

## OPEGA Summary of Response from Children's Licensing Regarding Follow-up on Report Recommendations

Recommendation #1: Children's Licensing should enhance policies to ensure thorough and consistent investigations.

- Recommendations have been incorporated into drafts of procedures; team is reviewing and making suggestions; final review by legal team. Expected completion: 12/31/17.
- A new direct supervisor position for Out of Home investigations was filled 4/17.

Recommendation #2: Children's Licensing should establish time frames for determining licensing actions and notifying providers.

- Recommendations have been incorporated in draft form.

Recommendation #3: DHHS should evaluate replacement of Children's Licensing's current documentation system.

- Continuing to explore. New system would need additional funds.

Recommendation #4: Children's Licensing should enhance investigation documentation.

- Revisions to Children's Licensing investigations templates were made during OPEGA review and additional revisions have been made since that time. OOH investigations have several templates in use. Templates will be analyzed after using for a period of time and will continually be enhanced and revised as needed.

Recommendation #5: DHHS should clarify when parental notification can and should occur.

- SOP was changed to align with statute.
- Licensing actions are now posted within 5 business days.
- Details of the negative licensing action are now only posted until they have been resolved. Once resolved, website will show there was a resolved negative licensing action, but will not show the details. Details will still be available upon request.



Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

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August 22, 2017

Ms. Beth Ashcroft, Director  
Office of Program Evaluation and Governmental Accountability  
State of Maine Legislature  
82 State House Station  
Augusta, Maine 04333-0082

Re: OPEGA Report on Children's Licensing and Investigation Services – August 2017 Status of Actions to Implement Recommendations

Dear Ms. Ashcroft:

The Department of Health and Human Services ("DHHS" or "the Department") is pleased to provide a five month status update of the actions to implement recommendations from OPEGA's March 2017 report.

For your convenience, below we include each summary recommendation followed by our response, proposed corrective action plan, and status of action to date.

**Recommendation # 1:**

Children's Licensing should enhance policies to ensure thorough and consistent investigations.

**Response:** In response to OPEGA's recommendation that Children's Licensing should enhance policies to ensure thorough and consistent investigations; the Department would note the continuous quality improvement that has occurred over the past four years. Major efforts to improve the program include: a change in leadership in the spring of 2013; a reorganization of the program structure; increased staff; and the implementation of an aggressive strategic plan focused on resource utilization, accountability, work force development, provider relations, and an established regulatory and legislative agenda. A primary objective of the strategic plan included the development and implementation of Standard Operating Procedures, as none previously existed for the Children's Licensing and Investigation Program.

The Department appreciates OPEGA's thorough review and recommendations regarding Standard Operating Procedures and will incorporate details where applicable to create more explicit procedures for staff. With respect to specific recommendations, the Department provides the following feedback:

- For both child care and the Out of Home Investigation Team (OOH), Children's Licensing will make revisions to Standard Operating Procedures to provide examples of expected actions for investigating common types of allegations, including parties that should be interviewed and documentation that should be reviewed. Current procedure is not explicit with details surrounding coordination and consultation with special services. OOH investigates a wide range of programs; and, depending on the provider type and nature of the allegation, there can be significant variation in participants of a multi-agency investigation. However, for both child care and OOH, Children's Licensing will revise Standard Operating Procedures to provide examples of the types of special services that should be contacted when investigating common types of allegations.

- A definition of “high-risk” is not included in Standard Operating Procedures and will be incorporated. The definition exists elsewhere in policy. When a complaint is entered into the Maine Automated Child Welfare Information System (MACWIS), the allegations are identified as high-risk and are clear to both the assigning Program Manager and receiving Investigator, but not necessarily to others.

With reference to recommendations for additional and clarifying Standard Operating Procedures around documentation and field response in the event of a serious or urgent violation, the Department concurs that greater detail in these areas would be beneficial.

**August 2017 Update:**

Recommendations have been incorporated in draft form into Child Care Licensing Standard Operating Procedures: Complaint Investigations and Compliance Advisory Panel. Licensing Specialists and Supervisors are aware of the OPEGA recommendations and revisions; the team is reviewing and will make suggestions for additional clarifying revisions. A final review by MeCDC Legal and Policy Team will be necessary prior to Program management’s final approval of the SOP revisions.

Children’s Licensing has undergone structural changes to include the hiring of a direct supervisor for the Out of Home Investigation Team in April 2017. This team was formerly supervised by the Program Manager. While new to this program, this Supervisor brings two decades of child welfare/ investigatory experience. In the process of reviewing and enforcing the Standard Operating Procedures developed and approved in July of 2016, we have determined that a more thorough revision is required that will include more robust details in general procedures and delineate procedures specific to program areas including Child Care, Foster Care, Residential Settings, Schools, etc. This effort will take some time to develop. The Children’s Licensing Program Manager will follow up with these changes with an expected completion date of December 31, 2017.

**Recommendation # 2:**

Children’s Licensing should establish time frames for determining licensing actions and notifying providers.

**Response:** The Department concurs that formalizing established timeframes into Standard Operating Procedures for post-investigation actions would increase internal consistency and potentially expedite corrective action taken by the provider.

**August 2017 Update:**

Recommendations have been incorporated in draft form into Child Care Licensing Standard Operating Procedures: Complaint Investigations and Compliance Advisory Panel.

**Recommendation # 3:**

DHHS should evaluate replacement of Children’s Licensing’s current documentation system.

**Response:** DHHS concurs with OPEGA’s recommendation that the Department evaluate replacement of Children’s Licensing’s current documentation system. Efforts to enhance the Maine Automated Child Welfare Information System (MACWIS) are currently underway. Children’s Licensing has concurrently taken steps to complete a comprehensive gap analysis and has explored risks and benefits to moving child care licensing from MACWIS to a new data management system designed for children’s licensing and inspection functions. In addition to a new data management system the Department has explored replacement of the current duplicate paper forms being used for inspections with a tablet. The advanced technology would yield higher quality inspection reports while increasing efficiency. Further analysis is required and the Department will do its due diligence to ensure that the benefits of a replacement system would justify the expense incurred.

**August 2017 Update:**

The Department continues to explore purchasing a new data management system for Child Care Licensing. It is important to note, this will require additional funds to appropriately fund a new system.

**Recommendation # 4:**

Children’s Licensing should enhance investigation Documentation.

**Response:** The Department concurs with OPEGA's recommendation that Children's Licensing should enhance investigation documentation. Given the limitations within the MACWIS system, Children's Licensing developed a standardized template for Child Care Licensing staff to follow when documenting a complaint investigation. Incorporating prompts into the template that do not currently exist would benefit both licensing staff in the field and supervisors in their review of completed investigations. A template will also be developed and implemented for use by the Out of Home Investigation team as the Department also believes a template would enhance quality, improve consistency, and streamline supervisory review.

**August 2017 Update:**

The standardized Investigation template for Child Care Licensing was revised during OPEGA's review and was included in the final report as Appendix B. Additional revisions have been made to prompt staff to document persons interviewed, documentation reviewed, observations made, and to document the date the closing letter or action was sent to the provider. Several templates are in use by the Out of Home Investigation Team to include Previous Agency Involvement, Summary, and Findings. The templates require a more thorough analysis after a significant period of use to determine effectiveness. The plan is to continue to enhance and revise as needed.

**Recommendation # 5:**

DHHS should clarify when parental notification can and should occur.

**Response:** The Department is revising Standard Operating Procedures to address minor inconsistencies that currently exist with related statute.

