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No. 98

H.P. 64

House of Representatives, January 13, 2021

An Act To Clarify Maine's Statutes Related to the Licensing of Child Care Providers

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Received by the Clerk of the House on January 11, 2021. Referred to the Committee on
Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint
Rule 401.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MEYER of Eliot.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1319-C, sub-§3**, as amended by PL 2005, c. 530, §3, is further
3 amended to read:

4 **3. Approval dependent on compliance.** As of July 1, 1998, a family child care
5 provider, child care facility or nursery school may not be licensed, registered, ~~certified~~ or
6 otherwise approved or receive any state funds unless it is in compliance with this section.

7 **Sec. 2. 22 MRSA §2662, sub-§5**, as amended by PL 2007, c. 631, §4, is further
8 amended to read:

9 **5. Residential swimming pool.** "Residential swimming pool" means any constructed
10 pool that is used for swimming in connection with a single or multifamily residence, used
11 by tenants of apartment buildings, owners of condominiums and members of property
12 owners associations and available only to these residents and their private guests. A pool
13 on the premises of a family child care provider who is ~~certified~~ licensed or required to be
14 certified licensed under section 8301-A is a residential swimming pool.

15 **Sec. 3. 22 MRSA §7702-A, sub-§2**, as repealed and replaced by PL 2003, c. 452,
16 Pt. K, §27 and affected by Pt. X, §2, is amended to read:

17 **2. Civil penalties.** The following penalties apply to the following violations:

18 A. A person who violates section 7703 or 8603 or rules adopted pursuant to those
19 sections commits a civil violation for which a fine of not more than \$500 may be
20 adjudged.

21 B. A person who violates rules governing child-to-staff ratios adopted under section
22 8302-A, subsection 1, paragraph A or subsection 2, paragraph G commits a civil
23 violation for which a fine of not more than \$500 per incident or \$500 per number of
24 children above the limitation set by rule, or both, may be adjudged.

25 C. A person who violates the following sections or rules adopted pursuant to those
26 sections commits a civil violation for which a fine of not more than \$500 per incident
27 may be adjudged:

28 (1) Section 7801, subsection 1, paragraph A;

29 (2) Section 8301-A; or

30 (3) Section 8302-A, subsection 1, paragraphs B to J and subsection 2, paragraphs
31 A to F and H to K.

32 A civil violation under this subsection must be enforced pursuant to Title 17-A, section
33 4-B.

34 **Sec. 4. 22 MRSA §7702-A, sub-§3**, as amended by PL 2015, c. 497, §1, is
35 repealed.

36 **Sec. 5. 22 MRSA §7702-B**, as enacted by PL 2007, c. 324, §5, is amended by
37 amending the section headnote to read:

38 **§7702-B. Operating without a license or certificate; violations; penalties**

39 **Sec. 6. 22 MRSA §7702-B, sub-§1**, as enacted by PL 2007, c. 324, §5, is amended
40 to read:

1 **1. License ~~or certificate~~ required.** A person, firm, partnership, association,
2 corporation or other entity may not, without first obtaining a license:

3 A. Manage or operate a long-term care facility as defined in chapter 1666-B;

4 B. Operate a child care facility as defined in section 8301-A, subsection 1-A, paragraph
5 B; or

6 C. Operate as a family child care provider as defined in section 8301-A, subsection
7 1-A, paragraph C.

8 **Sec. 7. 22 MRSA §7702-B, sub-§7**, as enacted by PL 2007, c. 324, §5, is amended
9 to read:

10 **7. Right of entry.** To inspect the premises of a long-term care facility, child care
11 facility or family child care provider that the department knows or believes is being
12 operated without a license ~~or certificate~~, the department may enter only with the permission
13 of the owner or person in charge or with an administrative inspection warrant issued
14 pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing
15 entry and inspection.

16 **Sec. 8. 22 MRSA §7702-B, sub-§8**, as enacted by PL 2007, c. 324, §5, is amended
17 to read:

18 **8. Administrative inspection warrant.** The department and a duly designated officer
19 or employee of the department have the right to enter upon and into the premises of an
20 unlicensed long-term care facility ~~or~~ child care facility or ~~an un~~certified family child care
21 provider with an administrative inspection warrant issued pursuant to the Maine Rules of
22 Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand,
23 have the right to inspect and copy any books, accounts, papers, records and other
24 documents in order to determine the state of compliance with subsection 1. Pursuant to the
25 Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection
26 may extend to any premises and documents of a person, firm, partnership, association,
27 corporation or other entity that the department has reason to believe is operating without a
28 license ~~or a certificate~~.

29 **Sec. 9. 22 MRSA §7702-B, sub-§9**, as enacted by PL 2007, c. 324, §5, is amended
30 to read:

31 **9. Noninterference.** An owner or person in charge of an unlicensed long-term care
32 facility ~~or~~ child care facility or ~~an un~~certified family child care provider may not interfere
33 with or prohibit the interviewing by the department of residents or consumers of services.

