

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 1887

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H.P. 1327

House of Representatives, January 3, 2006

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### **An Act To Update Licensing and Certification Requirements for Child Care Facilities and Family Child Care Providers**

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.

Received by the Clerk of the House on December 28, 2005. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND

Clerk

Presented by Representative PELLETIER-SIMPSON of Auburn.  
Cosponsored by Senator MAYO of Sagadahoc and  
Senator: GAGNON of Kennebec.

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

2  
4       **Sec. 1. 20-A MRSA §12501-A, sub-§5**, as enacted by PL 2003, c. 427, §2, is amended to read:

6       **5. Child care facility.** "Child care facility" means a  
8 child care center or a ~~home-day~~ family child care provider as defined in Title 22, section 8301-A.

10       **Sec. 2. 22 MRSA §1319-C, sub-§1**, as amended by PL 2003, c. 421, §3, is further amended to read:

12       **1. Annual screening required.** The department shall require  
14 a child care facility and the premises of a ~~home-day~~ family child  
16 care provider as defined in chapter 1673 and a nursery school as  
18 defined in chapter 1675 to have an annual screening for potential  
lead hazards. If potential lead hazards are identified, a full  
lead inspection must be conducted.

20       **Sec. 3. 22 MRSA §1319-C, sub-§3**, as enacted by PL 1999, c. 276, §10, is amended to read:

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

28       **Sec. 4. 22 MRSA §1321**, as amended by PL 2003, c. 421, §§6 to  
30 8, is further amended to read:

32       **§1321. Notice and removal**

34       If the department determines that an environmental lead  
36 hazard exists in or on any dwelling, premises, residential  
child-occupied facility, child care facility, premises of a ~~home~~  
day family child care provider or nursery school:

38       **1. Notice posted.** The department shall post in or upon the  
40 dwelling, premises, residential child-occupied facility, child  
42 care facility, premises of the ~~home--day~~ family child care  
44 provider or nursery school, in a conspicuous place or places,  
notice of the existence of environmental lead hazard. Notice may  
not be removed until the department states that the environmental  
lead hazard no longer exists;

46       **2. Notice to persons.** The department shall give notice of  
the existence of the environmental lead hazard to all occupants;

48       **3. Notice to owner; removal.** The department shall give  
50 notice of the existence of the environmental lead hazard to the

owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. If the lead-based substances can not be removed, replaced or securely and permanently covered within 30 days, the department may grant an extension of reasonable time. All lead-based paint activities must be performed in accordance with rules adopted by the Department of Environmental Protection pursuant to Title 38, chapter 12-B. In the case of an owner-occupied, single-family residence, the department may provide technical assistance and guidance in lieu of enforcement activity at the department's discretion; and

**4. Sale of dwelling, residential facility, child-occupied facility or nursery school.** If, before the end of the 30-day period or extension, the owner sells the dwelling, premises, child care facility, premises of the ~~home-day~~ family child care provider, residential child-occupied facility or nursery school, the owner shall notify the prospective buyer of the environmental lead hazard and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period.

**Sec. 5. 22 MRSA §1326.** as amended by PL 2003, c. 421, §10, is further amended to read:

**§1326. Injunction requiring removal**

If the lead-based substance remains an environmental lead hazard at the expiration of 30 days or at the expiration of an extension given by the commissioner pursuant to section 1321, the State, in addition to any other remedies it has, may seek a mandatory injunction ordering the environmental lead hazard removed by a suitable 3rd party at the expense of the owner of the dwelling, premises, residential child-occupied facility, child care facility, premises of the ~~home-day~~ family child care provider or nursery school.

**Sec. 6. 22 MRSA §7702-A, sub-§3,** as enacted by PL 1999, c. 363, §3, is amended to read:

**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, ~~day-care-center~~ child care facility or home-day family child care provider:

- A. Section 7801, subsection 1, paragraph A;
- B. Section 8301-A; or

2 C. Section 8302-A, subsection 1, paragraphs B to I and  
subsection 2, paragraphs A to F and H to J.

4 **Sec. 7. 22 MRS §8301-A**, as amended by PL 2005, c. 224, §1,  
is further amended to read:

6  
8 **§8301-A. Licensure of child care facilities; certification of  
family child care providers**

10 **1-A. Definitions.** As used in this chapter, unless the  
context otherwise indicates, the following terms have the  
12 following meanings.