The Department concurs with the recommendation to establish a timeframe for posting licensing actions to the Child Care Choices website. Children's Licensing Program Manager will establish and implement this change immediately.

**August 2017 Update:**

Statutorily, the Out of Home Investigation Team may notify parent/guardians of children in a child care program when the program is under investigation. Given the varying nature of investigations and the need to respond accordingly to each situation, the Standard Operating Procedure has been changed to be consistent with law and also reads as "may" notify. Investigators are in close communication with the program Supervisor when there are questions regarding how widespread the notification needs to be. Practice continues to focus narrowly on the identified victims and expands more broadly as required.

The Department posts to the Child Care Choices website within five business days of completed action. Children's Licensing has made some changes to online posting of licensing and inspection information based on provider feedback regarding the detailed postings of provider deficiencies. Through our evaluation, Children's Licensing heard from providers that the website could have a negative, long-term impact on a program's enrollment and reputation. Children's Licensing is striving to provide accessibility of provider licensing history that shows routine inspection results, commendations, and negative licensing history. In the meantime, the Department will post the licensing document detailing the negative licensing action for the period of time that it is in effect. Following that period of time, the website shows that there was past negative licensing action which has since been resolved, the details of which are available upon request. The Licensing Specialist's contact information is available for the public. All information regarding rule violations and sanctions is public information.

Thank you again for the opportunity to provide this update.

Sincerely,



Ricker Hamilton  
Acting Commissioner

RH/dg

## **Status of DHHS Rule Changes for Family Child Care Providers**

At the August 23<sup>rd</sup> GOC meeting, committee members had questions about the status of rule changes DHHS was pursuing for Family Child Care Providers that had been reviewed by the Health and Human Services Committee (HHS) toward the end of the 128<sup>th</sup> First Regular Session. OPEGA's understanding of the current status is:

- The Family Child Care Provider rules include some components that are Major Substantive Rules and others that are Routine Technical Rules.
- The proposed rule changes were reviewed by HHS and also have been through the required public comment process.
- At the time of the HHS Committee review, OPLA analysts created a document summarizing the rule changes (see attached). The HHS Committee submitted questions regarding the changes to DHHS and received a response on 8/22/17 (see attached).
- According to DHHS' response, the Department expects the rules to be implemented through emergency enactment in September 2017. The Department explained that the routine technical rules needed to be enacted within 120 days of the public comment period deadline of May 18, 2017 and that it wished to implement the major substantive rules at the same time. The emergency rule-making protocol provided an avenue to do so.
- The current proposed rules are currently with the AG's office for review, and thus are confidential and not available at this time. It is unknown whether DHHS has made any subsequent changes in rule language from what was initially reviewed by HHS and that were available for public comment.
- Emergency enactment of the major substantive rule components will be provisional unless enacted by the Legislature. The Department would be expected to properly file its rules, with all required elements, for legislative consideration in the next legislative session. If it does so, a Resolve will be prepared and processed through the HHS Committee like any other bill.

**SUMMARY OF APPLICATION FOR LEGISLATIVE REVIEW OF AGENCY RULES**

**CHILDREN'S RIGHTS**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<b>Sec. 7:</b> Rights to freedom from abuse/neglect, confidentiality, harmful actions/practices, safe/healthy environment, consideration/respect, informed of services/deficiencies, service plan, variety of activities/materials/equipment, mandatory reporting, reasonable accommodations	Removed

**PARENT INVOLVEMENT**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<b>Sec. 6.1.2:</b> Gives parents access to rules	Removed
<b>Sec. 6.2:</b> Parents allowed to visit and observe, parental permission required for off-site and high risk activities	Removed

**CHILD-STAFF RATIOS**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<b>Sec. 1.8, 1.15, 1.19, 1.23:</b> defines infant, toddler, preschool child, school age children <b>22 M.R.S. § 3731(1):</b> def'n child care p1	<b>Sec. 1(A)(4):</b> For the purpose of this rule, child means an individual over age 6 and under 13
<b>Child Care and Development Fund Plan for Maine FY 2016-2018, p. 113-114, 116-117:</b> Preschool child means a child age 2 ½-5 (not yet school age) p8-9	<b>Sec. 1(A)(20):</b> Preschool child means a child age 3-5
<b>Child Care and Development Fund Plan for Maine FY 2016-2018, p. 113-114, 116-117:</b> Toddler means a child age 1-2 ½ p8-9	<b>Sec. 1(A)(26):</b> Toddler means a child 1-3
<b>Child Care and Development Fund Plan for FY 2016-2018, p. 116-117:</b> Ratios; 2 year olds considered toddlers; children under 5 or licensee are included in ratio p9	<b>Sec. 8:</b> Ratios; 2 year olds considered with children up to 5; children of licensee is not included in ratio

**SUMMARY OF APPLICATION FOR LEGISLATIVE REVIEW OF AGENCY RULES**

**QUALIFICATIONS OF PROVIDERS**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<b>Sec. 2.5:</b> Applicants must demonstrate “mature judgment, compassionate regard for the BIC,” whether applicant has a “record and reputation for honest and lawful conduct in business and personal affairs”	Removed
<b>Sec. 4.1:</b> Provisional certificate	Removed
<b>Sec. 2.8:</b> A Family Child Care provider must be at least 18  <b>Child Care and Development Fund Plan for Maine FY 2016-2018, p. 124:</b> A family child care provider must be at least 18 p10	<b>Sec. 2(A)(2):</b> A provider must be at least 16 years old, and, if younger than 18 years old, must be under the direct supervision of an adult
<b>P.L. Chapter 497, An Act to Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have been Convicted of Crimes p2-3</b>	<b>Sec. 6:</b> Background Checks
<b>Sec. 9.2:</b> Providers must report to the Dep’t arrests, investigations, PFA, etc.	<b>Sec. 7:</b> Licensees must provide notification to the Dep’t of closure, renovations, new location, change to phone/email, arrests, investigations, PFA, etc.
<b>Sec. 2.10:</b> Before receiving a Family Child Care certificate, the applicant must receive certificate in CPR and first aid.	<b>Sec. 9(C):</b> Provider training in the first 12 months of employment must include first aid and CPR and at least two other trainings.
<b>Sec. 3.5:</b> Provider and staff must participate in minimum of 12 hours of training	<b>Sec. 9(D):</b> First aid and CPR training may be counted part of the 12 hours minimum hours of ongoing training per year

**CHILDREN WITH DISABILITIES**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<b>Sec. 7:</b> Right to a service plan and reasonable modifications and accommodations	Removed
<b>Sec. 6.3:</b> Compliance with ADA, including describing how to work with families of a child with disabilities	<b>Sec. 2(A)(3):</b> The applicant and all providers within the child care are responsible for ensuring compliance with this rule and all applicable statutes

**SUMMARY OF APPLICATION FOR LEGISLATIVE REVIEW OF AGENCY RULES**

**REQUIREMENTS OF ENVIRONMENT**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<b>Sec. 1.6:</b> def'n of "developmentally appropriate"	Removed
<b>Sec. 14.5:</b> Fire drills must be conducted at least once a month	<b>Sec. 2(D)(10):</b> Fire drills must be conducted at least every other month
<b>Sec. 11.1:</b> Provider must supply toys and equipment for indoor and outdoor play appropriate to the age, ability and number of children	Removed <b>Sec. 14(E):</b> Provider must have access to an outdoor play area with sufficient space for safe play for children
<b>Sec. 14.3.5.9:</b> Smoking is prohibited on the premises when children are present. This includes all indoor and outdoor areas used by the Family Child Care Program where children may be present.	<b>Sec. 14(A)(8):</b> Smoking is prohibited on the premises when children are present.

