

STATE OF MAINE

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

—
H.P. 64 - L.D. 98

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

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

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

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

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

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

Sec. 3. 22 MRSA §7702-A, sub-§2, as repealed and replaced by PL 2003, c. 452, Pt.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

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

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

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

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

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

(2) Section 8301-A; or

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

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

Sec. 4. 22 MRSA §7702-A, sub-§3, as amended by PL 2015, c. 497, §1, is repealed.

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

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

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

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

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

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

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

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

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

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

8. Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed long-term care facility ~~or~~, child care facility or ~~an uncertified~~ family child care provider with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with subsection 1. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection

may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license ~~or a certificate~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. If a license ~~or certificate~~ for a child care facility or a family child care provider has been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a license ~~or certificate~~ for a child care facility or a family child care provider for a period of 2 years from the effective date of the second denial or revocation decision if the

decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

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

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

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

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

C. "Family child care provider" means a person who provides day care in that person's home on a regular basis, for consideration, for 3 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 2 other children, the provider is not required to be ~~certified~~ licensed as a family child care provider.

Sec. 18. 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~~ licensure. A family child care provider shall pay the ~~certification~~ licensing fee required under section 8303-A. A family child care provider must be ~~certified~~ licensed 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~~ licensed under this chapter during the term of the ~~certificate~~ license. The inspection must take place between 6 and 18 months after the issuance of the ~~certificate~~ license.

Sec. 19. 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.

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

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~~ license 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.

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

6. Temporary license. Whenever a ~~certified family child care provider~~ or licensed child care facility or family child care provider 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
- 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.

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

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

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

D-2. The administration of medication;

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

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

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

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

Sec. 26. 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. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

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

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

- A. The Commissioner of Public Safety shall issue a fire safety technician certificate to any person who successfully completes a training course established by the

Department of Public Safety. A person who receives a fire safety technician certificate pursuant to this paragraph may perform fire safety inspections under this section.

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

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

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

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

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

Sec. 30. 22 MRSA §8356, sub-§2, as enacted by PL 2015, c. 283, §3, is amended to read:

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

Sec. 31. 24-A MRSA §3060, sub-§1, as enacted by PL 2009, c. 185, §1, is amended to read:

1. Evidence of business liability insurance. An insurer may not refuse to issue or renew a policy covering the primary residence of a family child care provider ~~certified~~ licensed under Title 22, section 8301-A, subsection 3 or cancel such policy within the first 90 days of coverage unless the denial of coverage or cancellation is based solely on underwriting factors other than the presence of a family child care business on the premises if the family child care provider has demonstrated satisfactory evidence that the child care business is covered by separate insurance coverage for business liability, including medical payments coverage equivalent to coverage in the policy. For purposes of cancellation or nonrenewal under section 3049 or 3051, an insurer may not treat the presence of the family child care business activity as a factor related to the insurability of the primary residence of a family child care provider ~~certified~~ licensed under Title 22, section 8301-A, subsection 3 if the family child care provider has demonstrated satisfactory evidence that the child care business is covered by separate insurance coverage for business liability in accordance with this subsection.

Sec. 32. 24-A MRSA §3060, sub-§2, as enacted by PL 2009, c. 185, §1, is amended to read:

2. No liability under property insurance policy. An insurer has no duty to defend or indemnify a family child care provider ~~certified~~ licensed under Title 22, section 8301-A, subsection 3 under a policy covering the primary residence of a family child care provider issued by the insurer if:

- A. The loss or damage for which the family child care provider is liable or alleged to be liable arises in whole or in part from the family child care business activity;
- B. The policy issued by the insurer expressly excludes that loss or damage arising from the family child care business activity;
- C. The family child care provider has demonstrated satisfactory evidence of separate insurance coverage for child care business liability in accordance with subsection 1; and
- D. The insurer issuing the policy covering the primary residence has disclosed to the family child care provider that failure to maintain separate insurance coverage for child care business liability might result in cancellation or nonrenewal of the policy covering the primary residence and that the child care business activity is excluded under the policy.