

**LD 1726: An Act to Build Maine's Economy by Supporting Child Care and Working Families**

Senator Baldacci,

Representative Meyers

Member of the Maine's Legislature's Health and Human Services Committee

**RE: Question of "Over-Regulation of Licensed Family Child Care in Maine"**

In the testimony before this committee in regards to **LD 1726: An Act to Build Maine's Economy by Supporting Child Care and Working Families** the concern was raised that the issue with the lack of childcare in Maine is a result of "over-regulation." The statement was made that "Family Child Care Providers are asked to meet more than 200 pages of regulations to operate in Maine."

While over-regulation should always be a concern, in this case it simply is not a valid point.

I offer this quick review of that claim (*that Child Care in Maine is "over regulated" and that Family Child Care Providers, in particular, are leaving the field because of unreasonable licensing demands*) as someone who has worked in the childcare field for 45 years, both as a direct care provider and as consultant and support person to Family Child Care Providers in Maine.

Some quick reality checking:

The entire licensing manual for Family Child Care Providers is only 55 pages long (NOT "200 pages" as claimed.) Even with, these 55 pages in the licensing book, the overall requirements that most providers must meet can easily be summed up in less than 3 pages (please see attached.) Some reasons for the extra 52 pages would be:

1. First, the Licensing Book does often use many words to explain simple concepts, but that is simply because it is, by definition, a "Legal Document with Statutory Weight," and the language has to meet the more complex standards of a legal document.
2. Beyond listing the legal requirements, the licensing book also takes a lot of time describing the intent of those requirements and how the provider might best document they have met the requirement.
3. There is a great deal of space set aside to cover a number of contingencies that many Family Child Care Providers will never have to consider, such as:
  - a. How you would have to adapt if you cared for infants and toddlers.
  - b. What you would need to guarantee if you are feeding the kids yourself (rather than having parents send in food.)
  - c. What you would need in place if you hired additional staff.
  - d. What you need to have in place if you offer swimming as part of your program.
  - e. What you would need to do if you provided "overnight care."
4. There is also a lot of additional language in the book simply because the State acknowledges that this Family Childcare is being provided, most often, in someone's home, and that there are accommodations that must be made, such as:
  - a. People have the right to own guns; so there is additional language on how to ensure the kids in care are safe when there are guns in the house.
  - b. People will own dogs, but again, there is language on what to do so the kids in care are safe when there are pets in the house.

Some additional notes per these rules:

Many of the requirements fall under the category of "common sense" (i.e. requirements for working smoke detectors, having fire drills, keeping the kids away from hazardous materials etc.) Unfortunately, in a legal document of this kind, the State cannot depend upon everyone having common sense so rules like these are spelled out in detail.

When these rules were re-written in 2021, many of the newer requirements were items that parents had asked for, such as additional safeguards to ensure their children's wellbeing (i.e. a plan for keeping the children safe in a "crisis situation" such as an active shooter) and/or ensuring parents have the information they need to make informed decision on who will care for their children (providers are now required to have written policies about key aspects of that care for parents to see and refer to when deciding if this care is right for their family.)

Finally, one last word about the "demands" required of these Family Child Care Providers. These requirements fall into two different categories:

1. Those things the provider will actually need to document and have available for review by the licensing worker (such as those written policies, evidence of insurance, records of fire drills etc.) and
2. Those things you need to do or have in place which don't require documentation, but failing to meet the standard, could lead to a parent to reporting you and jeopardize your license (such as not smoking in front of the children, having age-appropriate materials and supplies, or limiting "screen time.")

I also feel I need to point out that the State Licensing office **is not** constantly "looking over the provider's shoulders." Most providers only see their State licensing worker once a year. While the licensing worker may conduct more frequent visits based on the Provider's history, most often the licensing worker will only show up:

- A. When the provider first applies for his/her license and within the first few months of being licensed.
- B. Annually after that, unless,
  - a. The Provider has made a significant change, or
  - b. To investigate a complaint of a rule violation or an allegation of suspected Abuse or neglect, or
  - c. To follow up on an earlier complaint or violation.

In conclusion, let me say that, while one might disagree with one or another of these requirements, I have found them to be an honest attempt to meet the State's obligation to ensure children are kept safe, and to reassure parents that there is outside oversight for their children's well-being when in out of home care.

Sincerely,

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**Overview of Key Licensing Requirements for Family Child Care in Maine 2023**

**Qualifications you need to have to own/operate a Family Child Care in Maine.**

1. Be at least 18 years old
2. Sign off that you're willing and able to meet the licensing rules
3. Pass a child protective and criminal background check.
4. Have at least a high school degree (or equivalent)
5. Be able to exercise sound judgement.
6. Someone (either the provider or a paid staff) must be CRP/First Aid certified.
7. Must take the 6 hour MRTQ health and safety and training (free and on-line).
8. Must be immunized against Measles, Mumps and Rubella, Tetanus, Diphtheria, and Pertussis (same as the kids)
9. Must have documentation of appropriate insurances,
10. Must have 12 hours of training or professional development every year, and
11. Must enroll in the Maine Roads to Quality (MRTQ) "Registry."

**Training Requirements (for the owner/operator and anyone he/she hires to work with the kids)**

1. As noted above, 12 hours a year, ongoing training.
2. Annual training has to include a update of health and safety training (also free and on-line)
3. Every 4 years, updating on Department approved training on identifying and reporting suspected child abuse (also free and on-line.)
4. The training you receive should be "defendable" which is to say, have direct application to the care you are providing.
5. You have to provide an "orientation" for anyone else (hired or volunteering) to work with the kids. This needs to be done within the first 90 days of hire has to include all those policies you have in your operating handbook.