**INSPECTIONS**

<i>Current Rule/Law</i>	<i>Proposed Rule</i>
<p><b>Sec. 4.5:</b> The Dep't must make at least one unannounced inspection during the term of the certificate, and between 6-18 mo. after the issuance of the certificate</p> <p><b>22 M.R.S. § 8301-A(3):</b> The Dep't shall make at least one unannounced inspection of a family child care provider during the term of the certificate, and between 6-18 mo. after the issuance of the certificate p4</p> <p><b>Child Care and Development Fund Plan for Maine FY 2016-2018, p. 155-156:</b> The Dep't must make at least one unannounced inspection of a family child care provider during the term of the certificate, and 6-18 mo. after the issuance of the certificate p11</p>	<p><b>Sec. 4(A):</b> The Dep't generally conducts unannounced site inspections. Routine inspections occur upon application, annually, after request of change in capacity, to investigate complaint</p>
<p><b>81 Fed. Reg. 67438 (codified at 45 CFR 98):</b> "The Act requires Lead Agencies to make results of monitoring available in a consumer-friendly and easily accessible manner. We require posting a minimum of three years of results..." p5</p>	<p><b>Sec. 4(D)(4):</b> The Dep't may post inspection reports to a website available to the general public</p>



**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**  
**Chapter 1052-A: CHILD CARE SERVICES**

**§3731. DEFINITIONS**

As used in this chapter, unless the context otherwise indicates or unless they are inconsistent with federal law, the following terms have the following meanings. [1993, c. 158, §2 (NEW) .]

*K*  
1. **Child care.** "Child care" means a regular service of care and education provided for compensation for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children. "Child care" also means administrative functions related to the delivery of child care services, including, but not limited to, contract management, voucher administration, licensing, training, technical assistance and referral.

[ 2011, c. 388, §4 (AMD) .]

2. **Council.** "Council" means the Child Care Advisory Council established pursuant to Title 5, section 12004-I, subsection 35-B.

[ 1993, c. 158, §2 (NEW) .]

2-A. **Division.** "Division" means the early childhood division of the Department of Health and Human Services, Office of Child and Family Services.

[ 2011, c. 388, §5 (NEW) .]

3. **Office.** "Office" means the Office of Child Care and Head Start.

[ 1995, c. 502, Pt. D, §7 (AMD) .]

4. **Region.** "Region" means a service delivery region established by the commissioner.

[ 2007, c. 539, Pt. N, §32 (AMD) .]

**SECTION HISTORY**

1993, c. 158, §2 (NEW). 1995, c. 502, §D7 (AMD). 2007, c. 539, Pt. N, §32 (AMD). 2011, c. 388, §§4, 5 (AMD).

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GOVERNOR'S  
VETO  
OVERRIDDEN

APRIL 29, 2016

CHAPTER  
497  
PUBLIC LAW

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
H.P. 1154 - L.D. 1689

**An Act To Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the safety of children cared for and supervised by child care providers in this State is of the utmost importance; and

**Whereas,** child care facilities and family child care providers, as well as the families who rely on them, need to know that the providers of care and staff members do not have disqualifying criminal records from other states; and

**Whereas,** the 2014 reauthorization of the Child Care and Development Fund program through the federal Child Care and Development Block Grant Act of 2014 has identified that best practices for background checks include fingerprint-based national criminal background checks for all child care providers who supervise children and all persons who have unsupervised access to children who are cared for or supervised by a child care provider; and

**Whereas,** the transition to the criminal background check process required by federal law raises significant questions, not the least of which are the employment needs of child care providers while waiting for background check results and the costs involved in the more rigorous criminal background checks than the checks currently required under state law; and

**Whereas,** it is the intent of the Legislature to ensure that the additional criminal background check process will be cost-effective and will not create an undue burden on parents or child care providers; and

**Whereas,** the development of major substantive rules to comply with the federal Child Care and Development Block Grant Act of 2014 by September 2017 should include the participation of child care facilities and family child care providers; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §7702-A, sub-§3, ¶C, as enacted by PL 1999, c. 363, §3, is amended to read:

C. Section 8302-A, subsection 1, paragraphs B to F and subsection 2, paragraphs A to F and H to J.

Sec. 2. 22 MRSA §8302-A, sub-§1, as amended by PL 2005, c. 530, §8, is further amended to read:

1. **Rules for child care facilities.** Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G. The age, criminal record and personal history of the provider of care for children and staff members;
- H. The administration of medication; and
- I. Licensing procedures; and
- J. Requiring a criminal background check for:

(1) Each child care staff member whose activities involve the care or supervision of children; and

(2) Each adult who has unsupervised access to children who are cared for or supervised by a child care facility.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 3. 22 MRSA §8302-A, sub-§2**, as amended by PL 2005, c. 530, §8, is further amended to read:

**2. Rules for family child care providers.** Rules for family child care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;
- B. Water for drinking and cooking;
- C. Wastewater;
- D. Rabies vaccinations for pets;
- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of certification; and
- J. The age, criminal record and personal history of the family child care provider, staff and members of the household; and
- K. Requiring a criminal background check for:
  - (1) The family child care provider;
  - (2) Each child care staff member whose activities involve the care or supervision of children; and
  - (3) Each adult who has unsupervised access to children who are cared for or supervised by the family child care provider.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to J K are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 4. Department of Health and Human Services; adoption of rules.** The Department of Health and Human Services shall adopt rules required by the Maine Revised Statutes, Title 22, section 8302-A, subsections 1 and 2 to require criminal background checks for all providers of care and staff members of child care facilities and family child care providers, to be effective September 1, 2017. The rules must be provisionally adopted and submitted to the Legislature for review by the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 12, 2017. The department may submit to the committee recommendations for

legislation to support the rules to implement changes in criminal background checks in a manner that is effective for the department and child care facilities and family child care providers.

**Sec. 5. Implementing legislation.** The joint standing committee of the Legislature having jurisdiction over judiciary matters may submit a bill, including recommendations provided by the department pursuant to section 4, to the First Regular Session of the 128th Legislature to implement the criminal background checks required by 42 United States Code, Section 9858f(b). In developing the bill, the committee shall take into account the concerns of child care providers, including but not limited to employment needs while waiting for background check results, and shall explore options, including the application of federal grant funds, to defray all or some of the initial and ongoing additional costs.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

MRS Title 22 §8301-A. LICENSURE OF CHILD CARE FACILITIES;  
CERTIFICATION OF FAMILY CHILD CARE PROVIDERS

E. "Small child care facility" means a house or other place, not the residence of the operator, in which a person or combination of persons maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 to 12 children under 13 years of age. [2001, c. 645, §6 (NEW).]

[ 2009, c. 211, Pt. B, §§20, 21 (AMD) .]

2. **Child care facility licensure.** The owner or operator of a child care facility shall pay the licensing fee required under section 8303-A. A child care facility must be licensed under this chapter and must comply with the rules adopted by the commissioner under section 8302-A and the fire safety requirements of section 8304-A. The department shall make at least one unannounced inspection of a child care facility licensed under this chapter during the term of the license. The inspection must take place between 6 and 18 months after the issuance of the license. Except as otherwise provided, a nursery school must meet the requirements of this chapter and chapter 1675.

