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Commissioner



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May 10, 2023

Senator Joseph Baldacci, Chair
Representative Michele Meyer, Chair
Members, Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, ME 04333-0100

Re: LD 1729 – *An Act to Reduce Child Care Provider Regulation*

Senator Baldacci, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services:

The Division of Administrative Hearings (DAH) for the Department of Health and Human Services (DHHS) opposes LD 1729, *An Act to Reduce Child Care Provider Regulation*. This letter is focused on the section of LD 1729 establishing a Child Care Appeal Review Panel to hear all disputes of child care facilities, family child care providers, and nursery schools.

This letter seeks to address concerns that DAH is biased regarding child care licensing appeals or any other appeals from the Office of Child and Family Services. The Division of Administrative Hearings handles all administrative appeals of DHHS decisions. We are not associated with the Office of Child and Family Services or any other service-providing Office within the Department. We are under the purview of the Commissioner's Office. We conduct hearings pursuant to the Administrative Procedure Act and the Department's Administrative Hearing Regulations (10-144 CMR Ch. 1). Hearing Officers are required to be unbiased and to have no prior involvement in the decision being appealed. The parties are not allowed to have contact with the Hearing Officer without the other party being present. Hearings are conducted under a de novo review standard. Facts are determined anew. There is no presumption made for or against the Department. Testimony is submitted under oath subject to cross-examination. The appellant may call his or her own witnesses or subpoena witnesses if he or she wishes. The Hearing Officer is required to issue an independent decision without deference to the action being appealed.

For an appeal of a civil penalty, the Hearing Officer's decision would constitute the final agency action of the Department. If the Hearing Officer upholds the civil penalty, the appellant can appeal to the Superior Court. For more serious licensing actions such as a denial of an application for a license, the issuance of a conditional license, or the revocation of a license, the Hearing Officer issues a Recommended Decision to the Commissioner. The parties are given twenty days to submit exceptions and responses to the Recommended Decision. The Recommended Decision and any exceptions and responses are then submitted to the Commissioner, who makes the final decision. If the Commissioner upholds the Recommended Decision, then the appellant can appeal to the Superior Court.

Currently, there is no appeal process for the minor decisions made in inspection reports. However, if the Department were to base an appealable licensing decision upon such inspection reports, the Department would be required to prove those minor violations at the hearing under a de novo standard. The appellant would have an opportunity to dispute them at the hearing.

Thank you for the opportunity to provide information on LD 1729. I would be happy to provide any additional information that the Committee may want or need.

Sincerely,

/s/ **Joseph Pickering**

Joseph Pickering

Chief Administrative Hearing Officer

Division of Administrative Hearings