**Requirements for the Facility**

1. Must be approved by the Fire Marshals' office (reviewed every two years.)
2. Must have the water tested periodically
3. Must comply with any local zoning codes or ordinances
4. Must meet state law per lead exposure
5. Must post a copy of the license (where parents can see)
6. Must post a copy of the most recent licensing visit (where parents can see)
7. Must have a copy of the current licensing rules on hands (and make available to parents upon request.)
8. Must have at least 35 square feet of in-door space for each child enrolled, and "sufficient space" out of doors for the number of kids enrolled
9. Indoor space should be well ventilated and well lit. Out of doors space should be safely maintained
10. Stairs used by kids must be safe and equipped with solid mounted handrails, and if toddlers are cared for they must be kept safe by gate or door,
11. Electrical outlets must be covered
12. Any medication, toxic substances, hazardous materials (materials dangerous to children) must be kept where children cannot access them
13. Smoking, alcohol, and recreational drug are not allowed when children are present.
14. There must be a working phone available
15. All areas the kids use must be cleaned daily
16. All entrances must be clear for evacuation

17. Firearms, hunting knives, bows and arrows and other weapons kept on the premises, must remain in a locked case, closet or cabinet, inaccessible to children during all hours of operation

### **Requirements for the “Program”**

1. Must meet the State’s limits on the legal number of children who can be served, and the legal child to staff ratios that need to be maintained.
  - a. Children living with provider must be counted as part of the program ONLY when they are under 4 years of age.
  - b. Children of other adults working in the program MUST be counted as part of the program.
  - c. Total number of children allowed in the program may also be limited by the available space, if the provider has physical limitations, or there are children who require exceptional amounts of care.
2. You must have (and document you had) monthly fire drills
3. Must have a set of **written policies** (available to all parents, any other adults working with the kids and your licensing worker) that describes how you run your program. *For many of these policies, the State doesn’t have an opinion of what your policy contains. (For instance, if you want to provide a “religion based” curriculum, you are allowed to do so. But, by having this written and made available to the parents, it both shows you’ve given this some thought, and it allows the parent to know what their child is learning while in your care.)* These written policies include items such as:
  - a. The number and ages of kids who will be attending,
  - b. The days and hours the care is available,
  - c. If you have some specific focus for your program (i.e.. religious, Pre-K learning, After School etc.),
  - d. What you will be “teaching” the children
  - e. Opportunities for parent involvement (
  - f. A description of how you will be disciplining the children,
  - g. Any additional services you might be offering
  - h. What you will be charging the parents (Including if you will be charging for vacation days,)
  - i. How you deal with sick kids, including how you deal with kid’s medications,
  - j. How you deal with accidents and emergencies
  - k. How you deal with having to ask a family to leave your program
  - l. A plan for dealing with an unexpected crisis (I.e. active shooter)
  - m. The fact that you are a “Mandated Reporter” of potential child abuse and neglect, and how you plan to handle this responsibility.
  - n. A plan for responding to any allegations of abuse happening at the provider’s site.

### **Requirements on How you interact with Parents**

1. Must make your “Procedures” manual available to all parents.
2. Parents must have access to their kids any time the children are present in the program
3. Parents should have opportunities to participate with the program
4. You have to have a way of reaching all parents when their children are in care.
5. The provider must regularly exchange information with the parent. The younger the child, the more frequent the communication.

### **Requirements on how you interact with the kids.**

1. Children must be actively supervised at all time
2. You are asked to use “positive methods of child guidance,”

3. You are asked to be “consistent and reasonable” in applying program rules”
4. You are NOT allowed to harm any child in an attempt to discipline a child, by action (i.e. i.e. no spanking, hitting, belittling, insulting parents, etc.) or inaction (i.e. withholding food or sleep, outdoor play etc.)
5. You are NOT allowed to expose (or allow a child to be exposed to) profane language, depictions of violence, illicit drugs or sexual content
6. Activities for children must be age appropriate for those children served
7. Children must have outdoor time (weather permitting) every day.
8. Television, videos, hand held devices etc. must be age appropriate and limited to no more than 90 minutes per day.

**Requirements for Record Keeping:**

1. You must keep separate records of the children in your care, specifically,
  - a. Names
  - b. Ages
  - c. Enrollment information
  - d. Who is allowed to pick the kids up, and
  - e. Emergency Contacts
  - f. Child Immunizations
  - g. Any special needs the child might present
  - h. Any known allergies
  - i. Records of any injuries the child may have experienced in the program.
  - j. Signed parent permission forms for things like
    - i. Taking pictures of the children (If you do take pictures)
    - ii. Using sunscreen or insect repellent
    - iii. Field trips (if you take field trips)
    - iv. Swimming or other risking activities (like horseback riding)
2. You must keep attendance records for the days and hours each child attends
3. You must keep records of the days and hours each adult were with the children
4. You must keep a records of all fire drills
5. You must keep a record of all allegations of child abuse/neglect
6. You must keep a record of rabies vaccination for all pets on the premises

**Requirement for notifying the Licensing Office:**

1. The FCC Provider needs to notify the Department in writing if any of the follows happens
  - a. The program closes for any extended period of time
  - b. Any changes to the building
  - c. Any changes in the provider contact information
  - d. Any failed drinking water tests
  - e. If any legal action happen that could impact the children
  - f. Any child deaths or serious injuries
  - g. Any allegations of abuse or neglect that happen in the program.