[ 2005, c. 640, §2 (AMD) .]

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

[ 2005, c. 640, §3 (AMD) .]

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

[ 2005, c. 530, §7 (AMD) .]

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

[ 2005, c. 530, §7 (AMD) .]

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

A. All applicable standards have been met except a requirement that is dependent on the action of an agency of State Government or a contractor of that agency; and [2001, c. 645, §6 (AMD).]

B. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor. [1999, c. 363, §5 (NEW).]

[ 2005, c. 530, §7 (AMD) .]

comprehensive background checks, and monitoring. The Act requires States to monitor providers receiving CCDF funds (including those that are license-exempt), at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Regular monitoring of child care settings is necessary to ensure compliance with appropriate standards that protect the health and safety of children. However, this rule allows Lead Agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and exempts relative caregivers from the monitoring and training requirements at the option of Lead Agencies. This flexibility allows Lead Agencies to address the unique characteristics of these care arrangements.

In this final rule, we address the Act's background check requirements by requiring all child care staff members (including prospective staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services to have a comprehensive background check, unless they are related to all children in their care. We extend the background check requirement to all adults residing in family child care homes. All parents, regardless of whether they receive CCDF assistance, deserve this basic protection of knowing that those individuals who have access to their children do not have prior records of behavior that could endanger their children.

The Act requires Lead Agencies to establish standards and training in 10 topic areas related to health and safety that are fundamental for any child care setting, such as first aid, CPR, and safe sleep practices. We added recognizing and reporting child abuse and neglect to this list. The Act also requires Lead Agencies to maintain records of substantiated parental complaints about child care. The final rule requires Lead Agencies to designate a hotline or similar reporting process for parental complaints. Child care providers are required to report serious injuries or deaths that occur in child care settings in order to inform regulatory or other policy changes to improve health and safety.

#### *Help Parents Make Informed Consumer Choices and Access Information To Support Child Development*

The Act expanded requirements for the content of consumer education available to parents receiving CCDF assistance, the public, and where

applicable, child care providers. By adding providers, Congress recognized the positive role trusted caregivers can play in communicating and partnering with parents on a daily basis regarding their children's development and available resources in the community. Effective consumer education strategies are important to inform parental choice of child care and to engage parents in the development of their children in child care settings—a new purpose of the CCDF added by the CCDBG Act of 2014. States and territories have the opportunity to consider how information can be best provided to low-income parents through their interactions with CCDF, partner agencies, and child care providers, as well as through electronic means such as a Web site. Parents face great challenges in finding reliable information and making informed consumer choices about child care for their children.

The Act requires Lead Agencies to make available via a consumer-friendly and easily accessible Web site, information on policies and procedures regarding: (1) Licensing of child care providers; (2) conducting background checks and the offenses that keep a provider from being allowed to care for children; and (3) monitoring of child care providers. This is done through a single Web site that is easy for families to navigate and provides widest possible access to individuals who speak languages other than English and persons with disabilities. This Web site must give parents receiving CCDF information about the quality of their chosen providers. The final rule also requires Lead Agencies to provide CCDF parents with a consumer statement in hard copy or electronically (such as referral to the consumer education Web site) with specific information about the child care provider they select.

The Act requires Lead Agencies to make results of monitoring available in a consumer-friendly and easily accessible manner. We require posting a minimum of three years of results. If full reports are not in plain language, Lead Agencies must post a plain language summary for each report in addition to the full monitoring and inspection report. Parents should not have to parse through administrative code or understand advanced legal terms to determine whether safety violations have occurred in a child care setting.

Congress added a number of content areas that will support parents in their role as their child's first and most important teacher. In keeping with a new purpose of the CCDF program at Section 658A(b)(3) of the Act to promote

involvement by parents and family members in the development of their children in child care settings, Section 658C(2)(E)(i) of the Act requires Lead Agencies to make available information related to best practices in child development and State policies regarding child social and emotional development, including any State policies relevant to preventing expulsion of children under age five from child care settings.

The reauthorized Act also requires Lead Agencies to provide information that can help parents identify other financial benefits and services that may support their pathway to economic stability. Families eligible for child care assistance are often eligible for other supports, and the Act specifies that Lead Agencies provide families with information on several public benefit programs, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and the Children's Health Insurance Program (CHIP). In addition, the Act requires Lead Agencies to provide information on the programs and services that are part of Individuals with Disabilities Education Act (IDEA), such as early intervention and special education services, and that parents are given information on how to obtain a developmental screening for their child. Low-income parents deserve to have easy access to the full range of information, programs, and services that can support them in their parenting efforts. To ensure equal access for persons with limited English proficiency and for persons with disabilities, the final rule requires Lead Agencies to provide child care program information in multiple languages and alternative formats.

#### *Provide Equal Access to High-Quality Child Care for Low-Income Children*

Congress established requirements to provide more stable child care financial assistance to families, including extending children's eligibility for child care to a minimum of 12 months, regardless of increases in parents' earnings (as long as income remains at or below the Federal eligibility limit) and temporary changes in participation in work, training, or education. This will enable parents to maintain employment or complete education programs, and supports both family financial stability and the relationship between children and their caregivers. Under the reauthorized Act, Lead Agencies that choose to end assistance prior to 12 months, due to a non-temporary change in a parent's work,

*provided by OPLA*

5

**Child Care and Development Fund (CCDF) Plan  
For  
Maine  
FFY 2016-2018**

---

## 1 Define CCDF Leadership and Coordination with Relevant Systems

Implementation of the requirements of the CCDBG Act of 2014 will require leadership and coordination between the child care assistance program and other child- and family-serving agencies, services, and supports at the state and local levels. ACF recognizes that each grantee must identify the most appropriate entities and individuals to lead and participate in implementation based on the context within that State or Territory. This will include those that manage various components of CCDF-funded activities and requirements (fiscal, subsidy, health and safety monitoring, and continuous quality improvement) as well as other public and private partners.

This section collects information to help ACF understand the stakeholders convened and consulted to develop the Plan, where authority lies to make policy decisions and program changes, and who is responsible for implementing the blueprint for action the Plan describes. For example, the law requires that, at the option of the Tribes, State/Territory Lead Agencies must collaborate and coordinate with Indian tribes or tribal organizations in the State in a timely manner in the development of the CCDF Plan. ACF expects that new requirements in the law will necessitate that grantees build partnerships with other agencies and organizations to better link the children and families receiving financial assistance to information, services and resources regarding other programs for which they may be eligible, including developmental screenings for children, and other resources (also in section 2). In addition, States and Territories must describe how public-private partnerships are being used to increase the supply and quality of child care services.

### 1.1 CCDF Leadership

The Governor of a State or Territory shall designate an agency (which may be an appropriate collaborative agency), or establish a joint inter-agency office, to represent the State (or Territory) as the Lead Agency. The Lead Agency agrees to administer the program in accordance with applicable Federal laws and regulations and the provisions of this Plan, including the assurances and certifications appended hereto. (658D, 658E(c)(1))

*selected partners  
provided by OPLA*

6



### **1.1.1 Which Lead Agency is designated to administer the CCDF program?**

Identify the Lead Agency or joint inter-agency office designated by the State/Territory. ACF will send official grant correspondence such as grant awards, grant adjustments, Plan approvals, and disallowance notifications to the designated contact identified here. (658D(a))

Name of Lead Agency: Department of Health and Human Services

Address of Lead Agency: 11 State House Station, Augusta, Maine 04333

Name and Title of the Lead Agency Official: Mary C. Mayhew, Commissioner of the Department of Health and Human Services

Phone Number: 207-287-4223

E-Mail Address: Mary.Mayhew@Maine.gov

Web Address for Lead Agency (if any): <http://www.maine.gov/dhhs/index.shtml>

### **1.1.2 Who is the CCDF administrator?**

Identify the CCDF administrator designated by the Lead Agency, the day-to-day contact, with responsibility for administering the State/Territory's CCDF program. ACF will send programmatic communications such as program announcements, program instructions, and data collection instructions to the designated contact identified here. If there is more than one designated contact with equal or shared responsibility for administering the CCDF program, please identify the co-administrator or entity with administrative responsibilities and include contact information.

