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An Act To Amend the Laws Governing Certain Human Services Licensing and Certification Requirements

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

Sec. 1. 5 MRSA §19508, as amended by PL 2005, c. 662, Pt. A, §3, is further amended to read:

§ 19508. Application to residents in children's homes

This chapter also applies to children with disabilities in children's homes, emergency children's shelters, family foster homes, specialized children's homes and children's residential ~~child~~ care facilities, as defined in Title 22, section 8101, and to other residential educational facilities, including the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities.

Sec. 2. 17-A MRSA §253, sub-§2, ¶G, as amended by PL 2009, c. 211, Pt. B, §15, is further amended to read:

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, ~~daychild~~ care facility, facility operated by a family child care provider, children's residential ~~child~~ care facility, drug treatment center, youth camp licensed under Title 22, section 2495 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime;

Sec. 3. 20-A MRSA §1, sub-§24-A, ¶¶A and D, as enacted by PL 1985, c. 789, §§1 and 9, are amended to read:

A. An "emergency children's shelter," which is a facility operated by a corporation and licensed for the purpose of providing board and care to no more than 10 children over the age of 12 years, who may be runaways or abused children or whose well-being is jeopardized by some other crisis or emergency, and providing services to a child for not more than 21 consecutive days, except with special permission;

D. A "children's residential ~~child~~ care facility," which provides board and care for one or more children on a regular, 24-hours-a-day, residential basis. A children's residential ~~child~~ care facility does not mean family foster home, specialized children's home or an emergency children's shelter facility. The term includes, but is not limited to:

(1) A "group home," which is a children's residential ~~child~~ care facility operated by a corporation and licensed for the purpose of providing board and care for up to 10 children;

(2) A "residential agency," which is a children's residential child care facility operated by a corporation and licensed for the purpose of providing board and care to more than 10 children;

(3) A "residential treatment center," which is a children's residential child care facility operated by a corporation and licensed for the purpose of providing ~~therapeutically-planned~~therapeutically planned, group living situations within which educational, recreational, medical and sociopsychotherapeutic components are ~~intergrated~~integrated for children whose present handicaps preclude community outpatient treatment;

(4) A "residential treatment facility," which is a children's residential child care facility operated by a corporation and licensed for the purpose of providing board, care and treatment for more than 10 moderately to severely handicapped children and which does not contain an educational component; and

(5) A "therapeutic group home," which is a children's residential child care facility operated by a corporation and licensed for the purpose of providing board, care and treatment for up to 10 moderately to severely handicapped children.

Sec. 4. 20-A MRSA §7001, sub-§8, as enacted by PL 1981, c. 693, §§5 and 8, is amended to read:

8. Children's residential care facility. "~~Residential child~~Children's residential care facility" is a facility defined in Title 22, section 8101, subsection 4.

Sec. 5. 22 MRSA §1812-K is enacted to read:

§ 1812-K. Intermediate care facility for persons with intellectual disabilities

1. Survey. A state survey agency shall conduct a survey of each intermediate care facility for persons with intellectual disabilities not later than 15 months after the last day of the previous survey. The statewide average interval between surveys must be 12 months or less. The statewide average interval is computed at the end of each federal fiscal year by comparing the last day of the most recent survey for each participating facility to the last day of each facility's previous survey. As used in this section, "state survey agency" means the agency specified in 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs.

2. Rules. The department shall adopt rules necessary to license intermediate care facilities for persons with intellectual disabilities in accordance with the Maine Administrative Procedure Act. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 275, subchapter 2-A.

Sec. 6. 22 MRSA §7802, sub-§2, ¶B, as amended by PL 2007, c. 324, §8, is further amended to read:

B. The terms of full licenses or approvals are as follows.

- (1) Except as provided in subparagraphs (2) to (7), the term of all full licenses and approvals issued pursuant to this chapter is for one year or the remaining period of a conditional or provisional license that has been issued for less than one year.
- (2) The term of a children's residential child care facility license is for 2 years.
- (3) The term of a drug treatment center license may be for either one or 2 years.
- (4) The term of a family foster home or specialized foster home license is for 2 years.
- (5) The term of a child care facility license issued under section 8301-A, subsection 2 is for 2 years.
- (6) The term of a home day care certificate issued under section 8301-A, subsection 3 is for 2 years.
- (7) The term of an adult day care program license pursuant to chapter 1679 is for either one or 2 years at the discretion of the department.

Sec. 7. 22 MRSA §7853, first ¶, as amended by PL 2003, c. 673, Pt. V, §2 and affected by §29, is further amended to read:

The commissioner shall adopt rules for licensed assisted housing programs. Rules adopted pursuant to this section are ~~major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules to establish categories of licensed assisted housing programs, including private nonmedical institutions,~~ are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 22 MRSA §8101, as amended by PL 2011, c. 186, Pt. A, §1 and c. 187, §1, is further amended to read:

§ 8101. Definitions

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings.

