

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

—
H.P. 312 - L.D. 495

An Act Regarding Investigations of Out-of-home Child Abuse and Neglect

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

Sec. 1. 22 MRSA §4002, sub-§9, as enacted by PL 1979, c. 733, §18, is amended to read:

9. Person responsible for the child. "Person responsible for the child" means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility ~~which licensed or subject to licensure that~~, as part of its function, provides for care of the child; ~~or a person licensed or subject to licensure that, as part of its function, provides for care of the child.~~ "Person responsible for the child" includes the child's custodian.

Sec. 2. 22 MRSA §4004, sub-§2, ¶B, as corrected by RR 2021, c. 2, Pt. A, §64, is amended to read:

B. Promptly investigate all abuse and neglect cases and suspicious child deaths coming to its attention or, in the case of out-of-home abuse and neglect investigations, the department shall act in accordance with ~~chapter 1674~~ subchapter 18;

Sec. 3. 22 MRSA §4021, sub-§3, ¶C, as amended by PL 2015, c. 283, §1, is further amended by amending the last blocked paragraph to read:

Violation of this paragraph subjects any person involved in the violation, including individual school personnel, to the penalty provided in section 4009. This section does not apply to out-of-home abuse and neglect allegations as covered under ~~chapter 1674~~ subchapter 18.

Sec. 4. 22 MRSA c. 1071, sub-c. 18 is enacted to read:

SUBCHAPTER 18

INVESTIGATION OF OUT-OF-HOME CHILD ABUSE AND NEGLECT

§4099-J. Definitions

1. Investigation team. "Investigation team" means individuals employed by the department to investigate allegations of out-of-home abuse or neglect pursuant to this subchapter.

2. Licensed. "Licensed" means holding a license as defined in Title 5, section 8002, subsection 5 or, with respect to the Department of Education, any other form of approval or authorization required by law.

3. Out-of-home abuse or neglect. "Out-of-home abuse or neglect" means abuse or neglect or a suspicious child death:

A. That occurs in a facility or in the care of a person licensed or subject to inspection by the department, the Department of Education or the Department of Corrections;

B. That occurs in a facility operated by the department, the Department of Education or the Department of Corrections; or

C. That occurs in the care of an unlicensed provider that is funded by the department.

§4099-K. Investigation team

1. Investigation team established. The investigation team is established within the department to investigate reports of suspected out-of-home abuse or neglect of children in accordance with this subchapter.

2. Participation with other departments. The investigation team, on its own or upon request, may assist and participate with another department or agency charged with the responsibility to investigate abuse or neglect, including the Department of Education or the Department of Corrections.

3. Addition of relevant professionals. The investigation team must include, as appropriate, relevant professionals to participate in the investigations of out-of-home abuse or neglect.

4. Assistance by licensing staff. Department staff that perform general licensing functions may assist the investigation team in conducting out-of-home abuse or neglect investigations.

5. Consultation with law enforcement and others. The investigation team may consult with law enforcement personnel, advocates and others in the investigation of out-of-home abuse or neglect.

6. Results. The investigation team shall provide the results of its investigation to the department or other applicable licensing agency or department for appropriate action.

§4099-L. Duties of the investigation team

The duties of the investigation team include, but are not limited to, the following.

1. Receive reports of alleged abuse or neglect. The investigation team shall receive reports of alleged out-of-home abuse or neglect under circumstances set out in this subchapter. When the investigation team receives a report that alleges abuse or neglect in facilities or by persons not licensed or subject to inspection by the department, the investigation team shall immediately refer the report to the agency or department charged with the responsibility to investigate the report.

2. Investigate. The investigation team shall investigate reported out-of-home abuse or neglect.

A. The investigation team shall complete an investigation within 90 days from the date on which the investigation was initiated, except in circumstances when the information necessary to complete the investigation is unavailable to the investigation team.

B. The investigation team's investigation of a report with a high severity allegation with respect to a child in a residential care facility must be initiated within 3 business days of the date of the receipt of the report. If the investigation team cannot initiate its investigation within 3 business days, the investigation team shall request a safety plan from the facility.

C. To minimize redundant department investigations in response to the same or related allegations of out-of-home abuse or neglect, the investigation team shall conduct a single investigation sufficient to determine whether abuse or neglect occurred and whether a licensing violation has occurred. The investigation team shall coordinate and consult with the department entity that performs general licensing functions.

D. The investigation team shall refer allegations of criminal activity to the office of the district attorney or the Office of the Attorney General when appropriate and shall coordinate its investigation with the office to which allegations are referred to minimize trauma to the child or children involved.

E. The investigation team's investigation of a suspicious child death is subject to and may not interfere with the authority and responsibility of the Office of the Attorney General to investigate and prosecute homicides pursuant to Title 5, section 200-A.

F. The investigation team shall conduct interviews as needed to investigate allegations and determine if abuse or neglect has occurred.

(1) The investigation team shall conduct interviews of a child involved in the alleged abuse or neglect in a manner that is in the child's best interest.

(2) The investigation team shall notify the parent, guardian or custodian of a child prior to initiating an interview of the child except under circumstances in which prior notification is not in the child's best interest.

(3) The investigation team shall conduct an interview of a child without prior notification in accordance with section 4021, subsection 3 and rules adopted pursuant to this subchapter.

G. The investigation team, to the extent possible, shall record interviews in accordance with applicable rules adopted by the department and pursuant to section 4021.