#### **a) Contact Information for CCDF Administrator:**

Name of CCDF Administrator: Elissa Wynne

Title of CCDF Administrator: Child Care Services Team Leader

Address of CCDF Administrator: 2 Anthony Avenue, State House Station #11,  
Augusta, Maine 04333

requirement (e.g., legislative or rule changes, modify agreements with coordinating agencies, etc.)

Make funds available to increase access to quality for children in those areas.

Projected start date for each activity: 08/01/2016

Projected end date for each activity: 9/30/2016

Agency - Who is responsible for complete implementation of this activity DHHS- Office of Child and Family Services

Partners - Who is the responsible agency partnering with the State/Territory lead agency to complete implementation of this activity

## 5 Establish Standards and Monitoring Processes to Ensure the Health and Safety of Child Care Settings

\* [ The CCDBG Act of 2014 makes child care safer by defining minimum health and safety requirements for child care providers. This includes both the standards that must be established and the pre-service/orientation and ongoing minimum training required. States and Territories must also explain why exemptions to any of the licensing standards do not endanger the health and safety of CCDF children in license-exempt care. States and Territories are required to have standards for CCDF providers regarding group size limits and appropriate child-to-provider ratios based on the age of children in child care.

Pre-licensure and annual unannounced inspections of licensed CCDF providers and annual inspections of license-exempt CCDF providers are now required. The CCDBG Act of 2014 requires States and Territories to establish qualifications and training for licensing inspectors and appropriate inspector-to-provider ratios. It also requires States and Territories to conduct criminal background checks for all child care staff members, including staff members who don't care directly for children but have unsupervised access to children and lists specific disqualifying crimes. States and Territories must certify that all child care providers comply with child abuse reporting requirements of Child Abuse Prevention and Treatment Act (CAPTA), mandatory reporting of known and suspected instances of child abuse and neglect).

### 5.1 Licensing Requirements and Standards

Each State is required to certify it has in effect licensing requirements applicable to all child care services provided within the State (not restricted to providers receiving CCDF), and to provide a

(7)

planned activities, necessary legislative or regulatory steps to complete, and target completion date (no later than September 30, 2016). Please provide brief text responses and descriptions only. Do not cut and paste charts or tables here. Your responses will be consolidated electronically into an Implementation Plan summary report.

Overall Target Completion Date (no later than September 30, 2016)

Overall Status - Describe the State/Territory's overall status toward complete implementation for this requirement(s) (not yet started, partially implemented, substantially implemented, other)

Implemented requirement(s) - Identify any requirement(s) implemented to date if applicable

Tasks/Activities - What specific steps will you take to implement the unmet requirement (e.g., legislative or rule changes, modify agreements with coordinating agencies, etc.)

Projected start date for each activity:

Projected end date for each activity:

Agency - Who is responsible for complete implementation of this activity

Partners - Who is the responsible agency partnering with the State/Territory lead agency to complete implementation of this activity

**5.1.4 Describe how the State/Territory child care standards for providers receiving CCDF address appropriate ratios between the number of children and the number of providers and group size, in terms of the age of the children for each type of setting. (658E(c)(2)(H))**

a) Licensed Center-Based Care

1. Infant

- State/Territory age definition:

6 weeks-1 year

- Ratio:

8

1:4

- Group Size:

8

\* 2. Toddler

- State/Territory age definition:

1 Year-2 ½ Years

- Ratio:

1:4 or 1:5

- Group Size:

12 or 10

\* 3. Preschool:

- State/Territory age definition:

2 ½-3 ½ & 3 ½ -Not yet school-age 5

- Ratio:

1:7 & 1:8 or 1:10

- Group Size:

21 & 24 or 20

4. School-Age

- State/Territory age definition:

5 Years-13 Years

- Ratio:

1:13

- Group Size:

- Ratio:

- Group Size:

4. School-Age

- State/Territory age definition:

- Ratio:

- Group Size:

5. Describe the maximum number of children that are allowed in the home at any one time, if the State/Territory requires related children to be included in the child-to-provider ratio or group size, or the limits on infants and toddlers or additional school-age children that are allowed for part of the day

6. If any of the responses above are different for exempt group child care homes, describe

N/A. State/Territory does not have group child care homes.

\* c) Licensed Family Child Care:

1. Describe the ratios, group size, the threshold for when licensing is required, maximum number of children that are allowed in the home at any one time, if the State/Territory requires related children to be included in the Child-to-Provider ratio or group size, or the limits on infants and toddlers or additional school-age children that are allowed for part of the day.

Describe the ratios:

One provider, working alone, may care for:

9

4 infants and toddlers, or  
3 infants and toddlers plus 3 preschool children, plus 2 school-age children, or  
8 preschool children plus 2 school-age children, or  
12 school-age children.

With one additional staff person, a family child care provider may serve:

8 infants and toddlers, or  
12 preschool through school age children, or  
12 school-age (5 - 12 years) children, or  
12 infant through school-age children (6 weeks - 12 yrs) with no more than 6 infants and toddlers.

With two additional staff person, a family child care provider may serve:

12 infants and toddlers, or  
12 preschool through school age children, or  
12 school-age (5 - 12 years) children, or  
12 infant through school-age children (6 weeks - 12 yrs) with no more than 9 infants and toddlers.

Describe the group size:

The maximum size for a family child care is 12 children

Describe the threshold for when licensing is required:

Any person who provides child care in that person's home on a regular basis, for consideration, for three to twelve children under thirteen years of age who are not the children of the provider must have a certificate from the Department of Health and Human Services

Describe the maximum number of children that are allowed in the home at any one time:

12

Describe if the State/Territory requires related children to be included in the Child-to-Provider ratio or group size:

Children living with the provider who are five years of age and older are not counted in determining the staff-child ratio. Children under 5 years of are counted in the staff-child ratio

Describe the limits on infants and toddlers or additional school-age children that are

and assistant qualifications:

2. Toddler lead teacher

and assistant qualifications:

3. Preschool lead teacher

and assistant qualifications:

4. School-Age lead teacher

and assistant qualifications:

N/A. State/Territory does not have group child care homes.

c) Licensed Family Child Care home provider qualifications

A family child care provider must be at least eighteen years old.

Before receiving a Family Child Care certificate, the applicant must receive certification in adult child and infant cardiopulmonary resuscitation (CPR) and First Aid.

Before receiving a Family Child Care certificate, the applicant must take part in six hours of approved training in the operation of a family child care program.

