

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 9, 2021
To: Joint Standing Committee on Health & Human Services
From: Anna Broome, Legislative Analyst

LD 98 An Act To Clarify Maine's Statutes Related to the Licensing of Child Care Providers (department bill)

SUMMARY AND DRAFTING NOTES: This bill makes various changes to the laws governing the licensure of child care providers in order to ensure consistency between provider types. Specifically, the bill does the following.

1. Replaces all references to the certification of family child care providers with references to licensure. Current law requires a license for child care facilities and certification for family child care providers; this bill would use the same term for both.
2. Current statute specifies that rules for child care facilities include ¶F quality of the program and ¶H administration of medication. Secs. 22 and 23 of the bill include these in the rules for family child care providers as well.
3. Secs. 3 and 4 of the bill change the current statutes on violations allowing the department to levy civil penalties against those who violate statutes or licensing rules governing child care facilities. The bill repeals §7702-A, sub-§3 with the violations of licensure and moves it into the civil penalty section in §7702-A, sub-§2 citing the same sections of current statute that generate a violation and applying the same fine language for the civil violation as violating child-staff ratios.

Current law:

§7702-A. Violations; penalties

1. Criminal penalties. Except as otherwise provided by law, a person who violates any provision of this subtitle commits a Class E crime.

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

A. A person who violates section 7703 [records disclosure] or 8603 [adult day without a license] 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.

3. Licensure provisions. A person who violates the following sections or rules adopted pursuant to those sections is subject to the sanctions provided for under the rules of licensure applicable to the facility, child care facility or family child care provider:

A. Section 7801, subsection 1, paragraph A; [residential care license]

B. Section 8301-A; or [licensure]

C. Section 8302-A, subsection 1, paragraphs B to J and subsection 2, paragraphs A to F and H to K. [child care rules other than child-staff ratios]

ISSUES FROM TESTIMONY:

- DHHS: Out of compliance with the federal block grant and the bill would codify those components. Need to change the law to implement rules needed for compliance.
- Testimony on both sides about rules on quality being included in the rules – positive impacts on children; subjective and exacerbates loss of child care spaces (more than half closed by July 2020).

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- Compliance issue in this bill? (Background check compliance issue resolved earlier.)
DHHS: “Updates are required to the rules governing child care providers in order to bring the state into compliance with CCDBG requirements. The background check issue has been resolved, but if we fail to amend our rules to ensure compliance we risk a penalty on areas where our rules are out of compliance. We are in the process of drafting and promulgating these new child care provider rules and the changes proposed by LD 98 were identified by the Attorney General’s Office as areas of the statute in need of change in order to implement the rules required under CCDBG. For instance, the OAG pointed out that the statute doesn’t extend the same authority over “certificates” as it does over “licenses”. OCFS would like to continue to include Family Child Care Providers within the CCSP program, to do so without penalty requires rules that comply with CCDBG requirements and our legal counsel has advised us that in order to promulgate these rules statutory changes are necessary.”

- Updated numbers of child care spaces since July 2020?

DHHS:

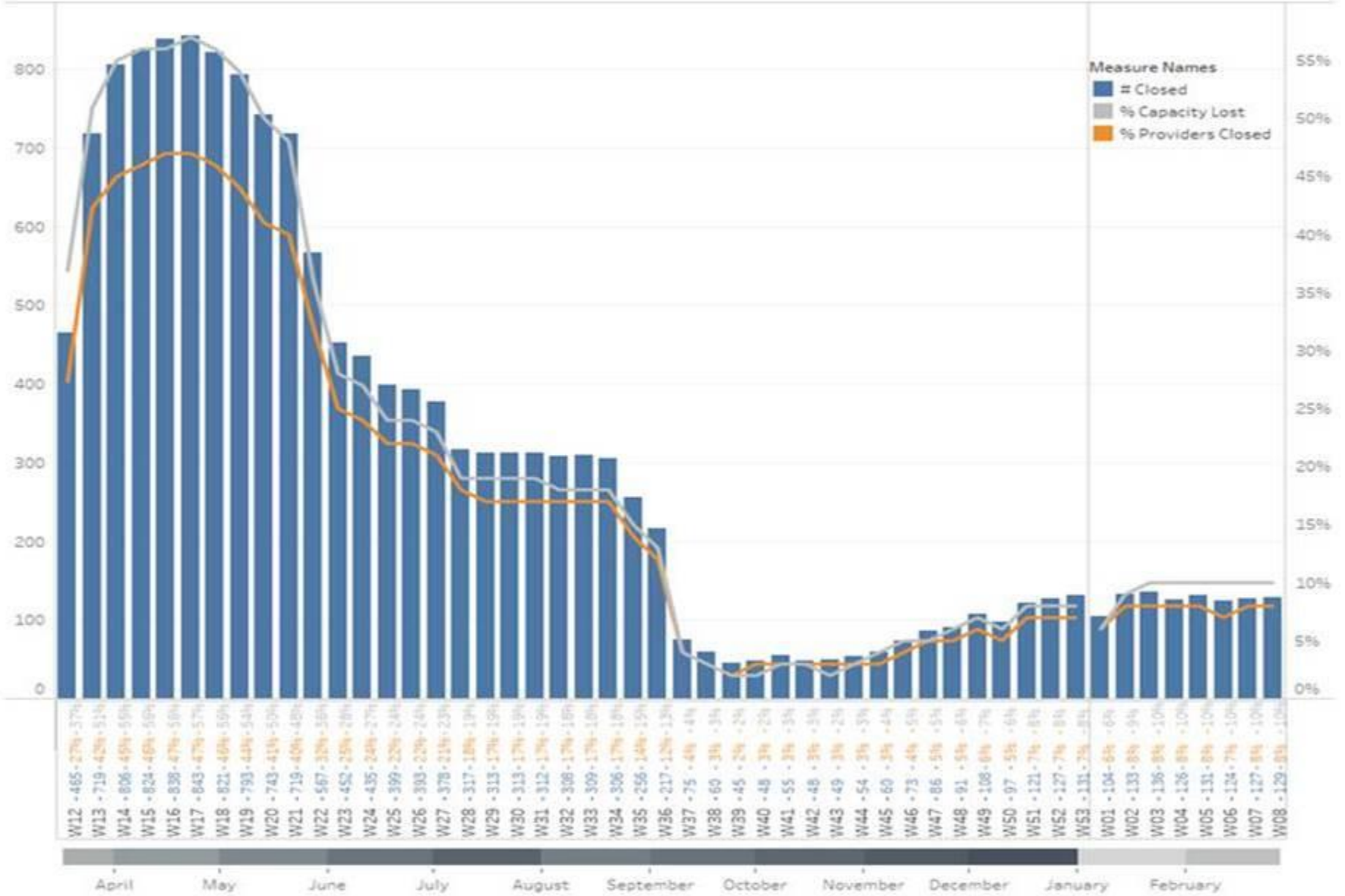
The letter in the linked testimony links to a Maine-specific Child Care Aware info sheet (see:

https://info.childcareaware.org/hubfs/2020%20State%20Fact%20Sheets/Maine-2020StateFactSheet.pdf?utm_campaign=Picking%20Up%20The%20Pieces&utm_source=Maine%20SFS which reflects a significant drop in total available child care slots statewide. Unfortunately this fact sheet fails to note that the July 2020 data was provided to Child Care Aware specifically in response to a request for child care provider data as it related to the COVID-19 pandemic. By selecting a single point in time during the pandemic the numbers skewed much lower, both because of temporary provider closures related to the pandemic and also because a portion of child care providers (particularly preschools) operate on a schedule similar to K-12 schools, which means they are not open in the summer, thus their slots were not included in this data. OCFS provides regularly updated reports on the number of child care providers on its dashboard:

<https://www.maine.gov/dhhs/ocfs/dashboards/early-childhood-education.shtml> where you can track and compare the number of providers from August 2019 to February of 2021. While the data is specific to total number of providers and not slots we believe it is the best representation of the availability of child care providers given that the number of slots fluctuates based on time of year (and more recently due to pandemic-related temporary closures).

Also of interest to the committee may be a data visualization of the impact of COVID-19 on child care, available on DHHS' COVID-19 impact dashboard: <https://www.maine.gov/dhhs/data-reports/covid-19-impacts-on-dhhs-services>. You can see here how high the number of closed providers was in July 2020, and how that number has dropped precipitously since then.

CHILD CARE CLOSURES



FISCAL IMPACT:

OFPR preliminary fiscal impact statement: Minor cost increase – GF; minor revenue increase – GF and OSR.

Correctional and judicial impact statement: The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional fine and/or fee revenue will increase GF and dedicated revenue by minor amounts. No fiscal note needed.

Cross-reference for Sec. 3:

17-A §4-B. Civil violations

1. All civil violations are expressly declared not to be criminal offenses. They are enforceable by the Attorney General, the Attorney General's representative or any other appropriate public official in a civil action to recover what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the law.
2. A law or ordinance may be expressly designated as a civil violation.
3. A law or ordinance which prohibits defined conduct, but does not provide an imprisonment penalty, is a civil violation, enforceable in accordance with subsection 1. A law or ordinance which is stated to be a criminal violation or which otherwise uses language indicating that it is a crime, but does not provide an imprisonment penalty is a civil violation, enforceable in accordance with subsection 1, unless the law or ordinance is an exception to the operation of this subsection.
4. Evidence obtained pursuant to an unlawful search and seizure shall not be admissible in a civil violation proceeding arising under Title 22, section 2383.

Rules for family child care providers for violations:

4. The Department has established the following schedule of administrative fines for licensees failing to correct violations by the Department's timeline pursuant to 22 M.R.S. §7702-A:
 - a. Non-critical violation: \$100.00 per violation.
 - b. Critical violation (as defined in Section 1(A) (7)): \$250.00 per violation.
5. The Department may assess administrative fines up to \$500 per inspection.

Rules for child care facilities for violations:

5.6 Financial penalties. The amount of any penalty to be imposed shall be calculated as follows:

Operation of a Child Care Facility without a license: not less than \$500 nor more than \$10,000 per day. Each day constitutes a separate offense.

Impeding, interfering, or giving false information in connection with the enforcement of laws or rules governing licensure, \$500.00 per incident.

Violation of rules governing child-to-staff ratios outlined in these rules is a violation for which an administrative penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged.

Violation of rules governing records disclosure and confidentiality outlined in these rules commits a violation for which an administrative penalty not to exceed \$500.00 per incident or \$500.00 per number of children above the limitation set by rule, or both, may be adjudged.

Violation of Rights for Children in Child Care Facilities, Section-10: \$50.00 per incident.