14 A. "Child care center" means:

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

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

26 B. "Child care facility" means a child care center, small  
child care facility or nursery school. "Child care  
28 facility" does not include a facility operated by a home-day  
family child care provider, a summer camp established solely  
30 for recreational and educational purposes or, programs  
offering instruction to children for the purpose of teaching  
32 a skill such as karate, dance or basketball, a formal public  
or private school in the nature of a kindergarten or  
34 elementary or secondary school approved by the Commissioner  
of Education in accordance with Title 20-A or a private  
36 school recognized by the Department of Education as a  
provider of equivalent instruction for the purpose of  
38 compulsory school attendance. Any program for children  
under 5 years of age that is located in a private school,  
40 other than programs that contract with one or more Child  
Development Services System sites, is required to be  
42 licensed as a child care facility.

44 C. "Home-day Family child care provider" means a person who  
provides day care in that person's home on a regular basis,  
46 for consideration, for 3 to 12 children under 13 years of  
age who are not the children of the provider or who are not  
48 residing in the provider's home. If a provider is caring  
for the provider's children related by blood or marriage in  
50 the provider's home and is caring for no more than 2

2           nonrelated children, the provider is not required to be  
3           certified as a family child care provider.

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

10                   (1) No session conducted for the children is longer  
11                   than 3 1/2 hours in length;

12                   (2) No more than 2 sessions are conducted per day;

13                   (3) Each child in attendance at the nursery school  
14                   attends only one session per day; and

15                   (4) No hot meal is served to the children.

16           "Nursery school" does not include any facility operated as a  
17           child care center or small child care facility licensed  
18           under subsection 2, a summer camp established solely for  
19           recreational and educational purposes or a public or private  
20           school in the nature of a kindergarten approved by the  
21           Commissioner of Education, in accordance with Title 20-A.

22           E. "Small child care facility" means a house or other  
23           place, not the residence of the operator, in which a person  
24           or combination of persons maintains or otherwise carries out  
25           a regular program, for consideration, for any part of a day  
26           providing care and protection for 3 to 12 children under 13  
27           years of age.

28           **2. Child care facility licensure.** The owner or operator of  
29           a child care facility shall pay the licensing fee required under  
30           section 8303-A. A child care facility must be licensed under  
31           this chapter and must comply with the rules adopted by the  
32           commissioner under section 8302-A and the fire safety  
33           requirements of section 8304-A. Except as otherwise provided, a  
34           nursery school must meet the requirements of this chapter and  
35           chapter 1675.

36           **3. Family child care provider certification.** A ~~home--day~~  
37           family child care provider shall pay the certification fee  
38           required under section 8303-A. A ~~home--day~~ family child care  
39           provider must be certified under this chapter and shall comply  
40           with the rules adopted by the commissioner under section 8302-A  
41           and the fire safety requirements of section 8304-A.

2           **4. Complaints.** Upon receipt of a complaint about a  
4 licensed child care facility or a certified home-day family child  
6 care provider and if the department has reasonable cause to  
8 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.

10           **5. Administrative suspension.** Whenever conditions exist  
12 that immediately jeopardize the health and safety of children,  
14 the commissioner may issue an order of closure, which suspends  
16 the certification of the home-day family child care provider or  
18 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.

20           **6. Temporary license.** Whenever a certified home-day family  
22 child care provider or licensed child care facility moves to a  
24 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:

26           A. All applicable standards have been met except a  
28 requirement that is dependent on the action of an agency of  
State Government or a contractor of that agency; and

30           B. Through no action by the applicant that causes a  
32 significant delay, timely issuance of a provisional or full  
license has been delayed by the agency or contractor.

34           **7. Injunctive relief.** The department may seek an  
36 injunction to require compliance with the provisions of this  
section or rules adopted pursuant to this section.

38           **8. Rulemaking.** The department shall adopt rules to  
40 implement this section. Rules adopted pursuant to this section  
42 are routine technical rules as defined by Title 5, chapter 375,  
subchapter II-A 2-A.

44           **9. Exemption from certain requirements for accredited**  
46 **Montessori schools.** Notwithstanding any provision of this  
48 chapter or rules adopted pursuant to this chapter, a child care  
50 facility that is accredited as a Montessori school by a national  
or international accreditation organization may apply to the  
commissioner for an exemption from those requirements of this  
chapter or rules adopted pursuant to this chapter that conflict  
with the recognized tenets of the Montessori philosophy.

