMMEDIATE AND DIRECT THREAT TO HIS OR HER SAFETY AND WELFARE OR WHEN A SUBSTANTIAL VIOLATION OF A FUNDAMENTAL STANDARD OF CARE WARRANTS IMMEDIATE ACTION. IF THE COUNTY DEPARTMENT ACTS PURSUANT TO THIS SECTION, A DUE PROCESS HEARING SHALL BE HELD WITHIN FIVE DAYS AFTER SUCH ACTION AND CONDUCTED AS SUCH HEARING WOULD NORMALLY BE CONDUCTED PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

SECTION 7. The introductory portion to 26-6-108 (2.5) (a), Colorado Revised Statutes, is amended, and the said 26-6-108 (2.5) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

26-6-108. Denial of original license - suspension - revocation - probation - refusal to renew license - fines. (2.5) (a) The STATE department shall deny a license under the circumstances described in section 26-6-104 (7). The STATE department shall revoke a license previously issued if:

(II.5) THE LICENSEE, AN AFFILIATE OF THE LICENSEE, A PERSON EMPLOYED BY THE LICENSEE, OR A PERSON WHO RESIDES WITH THE LICENSEE AT THE FACILITY HAS BEEN DETERMINED TO BE INSANE OR MENTALLY INCOMPETENT BY A COURT OF COMPETENT JURISDICTION AND, SHOULD A COURT ENTER, PURSUANT TO PART 3 OR PART 4 OF ARTICLE 14 OF TITLE 15, C.R.S., OR SECTION 27-10-109 (4) OR 27-10-125, C.R.S., AN ORDER SPECIFICALLY FINDING THAT THE MENTAL INCOMPETENCY OR INSANITY IS OF SUCH A DEGREE THAT THE LICENSEE IS INCAPABLE OF OPERATING A FAMILY CHILD CARE HOME, FOSTER CARE HOME, OR CHILD CARE CENTER, THE RECORD OF SUCH DETERMINATION AND ENTRY OF SUCH ORDER BEING CONCLUSIVE EVIDENCE THEREOF.

SECTION 8. Part 1 of article 6 of title 26, Colorado Revised Statutes, is amended

BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

26-6-117. Accreditation standards for county departments and child placement agencies - study - rules - foster care accreditation fund. (1) NO LATER THAN JULY 1, 2002, THE STATE DEPARTMENT SHALL STUDY:

(a) STANDARDS FOR ASSESSING THE QUALITY AND PERFORMANCE OF FOSTER CARE IN FOSTER CARE HOMES CERTIFIED BY COUNTY DEPARTMENTS OR BY CHILD PLACEMENT AGENCIES BASED UPON NATIONAL STANDARDS FOR FOSTER CARE SERVICES.

(b) STANDARDS FOR THE ACCREDITATION OF COUNTY DEPARTMENTS AND CHILD PLACEMENT AGENCIES FOR PURPOSES OF FOSTER CARE SERVICES BASED UPON ACCREDITATION STANDARDS OF A NATIONALLY RECOGNIZED ACCREDITING BODY OF CHILD WELFARE AND SOCIAL SERVICES ORGANIZATIONS.

(2) IN CONDUCTING SUCH STUDY ON ACCREDITATION STANDARDS, THE STATE DEPARTMENT SHALL COMPARE THE MERITS OF WRITING ITS OWN STANDARDS WITH THE MERITS OF CONTRACTING WITH A NATIONAL ACCREDITING BODY. THE STUDY SHALL INCLUDE, BUT IS NOT LIMITED TO, ANALYZING THE FOLLOWING:

(a) THE FISCAL IMPACT ON THE STATE, COUNTIES, AND PROVIDERS, INCLUDING THE COST OF:

(I) WRITING STANDARDS;

(II) CONTRACTING WITH A NATIONAL ACCREDITING BODY, INCLUDING ALL FEES AND TRAVEL EXPENSES;

(III) TRAINING;

(IV) IMPLEMENTATION;

(V) POTENTIAL CORRECTIVE ACTION;

(VI) STAFF TIME OF COUNTY DEPARTMENTS AND CHILD PLACEMENT AGENCIES TO MEET THE ACCREDITATION STANDARDS;

(VII) COLLECTING AND EVALUATING DATA RELATING TO ACCREDITATION STANDARDS;

(b) THE TIME FRAME FOR IMPLEMENTATION OF ACCREDITATION STANDARDS;

(c) SANCTIONS FOR FAILING TO MEET THE ACCREDITATION STANDARDS.

(3) THE STATE DEPARTMENT SHALL SUBMIT ITS REPORT AND ITS FINDINGS AND RECOMMENDATIONS TO THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND TO THE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE OF THE SENATE ON OR BEFORE JULY 1, 2002. SUCH REPORT SHALL ALSO INCLUDE ANY RECOMMENDATIONS REGARDING LEGISLATIVE CHANGES TO IMPLEMENT THE ACCREDITATION PROCESS.

26-6-118. Child placement agencies - information sharing - investigations by state department. (1) IF A COUNTY DEPARTMENT HAS SUBSTANTIATED EVIDENCE THAT A CHILD PLACEMENT AGENCY WITH WHICH THE COUNTY HAS CONTRACTED TO PROVIDE FOSTER CARE SERVICES HAS VIOLATED THE PROVISIONS OF THIS PART 1 OR ANY RULE OF THE STATE BOARD, IT SHALL COMMUNICATE SUCH INFORMATION TO THE STATE DEPARTMENT. A COUNTY DEPARTMENT SHALL ALSO IDENTIFY WHETHER IT IS REQUESTING THE STATE DEPARTMENT TO INVESTIGATE A COMPLAINT AGAINST A CHILD PLACEMENT AGENCY FOR POSSIBLE NEGATIVE LICENSING ACTION AGAINST THE CHILD PLACEMENT AGENCY.

(2) UPON RECEIPT OF A REQUEST FOR INVESTIGATION OF A CHILD PLACEMENT AGENCY FROM A COUNTY DEPARTMENT, THE STATE DEPARTMENT SHALL COMMENCE AN INVESTIGATION AND, UPON CONCLUSION, REPORT ITS FINDINGS TO THE REQUESTING COUNTY DEPARTMENT.

(3) THE STATE DEPARTMENT SHALL PROVIDE TO COUNTY DEPARTMENTS DIRECT ACCESS TO INFORMATION CONCERNING THE RESULTS OF ANY INVESTIGATION OR NEGATIVE LICENSING ACTION TAKEN AGAINST A CHILD PLACEMENT AGENCY LICENSED TO PROVIDE FOSTER CARE SERVICES IN COLORADO.

SECTION 9. 19-3-307 (3), Colorado Revised Statutes, is amended to read:

19-3-307. Reporting procedures. (3) (a) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

(b) WHEN THE COUNTY DEPARTMENT REASONABLY BELIEVES A CRIMINAL ACT OF ABUSE OR NEGLECT OF A CHILD IN FOSTER CARE HAS OCCURRED, THE COUNTY DEPARTMENT SHALL TRANSMIT IMMEDIATELY A COPY OF THE WRITTEN REPORT PREPARED BY THE COUNTY DEPARTMENT IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION TO THE DISTRICT ATTORNEY'S OFFICE AND TO THE LOCAL LAW ENFORCEMENT AGENCY.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2001