34 **Sec. 10. 22 MRSA §7707, sub-§1**, as enacted by PL 2015, c. 278, §2, is amended
35 to read:

36 **1. Reporting requirements.** A child care facility licensed pursuant to section 8301-A,
37 subsection 2; a family child care provider ~~certified~~ licensed pursuant to section 8301-A,
38 subsection 3; and a nursery school licensed pursuant to section 8402 shall report reportable
39 incidents in accordance with this section.

40 **Sec. 11. 22 MRSA §7801, sub-§1, ¶E**, as amended by PL 2001, c. 645, §3, is
41 further amended to read:

42 E. A child care facility licensed under section 8301-A, subsection 2; ~~or~~

1 **Sec. 12. 22 MRSA §7801, sub-§1, ¶G**, as enacted by PL 1987, c. 389, §4, is
2 amended to read:

3 G. An adult day care program; ~~or~~

4 **Sec. 13. 22 MRSA §7801, sub-§1, ¶H** is enacted to read:

5 H. A family child care provider licensed under section 8301-A, subsection 3.

6 **Sec. 14. 22 MRSA §7802, sub-§2, ¶B**, as amended by PL 2015, c. 267, Pt. RR,
7 §1, is further amended by amending subparagraph (6) to read:

8 (6) The term of a ~~home-day~~ family child care certificate provider license issued
9 under section 8301-A, subsection 3 is for 2 years.

10 **Sec. 15. 22 MRSA §7802, sub-§6**, as enacted by PL 2007, c. 324, §9, is amended
11 to read:

12 **6. Time limit on reapplication after denial or revocation.** The following time limit
13 applies to a reapplication after denial or revocation.

14 A. When a license ~~or certificate~~ for a child care facility or a family child care provider
15 has been denied or revoked on one occasion, the applicant or licensee may not reapply
16 for a license ~~or certificate~~ for a child care facility or a family child care provider for a
17 period of one year from the effective date of the denial or revocation decision if not
18 appealed, or, if appealed, from the effective date of the commissioner's final decision
19 or the reviewing court's order, whichever is later.

20 B. If a license ~~or certificate~~ for a child care facility or a family child care provider has
21 been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a
22 license ~~or certificate~~ for a child care facility or a family child care provider for a period
23 of 2 years from the effective date of the second denial or revocation decision if the
24 decision is not appealed or, if appealed, from the effective date of the commissioner's
25 final decision or the reviewing court's order, whichever is later.

26 C. If a license ~~or certificate~~ for a child care facility or a family child care provider has
27 been denied or revoked on 3 occasions, the applicant or licensee may not receive
28 another license ~~or certificate~~ for the care of children.

29 **Sec. 16. 22 MRSA §8301-A**, as amended by PL 2009, c. 211, Pt. B, §§20 and 21,
30 is further amended by amending the section headnote to read:

31 **§8301-A. Licensure of child care facilities; ~~certification of~~ and family child care**
32 **providers**

33 **Sec. 17. 22 MRSA §8301-A, sub-§1-A, ¶C**, as amended by PL 2005, c. 530, §7,
34 is further amended to read:

35 C. "Family child care provider" means a person who provides day care in that person's
36 home on a regular basis, for consideration, for 3 to 12 children under 13 years of age
37 who are not the children of the provider or who are not residing in the provider's home.
38 If a provider is caring for children living in that provider's home and is caring for no
39 more than 2 other children, the provider is not required to be ~~certified~~ licensed as a
40 family child care provider.

1 **Sec. 18. 22 MRSA §8301-A, sub-§3**, as amended by PL 2005, c. 640, §3, is further
2 amended to read:

3 **3. Family child care provider certification licensure.** A family child care provider
4 shall pay the ~~certification~~ licensing fee required under section 8303-A. A family child care
5 provider must be ~~certified~~ licensed under this chapter and shall comply with the rules
6 adopted by the commissioner under section 8302-A and the fire safety requirements of
7 section 8304-A. The department shall make at least one unannounced inspection of a
8 family child care provider ~~certified~~ licensed under this chapter during the term of the
9 ~~certificate~~ license. The inspection must take place between 6 and 18 months after the
10 issuance of the ~~certificate~~ license.

11 **Sec. 19. 22 MRSA §8301-A, sub-§4**, as amended by PL 2005, c. 530, §7, is further
12 amended to read:

13 **4. Complaints.** Upon receipt of a complaint about a licensed child care facility or a
14 ~~certified~~ family child care provider and if the department has reasonable cause to suspect
15 that a violation of the licensure ~~or certification~~ requirements has occurred, the department
16 may investigate the complaint and enter the premises at any reasonable time for the
17 purposes of the investigation.