Qualifications of the applicant: The applicant must demonstrate a willingness and ability to operate and manage the family child care program with mature judgment, compassionate regard for the best interests of children and consistent compliance with these rules and all relevant laws. In making this determination, the department shall consider each of the following factors to the extent that they are relevant:

Record and reputation for honest and lawful conduct in business and personal affairs: The applicant must, as part of the certificate application and renewal process, authorize the department to review the records of professional licensing boards or registers, any criminal record, child protective record, Out-of-Home Investigations Unit record or adult protective record necessary to determine compliance with these rules;

Conduct which demonstrates an understanding of, and compliance with, Rights for Children in family child care programs (Section 7 of these rules);

Information which relates to the ability or willingness to comply with all applicable laws and

Tasks/Activities - What specific steps will you take to implement the unmet requirement (e.g., legislative or rule changes, modify agreements with coordinating agencies, etc.)

Projected start date for each activity:

Projected end date for each activity:

Agency - Who is responsible for complete implementation of this activity

Partners - Who is the responsible agency partnering with the State/Territory lead agency to complete implementation of this activity

**b) Inspections for Licensed CCDF Providers** - It will require licensing inspectors to perform inspections, with not less than one preclosure inspection, for compliance with health, safety, and fire standards, of each such child care provider and facility in the State/Territory. It will require licensing inspectors to perform not less than annually, one unannounced inspection of licensed CCDF providers for compliance with all child care licensing standards, which shall include an inspection for compliance with health, safety, and fire standards (inspectors may inspect for compliance with all 3 standards at the same time. (658E(c)(2)(K)(i)(II))

Yes.

The State/Territory certifies that as of March 1, 2016 it has policies and practices regarding inspections for licensed CCDF providers. List the policy citation and describe the inspection requirements including the frequency of announced and unannounced visits

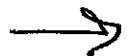
No. If no, the State/Territory must provide a State/Territory-specific implementation plan for achieving compliance with this requirement, including planned activities, necessary legislative or regulatory steps to complete, and target completion date (no later than November 19, 2016). Please provide brief text responses and descriptions only. Do not cut and paste charts or tables here. Your responses will be consolidated electronically into an Implementation Plan summary report.

Overall Target Completion Date (no later than November 19, 2016) 11/19/2016

Overall Status - Describe the State/Territory's overall status toward complete implementation for this requirement(s) (not yet started, partially implemented, substantially implemented, other) Partially implemented

Implemented requirement(s) - Identify any requirement(s) implemented to date if

(11)





applicable

Maine State Statute and Child Care Licensing Rules governing the operations of licensed child care centers and certified providers guarantee that facilities comply with licensing and health and safety requirements. Following receipt of a complete application for a license to operate a child care facility, a representative of the department will conduct an inspection of the facility, its policies, and program to evaluate compliance with applicable rules adopted by the Department of Health and Human Services. [The department must make at least one unannounced inspection of the child care facility licensed under Title 22 M.R.S.A. chapter 1673 during the term of the license. The inspection must take place between 6 and 18 months after the issuance of the license. This rule will need to be amended to be in compliance.]

Unmet requirement - Identify the requirement(s) to be implemented require licensing inspectors to perform not less than annually, one unannounced inspection of licensed CCDF providers for compliance with all child care licensing standards, which shall include an inspection for compliance with health, safety, and fire standards (inspectors may inspect for compliance with all 3 standards at the same time.)

Tasks/Activities - What specific steps will you take to implement the unmet requirement (e.g., legislative or rule changes, modify agreements with coordinating agencies, etc.)

This will require a Child Care Licensing Rule Change. The rules are currently in draft form under legal review. They will then go through the public hearing process and then be implemented.

Projected start date for each activity: 07/01/2015

Projected end date for each activity: 09/30/2016

Agency - Who is responsible for complete implementation of this activity

Division of Licensing and Regulatory Services (DLRS)

Partners - Who is the responsible agency partnering with the State/Territory lead agency to complete implementation of this activity

Office of Child and Family Services (OCFS)

Office for Family Independence (OFI)

**c) Inspections for License-Exempt CCDF Providers (except those serving relatives) -**  
It will have policies and practices that require licensing inspectors (or qualified monitors



Paul R. LePage, Governor      Ricker Hamilton, Acting Commissioner

Department of Health and Human Services  
Commissioner's Office  
221 State Street  
11 State House Station  
Augusta, Maine 04333-0011  
Tel.: (207) 287-3707; Fax: (207) 287-3005  
TTY Users: Dial 711 (Maine Relay)

Date: August 22, 2017

To: Senator Eric L. Brakey, Chair  
Representative Patricia Hymanson, Chair  
Members, Joint Standing Committee on Health and Human Services

From: Ricker Hamilton, Acting Commissioner, DHHS

Re: Child Care Rules

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**Question 1** - We understand that the Department has chosen to enter into emergency rulemaking for some or all of these rule changes pursuant to its discretion under 5 MRSA §§8054 and 8073. Is this still the plan? Please explain why the Department believes that *not* changing the current rules presents an "immediate threat to public health, safety or general welfare."

**Response:** The Department is pursuing an emergency enactment of these major substantive components of this rule in order to protect public safety and general welfare, due to the changes that include updates to background checks, health and safety provisions for further protection against the spread of communicable diseases, updating child seat safety requirements, and further protection of outdoor play equipment to protect against injury. Emergency rulemaking will also ensure that the entire family childcare licensing rule will be effective on the same date.

**Question 2** - What is the Department's timeline relating to emergency rulemaking? Have the proposed rules been reviewed by an Assistant AG? Why didn't DHHS submit these rules during this legislative session?

**Response:** The Department is hoping to adopt the emergency major substantive rule at the same time that it files the routine technical parts of the rule for adoption, which must be adopted 120 days from the comment deadline of May 18, 2017. Therefore, the Department is planning to adopt the emergency major substantive rule in September 2017.

The draft rules are currently under review by an AAG.

Under MAPA, the rulemaking process requires advertising, public hearing, public comment period, Department response to all comments, AAG review, DHHS Commissioner's Office review and Governor's Office review prior to submission to the Legislature for the major substantive review required for provisionally adopted rules. These steps take time and are in process.

**Question 3** - Section 2(a)(2) would allow a 16 or 17 year old person to be considered a provider. As these individuals are not subject to the same background check requirements as adult providers, and the age differs from the Department's State Child Care Plan submitted to the Federal Government in 2016 (which defines a provider as someone over 18), why does the Department deem this change necessary?

Are there concerns about or policy changes to be made ensuring Maine is not contradicting itself in regulations and how we are portraying our programs to in-state and Federal entities? In this process did the Department consider the quality implications related to having providers who have not attained a high school diploma?

**Response:** The change allows for a 16-17 year old to work under the direct supervision of the licensee, who must be 18 years old, and who would have had background checks completed prior to the issuance of the license.

The Department does not believe there are any quality implications due to this proposed change because the employed minor would be under the direct supervision of the licensee at all times. The current rule does not require an applicant to have attained a high school diploma.

**Question 4 -** There are significant changes to the staff-child ratio requirements in these rule changes. Please outline these for the committee and the rationale behind these changes. Additionally, did the Department consider quality implications related to allowing more children per staff member?

**Response:** The rule changes only pertain to the age range for infants, which changed from 6 weeks to 30 months to the proposed 6 weeks to 24 months old. The staff/child ratio and capacity limit for the number of children has not changed. The Department originally proposed that the children of the provider/licensee not be included in the staff to child ratio. As a result of and in response to public comment, the Department modified this proposed change to reflect that only children of the provider under the age of three would be included in the staff /child ratio. The change in age range from 30 months to 24 months was made to address the crisis in lack of infant care, as reported to the Department by licensors and providers.

