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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1523, L.D. 2027, Bill, "An Act Regarding Child Care Facility Laws"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place following:

Sec. 1. 17 MRSA §2871, sub-§1, as amended by PL 1997, c. 494, §1 and affected by §15, is further amended to read:

1. Day care center. "Day care center" means a day child care center facility, as defined in Title 22, section 8301-A, subsection 1 1-A, paragraph -A- B.

Sec. 2. 22 MRSA §7701, sub-§2, as amended by PL 1997, c. 494, §5 and affected by §15, is further amended to read:

2. Facility. As used in this subtitle, the word "facility" means any of the places defined in section 8001, 8101, 8201 or 8301-A, subsection 1 1-A, paragraph -A- B.

Sec. 3. 22 MRSA §7801, sub-§1, ¶E, as amended by PL 1987, c. 389, §2, is further amended to read:

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

2 **Sec. 4. 22 MRSA §7801, sub-§1, ¶F**, as amended by PL 1987, c.
389, §3, is repealed.

4 **Sec. 5. 22 MRSA c. 1673** is amended by repealing the chapter
headnote and enacting the following in its place:

6 **CHAPTER 1673**

8 **CHILD CARE FACILITIES**

10 **Sec. 6. 22 MRSA §8301-A**, as amended by PL 1999, c. 363, §§4
12 and 5, is further amended to read:

14 **§8301-A. Licensure of child care facilities; certification of
16 home day care providers**

18 **1. Definitions.** As used in this chapter, unless the
context otherwise indicates, the following terms have the
following meanings:

20 **A. "Day-care-center" means:**

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

28 (2) A facility that is not part of a person's own home
30 where there are between 3 and 12 children being cared
for; or

32 (3) Any location or locations that are operated as a
34 single-day care program or by a single person or
persons when there are more than 12 children being
36 cared for.

38 "Day-care-center" does not include a facility operated as a
nursery school, a facility operated by a home day-care
40 provider or a summer camp established solely for
recreational and educational purposes or a formal public or
42 private school in the nature of a kindergarten or elementary
or secondary school approved by the Commissioner of
44 Education in accordance with Title 20-A.

46 **B. "Home-day-care-provider" means** a person who provides day
care in that person's home on a regular basis, for
48 consideration, for 3 to 12 children under 13 years of age
who are not the children of the provider.

2 1-A. Definitions. As used in this chapter, unless the
3 context otherwise indicates, the following terms have the
4 following meanings.

6 A. "Child care center" means:

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

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

18 B. "Child care facility" means a child care center, small
19 child care facility or nursery school. "Child care
20 facility" does not include a facility operated by a home day
21 care provider, a summer camp established solely for
22 recreational and educational purposes or a formal public or
23 private school in the nature of a kindergarten or elementary
24 or secondary school approved by the Commissioner of
25 Education in accordance with Title 20-A.

26 C. "Home day care provider" means a person who provides day
27 care in that person's home on a regular basis, for
28 consideration, for 3 to 12 children under 13 years of age
29 who are not the children of the provider.

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

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

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

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

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

46 "Nursery school" does not include any facility operated as a
47 child care center or small child care facility licensed
48 under subsection 2, a summer camp established solely for
49 recreational and educational purposes or a public or private
50 facility.

1 school in the nature of a kindergarten approved by the
2 Commissioner of Education, in accordance with Title 20-A.

3
4 E. "Small child care facility" means a house or other
5 place, not the residence of the operator, in which a person
6 or combination of persons maintains or otherwise carries out
7 a regular program, for consideration, for any part of a day
8 providing care and protection for 3 to 12 children under 13
9 years of age.

10
11 **2. Child care facility licensure.** The owner or operator of
12 a day child care center facility shall pay the licensing fee
13 required under section 8303-A. A day child care center facility
14 must be licensed under this chapter and must comply with the
15 rules adopted by the commissioner under section 8302-A and the
16 fire safety requirements of section 8304-A. Except as otherwise
17 provided, a nursery school must meet the requirements of this
18 chapter and chapter 1675.

19
20 **3. Home day care provider certification.** A home day care
21 provider shall pay the certification fee required under section
22 8303-A. A home day care provider must be certified under this
23 chapter and shall comply with the rules adopted by the
24 commissioner under section 8302-A and the fire safety
25 requirements of section 8304-A.

26
27 **4. Complaints.** Upon receipt of a complaint about a
28 licensed day child care center facility or a certified home day
29 care provider and if the department has reasonable cause to
30 suspect that a violation of the licensure or certification
31 requirements has occurred, the department may investigate the
32 complaint and enter the premises at any reasonable time for the
33 purposes of the investigation.

