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An Act To Amend Certain Laws Governing Child Care Providers

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

Sec. 1. 22 MRSA §3736, sub-§4 is enacted to read:

4. Cost of child care. If the cost of child care exceeds the amount of subsidy for a publicly funded child care program for an otherwise eligible applicant, the applicant may pay the outstanding balance of child care costs after subtracting the amount of subsidy without losing the subsidy.

Sec. 2. 22 MRSA §8301-A, sub-§1-A, as amended by PL 2009, c. 211, Pt. B, §§20 and 21, is further amended to read:

1-A. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Child care center" means:

(1) A house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 13 or more children under 13 years of age; or

(2) Any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for.

B. "Child care facility" means a child care center, small child care facility or nursery school. "Child care facility" does not include a facility operated by a family child care provider, a youth camp licensed under section 2495, programs offering instruction to children for the purpose of teaching a skill such as karate, dance or basketball, a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A or a private school recognized by the Department of Education as a provider of equivalent instruction for the purpose of compulsory school attendance. Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child Development Services System sites are required to be licensed as a child care facility.

B-1. "Director" means the individual having responsibility for administering and carrying out the policy of a child care facility. If the child care facility is owned or operated by a corporation or trust, "director" means the individual delegated to carry out or enforce the policies of the child care facility developed by the governing body or trustees of the corporation or trust.

C. "Family child care provider" means a person who provides day care in that person's home on a regular basis, for consideration, for 35 to 12 children under 13 years of age who are not the children of the provider or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than 24 other children, the provider is not required to be certified as a family child care provider.

C-1. "Infant" means a child who has not attained 12 months of age.

D. "Nursery school" means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children 33 months of age or older and under 8 years of age, provided that:

- (1) No session conducted for the children is longer than 3 1/2 hours in length;
- (2) No more than 2 sessions are conducted per day;
- (3) Each child in attendance at the nursery school attends only one session per day; and
- (4) No hot meal is served to the children.

"Nursery school" does not include any facility operated as a child care center or small child care facility licensed under subsection 2, a youth camp licensed under section 2495 or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20-A.

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.

F. "Toddler" means a child 12 months of age or older and under 36 months of age.

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

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. If a child care facility licensed under

this chapter has been in operation and licensed in good standing for at least 5 consecutive years, the department shall issue a license renewal for the term of 5 years. Except as otherwise provided, a nursery school must meet the requirements of this chapter and chapter 1675.

Sec. 4. 22 MRSA §8301-A, sub-§3, as amended by PL 2005, c. 640, §3, is further amended to read:

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. If a family child care provider certified under this chapter has been in operation and certified in good standing for at least 5 consecutive years, the department shall issue a certification renewal for the term of 5 years.

Sec. 5. 22 MRSA §8301-A, sub-§4, as amended by PL 2005, c. 530, §7, is further amended to read:

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. An investigation under this subsection may involve only a suspected violation related to the complaint and may not involve any other matter unless the department has reasonable cause to investigate another suspected violation.

Sec. 6. 22 MRSA §8302-A, sub-§§3 to 5 are enacted to read:

3. Background checks. A staff member undergoing a criminal background check under subsection 1, paragraph J, subparagraph (1) or subsection 2, paragraph K, subparagraph (2) may be employed by the child care facility or family child care provider for up to 90 days without a completed criminal background check while the criminal background check is being conducted.

4. Extenuating circumstances. Rules adopted under subsection 1, paragraph A and subsection 2, paragraph G and rules involving the ages of children, infants or toddlers must provide for extenuating circumstances, including allowing an exception to the rules due to an unexpected absence of a staff member or an unexpected drop-off of a child by a parent or due to the particular needs of an individual child. An extenuating circumstance under this subsection requires the child care facility or family child care provider to document the circumstance and make that documentation available for inspection by the department upon request.

5. Health and safety of children. All rules adopted under this section must be strictly limited to the health and safety of the children receiving child care services and may not unnecessarily interfere with the unrelated business operations of the child care facility or family child care provider. If a child care facility or family child care provider provides 35 square feet of usable space per child within the premises occupied by the child care facility or child care provider, the child care facility or family

child care provider is not required to provide 35 square feet of usable space per child in one room. A rule under this section may not require a child care facility or family child care provider to provide extra clothing for a child, but the child care facility or family child care provider may accept and store extra clothing for a child provided by the child's parent or guardian. A rule adopted under this section may not regulate the physical arrangement of furniture, equipment, instructional posting or other physical feature of a child care facility or the home of a family child care provider unless the rule directly involves a health or safety concern. The department may not require a child care facility to inform the department of a change of director of the child care facility.