**Question 5 -** One of the new proposals includes allowing for 12 months to pass before a provider completes orientation training, which among other skills includes First Aid and CPR. Currently these are required before the child care certificate is issued. What is the rationale for this change and why is it deemed necessary, especially for 1 full year.

**Response:** Section 12(E) requires that a provider who is currently certified in basic adult, child, and infant First Aid and CPR must be present at all times while child care is being provided, which would require that it be completed prior to licensure for a new applicant. An individual who has completed all requirements will be present with the children at all times.

**Question 6 -** These rule changes eliminate several qualifications for prospective applicants for employment in family child care. Please explain why the Department felt it was necessary to remove qualifications like "mature judgment, compassionate regard for the best interest of children," and "record and reputation of honest and lawful conduct in business and personal affairs."

**Response:** As a regulatory program, Child Care Licensing is responsible for licensing, inspection, compliance and enforcement of measureable standards. It is not possible to objectively measure factors such as mature judgment and compassionate regard for the best interest of children to ensure compliance with licensing standards. Regarding lawful conduct in business and personal affairs, the Department's

Child Care Licensing Program will rely on criminal background checks, the application process and site inspection in its entirety to determine this measure.

**Question 7** - What is the rationale behind loosening the requirement in 4(a) that the Department to conduct at least one unannounced inspection in the term of a family child care provider license? These rules would now state that DHHS “generally” conducts these inspections. Does the Department anticipate continuing with at least one unannounced inspection per term, and if so, what is the reason for changing the regulation? Additionally, in June 2014, Commissioner Mayhew responded to concerns from the Office of the US Inspector General about health and safety of children in certain child care settings. She stated in this letter that Maine DHHS does and will continue to inspect facilities at least once per 12 month period.

**Response:** This proposed language is not a loosening of the requirement. Rather, the description of unannounced visits meets the intent of the Department’s effort to increase transparency in its past and current practice. As stated, the Department is not reducing the frequency of inspections, but explaining its practice of unannounced inspections.

The June 2014, letter from Commissioner Mayhew is an accurate description of current and future inspection practice.

**Question 8** - Please explain the rationale behind the removal of section 7 “Rights for Children in Family Child Care Programs.” The Department has stated that the protections outline in this section have been covered elsewhere. Please explain where these protections are now codified and why you think this is a better fit. Of special concern is the removal of the right of a child with disabilities to have a service plan.

**Response:** The Department has reframed the previous section entitled “Rights of Children” to assure that this licensing rule focuses specifically on provider requirements. The Department believes that the outcome of this shift continues to assure that a provider’s compliance with the rule will assure that children’s rights are preserved. See attached crosswalk regarding new and existing rule language describing the provider’s responsibility in preserving children’s rights.

**Question 9** - Of additional concern are the limitations for parents for access and knowledge about the family care programs. Why does the Department believe it is necessary to remove section 6.1.2 which gives parents access to the rules we’re discussing? Additionally, why did the Department deem it necessary to remove section 6.2, which would allow parents access to the program during operating hours? Under what circumstances does the Department believe parents should not be allowed to visit and observe their children while in family care programs?

**Response:** There are no prohibitions or limitations in this rule to access and knowledge about the family child care programs. This current requirement was removed, because the Department determines this requirement to be outside the scope of licensing standards and is more appropriately decided between a licensee and parent.

The Department determined that parent involvement in child care, including visitation to the child care location, extends beyond the health and safety licensing requirements for a family child care provider and should be between the parent and provider.

**Question 10** - The Department also intends to remove the provision that requires notification and permission from parents for high-risk activities and outings and rather allows for an annual broad permission form. This is standard practice in public schools. What is the rationale for removing this provision for certain early child care providers?

**Response:** The Department still requires written permission for high-risk activities in Section 5(C)(19) of the proposed rule and requires an annual update of such permission.

**Question 11** - Please comment on the removal of the definition of “developmentally appropriate” and why the Department believes the removal of this definition and requirement of services is necessary.

**Response:** The Department determined that this term was so broad and variable, and subject to individual interpretation and application, it could not be reliably measured for compliance purposes. In an effort to remove subjective regulations that could vary in interpretation amongst licensees and licensees, the Department removed this definition.

**Question 12** - Why does the Department seek to remove the requirement that the results of inspections are posted to a publicly-available website (Section 4(d)(4))? What is the rationale for removing this requirement, which is used currently to help parents navigate and better know their options when choosing a childcare provider?

**Response:** The Department did not remove this requirement from current rule. In fact, this requirement was added to the proposed rule to allow for greater transparency and show provider compliance for parents and the public to better navigate and better know their options when choosing a child care provider.

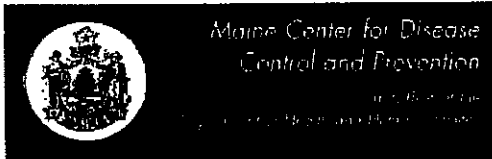
**Question 13** - Please describe the rationale behind the removal of section 11.1 (“Toys and Play Equipment”) which requires toys and equipment appropriate to the age, number, and ability of children.

**Response:** In response to public comment, the Department added language to the proposed rule which requires this standard. *See* Section 14(E)(2).

**Question 14** - The reauthorization of Child Care and Development Block Grant required states to make many changes in their child care systems. The Department informed the federal government in the State Child Care Plan that they submitted in March 2016 that they were making numerous changes to the child care system. What is the status of other rule making for child care centers, nursery schools, and the child care subsidy system?

**Response:** The Department plans to initiate rule making for child care centers and nursery schools after the conclusion of family child care rule making. The Department’s Office of Child and Family Services has the authority to initiate rule making for the child care subsidy program.

**Addendum:** Attached for your information is the document entitled “Children’s’ Rights Crosswalk”, which compares current rules to newly proposed rules.



Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

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 Maine Center for Disease Control and Prevention  
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<p><b>Current Rule 10-148 C.M.R. Ch. 33 Rules for the Certification of Family Child Care Providers</b></p> <p><b>Section 7. RIGHTS FOR CHILDREN IN FAMILY CHILD CARE PROGRAMS</b></p>	<p><b>Proposed Rule 10-144 C.M.R. Ch. 33 Family Child Care Provider Licensing Rule</b></p>
<p><b>7.1 Right to freedom from abuse and neglect.</b> Children must be free from mental, verbal, physical or sexual abuse, neglect and exploitation.</p> <p><b>7.2 Right to confidentiality.</b> Children's records and information kept by the Family Child Care Program are confidential. Family Child Care Programs must follow the rules regarding confidentiality as outlined in Section 6.4 of these rules.</p> <p><b>7.3 Right to freedom from harmful actions or practices.</b> Each child has the right to freedom from harmful actions or practices that are detrimental to a child's welfare and from practices that are potentially harmful to the child.</p>	<p><b>11. (A) Abuse and neglect in the child care.</b> The licensee must ensure that providers, students, and persons living on the premises do not abuse or neglect children in care in any way, including physical, sexual or emotional abuse.</p> <p><b>5. (F) Confidentiality.</b> Confidential information may not be released without a court order or a written release from the parent of the child about whom the confidential information has been requested in accordance with 22 M.R.S. §§7703(3) and (4). All personnel records shall be provided to the Department upon request. The following information is confidential:</p> <ol style="list-style-type: none"> <li>1. Child records, daily attendance lists, and all other information about children in care or formerly in care; and</li> <li>2. All personnel records.</li> </ol> <p><b>10. (B) Detrimental practices.</b> Actions that might be harmful to children are strictly prohibited. The licensee shall ensure that no child is subjected to an action or practice detrimental to the welfare of children, including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Corporal punishment as defined in Section 1;</li> </ol>