2 The commissioner shall adopt rules to implement this subsection.  
3 Rules adopted pursuant to this subsection are routine technical  
4 rules as defined in Title 5, chapter 375, subchapter 2-A.

6 **Sec. 8. 22 MRSA §8302-A**, as amended by PL 2001, c. 645, §7,  
7 is further amended to read:

8  
9 **§8302-A. Rules for child care facilities and family child care**  
10 **providers**

11 The commissioner shall adopt rules for child care facilities  
12 and ~~home--day~~ family child care providers according to this  
13 section. Nursery schools are subject to the requirements of  
14 chapter 1675 and this section, except that subsection 1,  
15 paragraph F does not apply to nursery schools.

16  
17 **1. Rules for child care facilities.** Rules for child care  
18 facilities must include, but are not limited to, rules pertaining  
19 to the following:

- 20  
21 A. Child to staff ratios;
- 22  
23 B. The health and safety of the children and staff,  
24 including training on communicable diseases;
- 25  
26 C. Water for drinking and cooking;
- 27  
28 D. Wastewater;
- 29  
30 E. Rabies vaccinations for pets;
- 31  
32 F. The quality of the program provided;
- 33  
34 G. The age, criminal record and personal history of the  
35 provider of care for children and staff members;
- 36  
37 H. The administration of medication; and
- 38  
39 I. Licensing procedures.

40  
41 Rules adopted pursuant to this subsection are routine technical  
42 rules pursuant to Title 5, chapter 375, subchapter ~~II~~-A 2-A.

43  
44 **2. Rules for family child care providers.** Rules for ~~home~~  
45 ~~day~~ family child care providers must include, and are limited to,  
46 rules pertaining to the following:

- 47  
48 A. Cardiopulmonary resuscitation;
- 49  
50



- 2 B. Water for drinking and cooking;
- 4 C. Wastewater;
- 6 D. Rabies vaccinations for pets;
- 8 E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- 10 F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- 14 G. Child to staff ratios;
- 16 H. Health and safety of the children and staff;
- 18 I. Procedures for waivers of rules and for suspension and revocation of certification; and
- 20
- 22 J. The age, criminal record and personal history of the home-day family child care provider, staff and members of the household.
- 24

26 Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~II~~-A 2-A and rules adopted pursuant to paragraphs G to J are major substantive rules pursuant to Title 5, chapter 375, subchapter ~~II~~-A 2-A.

30

32 **Sec. 9. 22 MRSA §8302-B. first ¶,** as enacted by PL 1997, c. 494, §11 and affected by §15, is amended to read:

34 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 as a home-day family child care provider pursuant to section 8301-A but is subject to the provisions of this section.

38

40 **Sec. 10. 22 MRSA §8303-A.** as amended by PL 1997, c. 494, §12 and affected by §15, is further amended to read:

42 **§8303-A. Fee for licenses**

44

46 By January 1, 1998, the department shall adopt rules to establish reasonable fees for both initial licensure or certification and license or certification renewals for day-care centers child care facilities, nursery schools and certified home day family child care providers. Rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter ~~II~~-A 2-A.

50

2           **Sec. 11. 22 MRSA §8304-A, sub-§1**, as amended by PL 2001, c.  
4           645, §8, is further amended to read:

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

24           A. The Commissioner of Public Safety shall issue a fire  
26           safety technician certificate to any person who successfully  
28           completes a training course established by the Department of  
30           Public Safety. A person who receives a fire safety  
32           technician certificate pursuant to this paragraph may  
34           perform fire safety inspections under this section.

36           B. In addition to ongoing license or certification  
38           requirements, inspection and certification are required  
40           under this section whenever a child care facility or  
42           certified home--day family child care provider changes or  
44           augments a heating system or makes major structural  
            alterations to the facility or home.

**Sec. 12. 22 MRSA §8306**, as enacted by PL 1985, c. 358, §2, is  
            repealed.

### SUMMARY

            This bill replaces references to "day care center" with  
            "child care facility" and replaces "home day care" with "family  
            child care" wherever it appears in the Department of Health and  
            Human Services' licensing and certification statutes relating to  
            these operations. This bill also updates the definitions of  
            "family child care provider" and "child care facility." The bill  
            repeals the requirement that the department distribute a brochure  
            that explains the difference between home day care and home  
            baby-sitting services.