(1) Information collected in an interview that was not recorded may not be excluded from use in court proceedings solely because the interview was not recorded.

(2) A person being questioned or interviewed under this subchapter may not be prohibited from recording the questioning or interview.

H. Notwithstanding Title 20-A, section 6101, subsection 2, when the investigation team is conducting an investigation of a person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is subject

to licensure by the Department of Education, the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and the Department of Education shall disclose the following information to the investigation team:

- (1) Background checks related to the person;
- (2) The person's credentials;
- (3) Any conduct on the part of the person related to the allegation; and
- (4) Any action taken by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf or the Department of Education in response to conduct of any person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that is similar to the allegation.

3. Investigative powers of commissioner. The following are investigative powers of the commissioner.

A. The commissioner or the commissioner's designee may issue a subpoena requiring a person to disclose or provide to the department information or records in that person's possession that are necessary and relevant to an investigation of a report of suspected out-of-home abuse or neglect.

- (1) The department may apply to the District Court to enforce a subpoena.
- (2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.
- (3) Information or records obtained by subpoena must be treated in accordance with section 7703.

B. The commissioner may obtain confidential criminal history record information and other criminal history record information under Title 16, chapter 7 that the commissioner considers relevant to an investigation of out-of-home abuse or neglect.

4. Determination of harm. The investigation team shall determine whether or not a child has been harmed, in which case the investigation team shall determine the degree of harm or threatened harm by a person responsible for the child. In the case of a suspicious child death, the investigation team shall determine:

- A. Whether abuse or neglect was a cause or factor contributing to the child's death; and
- B. The degree of threatened harm to any other child for whom the person or persons responsible for the deceased child may be responsible now or in the future.

5. Issue a decision. The investigation team shall issue a written decision that an allegation of abuse or neglect is unsubstantiated, indicated or substantiated. Each allegation of abuse or neglect must be considered separately. The written decision must include at least the following:

- A. The factors supporting an indicated or substantiated decision;

B. The identity of the person or persons responsible in the case of an indicated or substantiated decision; and

C. The person's right to appeal the department's indicated or substantiated decision pursuant to paragraph B.

§4099-M. Right to a hearing; appeal

A person who is the subject of the decision in section 4099-L, subsection 5 has the right to a hearing to appeal an indicated or substantiated finding of out-of-home abuse or neglect in accordance with the provisions of the Maine Administrative Procedure Act.

§4099-N. Entities subject to investigation

Reported abuse or neglect that occurs in the following out-of-home entities is subject to investigation by the investigation team.

1. Facility or person licensed by department; facility operated or funded by department. Out-of-home abuse or neglect is subject to investigation by the investigation team, including, but not limited to, abuse or neglect that occurs in the following:

A. A child care facility licensed pursuant to section 8301-A, subsection 2;

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

C. A nursery school licensed pursuant to section 8402;

D. A children's residential care facility licensed pursuant to chapter 1669;

E. An emergency children's shelter licensed pursuant to chapter 1669;

F. A shelter for homeless children licensed pursuant to chapter 1669;

G. A transitional living program licensed pursuant to section 4099-E, subsection 3;

H. A licensed family foster home as defined in section 8101, subsection 3, including, but not limited to, the home of a resource family that provides foster care, kinship care or adoption or permanency guardianship services;

I. An unlicensed relative's home approved by the department as meeting licensing standards; and

J. An unlicensed provider for children with cognitive impairments and functional limitations that is funded by the department pursuant to rules adopted by the department.

2. Unlicensed person or facilities. The investigation team may investigate a person or facility described in subsection 1 if the person or facility is not licensed.

3. School personnel. The investigation team may investigate an individual licensed by the Department of Education and employed by a school organized under Title 20-A, Part 2.

§4099-O. Records; confidentiality; disclosure

Notwithstanding section 4008, records that are made, acquired or retained by the department in connection with its responsibilities under this subchapter are subject to the provisions set out in section 7703 and the following provisions.

1. Disclosure; reports of abuse or neglect. The department may disclose, upon the conclusion of an investigation under this subchapter, a statement indicating whether or not a report of out-of-home abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the investigation team.

2. Notification of parent, guardian or custodian of child reported to be abused. When a report is received of out-of-home abuse or neglect in a facility or program described in section 4099-N, the investigation team may notify the child's parent, guardian or custodian that it has been reported that the child has been allegedly abused or neglected, whether an investigation is being conducted and, upon conclusion of the investigation, whether the investigation team determined that the allegations are supported or not supported.

3. Notification of parents, guardians or custodians of other children in facility. When a report is received of out-of-home abuse or neglect in a facility or program described in section 4099-N, the investigation team, upon conclusion of the investigation, may notify a parent, guardian or custodian who has a child in the program or facility for whom there is no report of abuse or neglect whether the investigation team determined that a violation of law or rules adopted by the department has occurred.

4. Disclosure to facility or program. The investigation team shall notify a facility or program described in section 4099-N when there is an indicated or substantiated finding of out-of-home abuse or neglect against an employee of the facility or program.

5. Disclosure of investigation. The department may publish information regarding an investigation conducted pursuant to this subchapter on the department's publicly accessible website upon the conclusion of an investigation in accordance with rules adopted by the department.

§4099-P. Rules

The department may adopt rules to carry out the purposes of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules may include but are not limited to establishing the factors that support unsubstantiated, indicated and substantiated findings.

Sec. 5. 22 MRSA c. 1674, as amended, is repealed.