<p>7.4 <b>Right to a safe and healthy environment.</b> Each child has a right to an environment that complies with the health and safety standards in these rules.</p> <p>7.5 <b>Right to be free from discrimination.</b> A child must be provided child care without regard to race, age, national origin, religion,</p>	<p>2. Cruel or severe punishment, humiliation or verbal abuse, including, but not limited to:</p> <ul style="list-style-type: none"> <li>a. Shaming and embarrassing; or</li> <li>b. Punishment for soiling, wetting or not using the toilet.</li> </ul> <p>3. Withholding food, drink or rest as punishment or threat of punishment, or being forced to eat or drink against the child's will.</p> <p>4. Exposing a child to profane language, depictions of violence, use of illicit drugs or sexual content.</p> <p>5. Requiring a child to be silent or inactive as a disciplinary measure for a period exceeding that child's age in minutes.</p> <p>6. Unusual confinement, including but not limited to: developmentally inappropriate use of high chairs, play yards, cribs or leaving a child unattended in any room.</p> <p>7. Withholding any adaptive equipment that would result in loss of a child's independence.</p> <p>8. Using physical restraints, unless trained, and with the review and approval of a licensed clinician.</p> <p>14. (A) <b>General condition of the building and surrounding premises.</b> A licensee must take immediate steps to correct any condition in the physical building or on the premises, which poses a danger to children's life, health or safety. (See also all of Section 14.)</p>
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disability, sex or family composition.

**7.6 Right to consideration and respect.** Children must be treated with dignity, consideration and respect in full recognition of their individuality. This includes the use of developmentally appropriate practices by the Family Child Care Program.

**7.7 Right to be informed of services provided by the Family Child Care Program.** A child's parent must be fully informed of items or services that are included in the rate paid for children attending the Family Child Care Program.

**7.8 Right to information regarding the Family Child Care Program's deficiencies.** A child's parent has the right to be fully informed of findings of a certification review conducted by the Division of Licensing and Regulatory Services. The Family Child Care provider must inform a child's parent that the certification review results are public information and available for examination upon request. Parents must be notified in a timely manner by the Family Child Care provider of any actions proposed or taken against the Family Child Care Program by the department, including but not limited to, decisions to issue a conditional certificate, refusal to renew a certificate or imposition of fines or other sanctions.

**2. (A)(3)** The applicant and all providers within the child care are responsible for ensuring compliance with this rule and all applicable statutes.

*(See 5 M.R.S. Chapter 337: HUMAN RIGHTS ACT, Subchapter 1: GENERAL PROVISIONS §4553, and the Americans with Disabilities Act of 1990: Title 42, U.S.C. Chapter 126)*

**10. (A) Constructive methods of guidance.** All providers must use only constructive methods of guidance, which may include, but are not limited to, interventions such as conflict resolution, encouraging the use of language skills, redirecting, providing choices, positive reinforcement, recognition of a child's strengths and allowance for individual differences.

**5 (C) Child Records.**

**11.** A record that the provider has shared the following information with the child's parent at the time of admission:

- a. Child guidance practices;
- b. Expulsion and suspension practices;
- c. Management of child illness;
- d. Emergency preparedness for natural disasters and human-caused events, including but not limited to, fire drills;
- e. Release of children to non-custodial caregivers;
- f. Mandated reporting; and
- g. Serious injury and child death reporting.

**4. (D) Inspection report.** The Department will document all violations of this rule on an inspection report, and will explain any violation noted at the time of inspection. The licensee may correct violations at the time of inspection. All violations corrected on-site shall be noted on the inspection report.



<p><b>7.9 Right to a service plan.</b> Each child has the right to expect the provider to assist the child in implementing a reasonable plan of service developed with community or state agencies.</p>	<p><b>2. (D)(3)</b> The licensee shall post a copy of the current license, including the most recent inspection report, any conditional license, lead hazard notices, or other notices or correspondence from the Department indicating that they must be posted in a conspicuous location.</p>
<p><b>7.10 Right to a variety of appropriate activities, materials and equipment.</b> Each child has a right to a variety of activities, materials and equipment that meets the child's interests and capabilities.</p>	<p><b>2. (D)(4)</b> The licensee must notify the parents of any licensing actions, as described in Section 20(E)-(I) of this rule, proposed or taken against the provider.</p>
<p><b>7.11 Mandatory report of rights violations.</b></p> <p><b>7.11.1</b> Any person or professional who provides health care, social services or mental health services or who administers a Family Child Care Program who reasonably believes that these rules pertaining to the rights of children in a Family Child Care Program have been violated, must report this information to the Division of Licensing and Regulatory Services.</p> <p><b>7.11.2</b> Any person reporting suspected abuse and neglect must report this information to Child Protective Intake Services, 1-800-452-1999, TTY 1-800-963-9490 which is staffed 24 hours a day, 7 days a week, pursuant to Title 22 M.R.S.A. §4011-A and Section 7 of these rules.</p> <p><b>7.11.3</b> Documentation that a report has been made must be maintained by the Family Child Care Program.</p> <p><b>7.12 Reasonable modifications and accommodations.</b> To afford individuals with disabilities the opportunity to participate in a</p>	<p><b>2. (A)(3)</b> The applicant and all providers within the child care are responsible for ensuring compliance with this rule and all applicable statutes. <i>(See the Americans with Disabilities Act of 1990: Title 42, U.S.C. Chapter 126)</i></p> <p><b>14. (E)(2)</b> A variety of equipment suitable for the age and needs of all children in care shall be available.</p> <p><i>(No equivalent as the rights section was reallocated to appropriate sections within the proposed rule.)</i></p> <p><b>11. (B) Reporting requirement.</b> All providers are required to report to the Department when there is reasonable cause to suspect abuse or</p>

Family Child Care Program, the program must act as follows:

**7.12.1** The Family Child Care provider must make reasonable modifications to program policies and practices to include children and parents with disabilities, unless to do so would be a fundamental alteration of the program.

**7.12.2** The Family Child Care provider must make the premises accessible to people with disabilities.

**7.12.2.1** Existing Family Child Care Programs must remove any barriers when the removal can be readily achieved by the Family Child Care Program. If existing barriers can be easily removed without much difficulty or expense, providers must remove those barriers immediately even if there are no children with disabilities currently enrolled in the program (rearranging tables, chairs or other furniture are examples of readily achievable barrier removal).

**7.12.2.2** Newly constructed Family Child Care buildings and any altered portions of existing Family Child Care buildings must be fully accessible.

neglect of a child. The licensee must inform all child care personnel of their status and responsibility as mandated reporters of suspected abuse or neglect of a child. The licensee must ensure that the telephone number of the Department's Child Protective Intake Unit (1-800-452-1999) is readily available to providers.

**7. (B) Mandatory report of suspected abuse and/or neglect.** Any provider suspecting abuse and/or neglect must report this information to Child Protective Intake Services, 1-800-452-1999, TTY 1-800-963-9490 which is staffed 24 hours a day, 7 days a week. The provider must maintain documentation that a report has been made.

**2. (A)(3)** The applicant and all providers within the child care are responsible for ensuring compliance with this rule and all applicable statutes.

*(See the Americans with Disabilities Act of 1990: Title 42, U.S.C. Chapter 126)*