Sec. 7. 22 MRSA §8303-A, sub-§1, as enacted by PL 2009, c. 590, §6, is amended to read:

1. Child care facilities and certified family child care providers. The department shall adopt rules to establish reasonable fees for both initial licensure or certification and license or certification renewals for child care facilities and certified family child care providers. The license or certification fee for a 5-year license under section 8301-A, subsection 2 or 3 must be 1.5 times the fee for a child care facility or family child care provider that has been in operation and licensed or certified in good standing for less than 5 consecutive years. If the department declines a license or certification renewal for a child care facility or family child care provider, the department shall return to the facility or provider all fees collected pursuant to the license or certification renewal. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 8. 22 MRSA §8309 is enacted to read:

§ 8309. Inspections

1. Inspection processes. Prior to an inspection of a child care facility or family child care provider under this chapter, the department shall inform in writing a child care facility or family child care provider of the identity of the department official who is conducting the inspection. Upon an inspection of the child care facility or family child care provider under this chapter, the department official conducting the inspection must immediately contact the on-site manager or individual in charge of the child care facility or family child care provider and inform the manager or individual in charge that an inspection is taking place. Upon contact by a department official inspecting a child care facility or family child care provider under this subsection, the on-site manager or individual in charge of the child care facility or family child care provider may contact an owner, director, board member or other person of authority over the child care facility or family child care provider if the inspection will involve the on-site manager, individual in charge or any other staff member of the child care facility or family child care provider that causes a violation of the required child to staff ratio of the child care facility or family child care provider. Before leaving a child care facility or family child care provider after an inspection of the child care facility or family child care provider, the department official conducting the inspection shall leave with the child care facility or family child care provider a copy of all reports and notes taken by the department official during the inspection.

2. Post-inspection processes; public postings. An inspection report by the department concerning the inspection of a child care facility or family child care provider may not be posted on a publicly accessible website for at least 2 weeks after an inspection to allow a child care facility or family

child care provider to remedy any deficiency or violation identified by the inspection. If a child care facility or family child care provider remedies a deficiency or violation cited by an inspection by the department and provides verifiable documentation of the remedy within 2 weeks of the inspection, the department may not post information of that deficiency or violation in any public posting of the results of the inspection. Any public posting by the department regarding a child care facility or family child care provider must have the purpose of reasonably informing the public of an objectively documented deficiency or violation.

Sec. 9. Department of Health and Human Services to create appeals board; provider bill of rights. The Department of Health and Human Services shall draft legislation to create an appeals board that consists of members who are not appointed by or employed by the department to hear appeals of licensing decisions and any other decisions of the department disputed by a licensee or certificate holder or applicant for license or certification under the Maine Revised Statutes, Title 22, chapter 1673. Membership of the appeals board must include members who represent child care facility and family child care provider interests in the State. The department shall develop a child care provider bill of rights that details the rights of family child care providers and child care facilities under the Maine Revised Statutes, Title 22, chapter 1673 as privately owned independent businesses able to conduct reasonable business practices outside of the area of the regulated activity. No later than December 6, 2017, the department shall submit recommended legislation to create the appeals board and the child care provider bill of rights to the Joint Standing Committee on Health and Human Services. The joint standing committee may report out a bill based upon the recommended legislation to the Second Regular Session of the 128th Legislature.

SUMMARY

This bill makes various changes to the laws governing child care facilities and family child care providers, including:

1. Allowing a parent who receives a child care subsidy to make up the difference between the amount of the subsidy and the total cost of child care without losing the subsidy;
2. Defining an infant as a child 6 weeks of age or older and under 12 months of age and a toddler as a child 12 months of age or older and under 36 months of age;
3. Allowing a person to care for up to 4 children in the person's home without that person's being required to become certified as a family child care provider;
4. Creating a license or certification renewal with a term of 5 years for a child care facility or family child care provider that has been in operation and licensed or certified in good standing for at least 5 consecutive years;
5. Directing the Department of Health and Human Services upon a complaint to investigate only that complaint unless there is reasonable cause to suspect another violation;
6. Providing a period of up to 90 days for a person to work as a staff member for a child care facility or family child care provider without the completion of a criminal background check while a criminal background check is being conducted;

7. Allowing for exceptions to department rules involving child to staff ratios, the ages of children and infants and toddlers in cases of extenuating circumstances due to an unexpected staff member absence or parent drop-off of a child at the facility or provider or due to the particular needs of an individual child;

8. Requiring department rules to be narrowly based upon the health and safety of the children and not to unreasonably interfere with facility or provider business operations in which the health and safety of the children are not involved;

9. Requiring in the instance of the department's declining to renew a license or certification of a child care facility or family child care provider that the renewal fee paid by the facility or provider be refunded;

10. Detailing inspection and post-inspection processes including the posting of information regarding a child care facility or family child care provider by the department on a publicly accessible website; and

11. Directing the department to develop recommended legislation to create an appeals board composed of members not employed or appointed by the department to review department decisions regarding child care facilities and family child care providers and to develop a child care provider bill of rights.