18 **Sec. 20. 22 MRSA §8301-A, sub-§5**, as amended by PL 2005, c. 530, §7, is further
19 amended to read:

20 **5. Administrative suspension.** Whenever conditions exist that immediately
21 jeopardize the health and safety of children, the commissioner may issue an order of
22 closure, which suspends the ~~certification~~ license of the family child care provider or ~~the~~
23 child care facility ~~license~~ for up to 10 days, pending further investigation or prior to
24 obtaining an order of emergency suspension from the court. The department shall require
25 that an order of closure be posted at the facility and made public as it determines to be most
26 appropriate for parents and other potential customers.

27 **Sec. 21. 22 MRSA §8301-A, sub-§6**, as amended by PL 2005, c. 530, §7, is further
28 amended to read:

29 **6. Temporary license.** Whenever a ~~certified family child care provider or~~ licensed
30 child care facility or family child care provider moves to a new location the department
31 may issue a temporary ~~certificate or~~ license, valid pending final action on the application
32 for the new location by the department, when:

33 A. All applicable standards have been met except a requirement that is dependent on
34 the action of an agency of State Government or a contractor of that agency; and

35 B. Through no action by the applicant that causes a significant delay, timely issuance
36 of a provisional or full license has been delayed by the agency or contractor.

37 **Sec. 22. 22 MRSA §8302-A, sub-§2, ¶D-1** is enacted to read:

38 D-1. The quality of the program of child care that is provided;

39 **Sec. 23. 22 MRSA §8302-A, sub-§2, ¶D-2** is enacted to read:

40 D-2. The administration of medication;

1 **Sec. 24. 22 MRSA §8302-A, sub-§2, ¶I**, as amended by PL 2017, c. 457, §3, is
2 further amended to read:

3 I. Procedures for waivers of rules and for suspension and revocation of ~~certification~~
4 licensure; and

5 **Sec. 25. 22 MRSA §8302-B, first ¶**, as amended by PL 2005, c. 530, §9, is further
6 amended to read:

7 A person who provides day care in that person's home for one or 2 children whose care
8 is paid for by state or federal funds is not required to be ~~certified~~ licensed as a family child
9 care provider pursuant to section 8301-A but is subject to the provisions of this section.

10 **Sec. 26. 22 MRSA §8303-A, sub-§1**, as enacted by PL 2009, c. 590, §6, is amended
11 to read:

12 **1. Child care facilities and ~~certified~~ family child care providers.** The department
13 shall adopt rules to establish reasonable fees for both initial licensure ~~or certification~~ and
14 license ~~or certification~~ renewals for child care facilities and ~~certified~~ family child care
15 providers. Rules adopted pursuant to this subsection are major substantive rules pursuant
16 to Title 5, chapter 375, subchapter 2-A.

17 **Sec. 27. 22 MRSA §8304-A, sub-§1**, as amended by PL 2005, c. 530, §11, is
18 further amended to read:

19 **1. Inspection required.** As an ongoing condition of licensure ~~or certification~~, the
20 Commissioner of Public Safety must provide at least biennially to the department a written
21 statement that the child care facility or ~~certified~~ family child care provider complies with
22 applicable fire safety rules adopted pursuant to Title 25, section 2452. The Commissioner
23 of Public Safety shall adopt rules in accordance with the Maine Administrative Procedure
24 Act to implement this subsection. The rules must provide for at least the following.

25 A. The Commissioner of Public Safety shall issue a fire safety technician certificate
26 to any person who successfully completes a training course established by the
27 Department of Public Safety. A person who receives a fire safety technician certificate
28 pursuant to this paragraph may perform fire safety inspections under this section.

29 B. In addition to ongoing license ~~or certification~~ requirements, inspection ~~and~~
30 ~~certification~~ is required under this section whenever a child care facility or ~~certified~~
31 family child care provider changes or augments a heating system or makes major
32 structural alterations to the facility or home.

33 **Sec. 28. 22 MRSA §8353, sub-§3**, as enacted by PL 2015, c. 283, §3, is amended
34 to read:

35 **3. Addition of relevant professionals.** The investigation team shall include, as
36 appropriate, relevant professionals to participate as members of the investigation team for
37 investigations of residential treatment centers, group homes, ~~certified~~ family child care
38 providers or child care facilities.

39 **Sec. 29. 22 MRSA §8356, sub-§1, ¶B**, as enacted by PL 2015, c. 283, §3, is
40 amended to read:

41 B. A family child care provider ~~certified~~ licensed pursuant to section 8301-A,
42 subsection 3;

- 1 1. Provides clarity on the department's ability to levy civil penalties against those who
2 violate statutes or licensing rules governing child care facilities;
- 3 2. Allows the department to regulate the quality of the program of child care that is
4 provided by providers classified as family child care providers;
- 5 3. Allows the department to regulate the administration of medication by providers
6 classified as family child care providers; and
- 7 4. Replaces all references to the certification of family child care providers with
8 references to licensure.