1. Children's home. "Children's home" means any residence maintained exclusively or in part for the board and care of one or more children under the age of 18. "Children's home" does not include:

- A. A facility established primarily to provide medical care;

B. A youth camp licensed under section 2495; or

C. A school established solely for educational purposes except as provided in subsection 4.

2. Emergency children's shelter. "Emergency children's shelter" means a ~~children's home~~facility that operates to receive children 24 hours a day and that limits placement to 30 consecutive days or less. For purposes of this section, the definition of "children" includes a person under the age of 21 years of age. "Emergency children's shelter" does not mean a family foster home or specialized children's home ~~and, if, if emergency shelter is a service of provided by a children's residential child care facility, the service is restricted to a designated physical area of the facility.~~

3. Family foster home. "Family foster home" means a children's home, other than an Indian foster family home, that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis. The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. "Family foster home" includes the home of a resource family whether the family provides foster care, kinship care, adoption or permanency guardianship services, as long as the home meets the requirements and standards for adoption of children in foster care. Family foster homes licensed by the Department of Health and Human Services or relatives' homes approved by the Department of Health and Human Services as meeting licensing standards are eligible for insurance pursuant to Title 5, section 1728-A. In any action for damages against a family foster home provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claim for and award of those damages, including costs and interest, may not exceed \$300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maximum liability limit must be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be deemed to make the operation of a family foster home a state activity nor may it expand in any way the liability of the State or foster parent.

3-A. Indian foster family home. "Indian foster family home" means a foster home licensed, approved or specified by the Indian child's tribe where substitute parental care is provided for an Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq.

4. Children's residential care facility. "~~Residential child~~Children's residential care facility" means a children's ~~home~~facility that provides board and care for one or more children on a regular, 24-hour a day, residential basis. For purposes of this section, the definition of "children" includes a person under 21 years of age. A children's residential ~~child~~ care facility does not mean a family foster home, a specialized children's home or an emergency children's shelter ~~facility~~. The term includes, but is not limited to:

B. An approved treatment facility under Title 5, section 20003, subsection 3;

C. A drug treatment center under section 8001; ~~and~~

E. A residential facility under Title 34-B, section 1431-; ~~and~~

F. A children's residential treatment facility with secure capacity.

4-A. Shelter for homeless children. "Shelter for homeless children" means ~~an emergency shelter~~ a facility designed to provide for the overnight lodging and supervision of children 10 years of age or older for no more than 30 consecutive overnights. For purposes of this section, the definition of "children" includes a person under 21 years of age.

4-B. Children's residential treatment facility with secure capacity.

~~Residential~~ Children's residential treatment facility with secure capacity" means a children's ~~home~~ residential care facility that provides a mental health intensive treatment program to a child whose diagnostic assessment indicates that the persistent pattern of the child's mental health presents a likely threat of harm to self or others and requires treatment in a setting that prevents the child from leaving the program. For purposes of this section, the definition of "children" includes a person under 21 years of age.

5. Specialized children's home. "Specialized children's home" means a children's home where care is provided to no more than 4 moderately to severely handicapped children by a caretaker who is specifically educated and trained to provide for the particular needs of each child placed. The total number of children in a specialized children's home may not exceed 4, including the caretaker's legal children under 16 years of age, with no more than 2 children under the age of 2.

Sec. 9. 22 MRSA §8102, sub-§1, as amended by PL 2003, c. 673, Pt. V, §3 and affected by §29, is further amended to read:

1. Rules. The department shall adopt rules for the various levels of children's ~~homes~~ residential care facilities, including, but not limited to, facilities that are private nonmedical institutions, in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must be designed to protect the health, safety, well-being and development of children and must include, but are not limited to:

- A. The number and qualifications of staff;
- B. Rights and responsibilities of parents, children and staff;
- C. The nature, provision, documentation and management of programs of care or treatment; and
- D. The physical environment.

Sec. 10. 22 MRSA §8107, sub-§4, as enacted by PL 2007, c. 320, §1, is amended to read:

4. Parents of children receiving services. Adult parents may reside with their children in a children's residential child care facility in order to facilitate the care of the child when the department has determined it to be in the best interest of the child.

Sec. 11. 26 MRSA §2164, sub-§3, as amended by PL 2009, c. 628, §1, is further amended to read:

3. Certification. Participants who complete training under this section with a ~~200-hour~~180-hour curriculum approved by the Department of Health and Human Services to include both theoretical and practical training receive a statewide certificate granted by the Department of Health and Human Services. This certificate or a certificate issued under subsection 4 is required for employment as an activities coordinator in this State after December 31, 1993, except that a person employed as an activities coordinator on October 9, 1991 who has completed a training program approved by the Department of Health and Human Services is not required to obtain a certificate under this section.

SUMMARY

This bill accomplishes the following.

1. To comply with federal requirements, it provides that the survey interval may be up to 15 months for intermediate care facilities for persons with intellectual disabilities.
2. It requires the Department of Health and Human Services to adopt routine technical rules necessary to license intermediate care facilities for persons with intellectual disabilities.
3. It changes the designation for most rules for licensed assisted housing programs from major substantive to routine technical.
4. It changes definitions relating to children's homes by replacing the term "residential child care facility" with "children's residential care facility," replacing the term "emergency shelter" with "emergency children's shelter" and replacing the term "residential treatment facility with secure capacity" with "children's residential treatment facility with secure capacity."
5. It specifies that the Department of Health and Human Services is required to adopt rules for various levels of children's residential care facilities. Current law requires the department to adopt rules for various levels of children's homes.
6. It reduces training requirements for the certification of activity coordinators in long-term care facilities from 200 hours to 180 hours.