34
35 **5. Administrative suspension.** Whenever conditions exist
36 that immediately jeopardize the health and safety of children,
37 the commissioner may issue an order of closure, which suspends
38 the certification of the home day care provider or the day child
39 care center facility license for up to 10 days, pending further
40 investigation or prior to obtaining an order of emergency
41 suspension from the court. The department shall require that an
42 order of closure be posted at the facility and made public as it
43 determines to be most appropriate for parents and other potential
44 customers.

45
46 **6. Temporary license.** Whenever a certified home day care
47 provider or licensed day child care center facility moves to a
48 new location the department may issue a temporary certificate or
49 license, valid pending final action on the application for the
50 new location by the department, when:

2 A. All applicable standards have been met except a
3 requirement that is dependent on the action of an agency of
4 state-~~government~~ State Government or a contractor of that
5 agency; and

6
7 B. Through no action by the applicant that causes a
8 significant delay, timely issuance of a provisional or full
9 license has been delayed by the agency or contractor.

10
11 **7. Injunctive relief.** The department may seek an
12 injunction to require compliance with the provisions of this
13 section or rules adopted pursuant to this section.

14
15 **8. Rulemaking.** The department shall adopt rules to
16 implement this section. Rules adopted pursuant to this section
17 are routine technical rules as defined by Title 5, chapter 375,
18 subchapter II-A.

19
20 **Sec. 7. 22 MRSA §8302-A**, as corrected by RR 1997, c. 1, §21,
21 is amended to read:

22
23 **§8302-A. Rules for child care facilities and home day care**
24 **providers**

25
26 The commissioner shall adopt rules for day child care
27 ~~centers~~ facilities and home day care providers according to this
28 section. Nursery schools are subject to the requirements of
29 chapter 1675 and this section, except that subsection 1,
30 paragraph F does not apply to nursery schools.

31
32 **1. Rules for child care facilities.** Rules for day child
33 care ~~centers~~ facilities must include, but are not limited to,
34 rules pertaining to the following:

35 A. Child to staff ratios;

36
37 B. The health and safety of the children and staff,
38 including training on communicable diseases;

39
40 C. Water for drinking and cooking;

41
42 D. Wastewater;

43
44 E. Rabies vaccinations for pets;

45
46 F. The quality of the program provided;

47
48 G. The age, criminal record and personal history of the day
49 care provider of care for children and staff members;

2 H. The administration of medication; and

4 I. Licensing procedures.

6 Rules adopted pursuant to this subsection are routine technical
rules pursuant to Title 5, chapter 375, subchapter II-A.

8

10 **2. Rules for home day care providers.** Rules for home day
care providers must include, and are limited to, rules pertaining
to the following:

12

A. Cardiopulmonary resuscitation;

14

B. Water for drinking and cooking;

16

C. Wastewater;

18

D. Rabies vaccinations for pets;

20

E. Recording the times, reasons and numbers of children
involved when more than 12 children are cared for;

22

24 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;

26

28

G. Child to staff ratios;

30

H. Health and safety of the children and staff;

32

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

34

J. The age, criminal record and personal history of the
home day care provider, staff and members of the household.

36

38

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

42

44 **Sec. 8. 22 MRSA §8304-A, sub-§1,** as amended by PL 1997, c.
728, §13, is further amended to read:

46

48 **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 ~~day-care-center,--nursery--school~~ child care

50

2 facility or certified home day care provider complies with
3 applicable fire safety rules adopted pursuant to Title 25,
4 section 2452. The Commissioner of Public Safety shall adopt
5 rules in accordance with the Maine Administrative Procedure Act
6 to implement this subsection. The rules must provide for at
least the following.

8 A. The Commissioner of Public Safety shall issue a fire
9 safety technician certificate to any person who successfully
10 completes a training course established by the Department of
11 Public Safety. A person who receives a fire safety
12 technician certificate pursuant to this paragraph may
13 perform fire safety inspections under this section.

14 B. In addition to ongoing license or certification
15 requirements, inspection and certification are required
16 under this section whenever a ~~day-care-center,--nursery~~
17 ~~school~~ child care facility or certified home day care
18 provider changes or augments a heating system or makes major
19 structural alterations to the ~~center~~ facility or home.

22 **Sec. 9. 22 MRSA §8401**, as amended by PL 1989, c. 700, Pt. A,
23 §98, is further amended to read:

24 **§8401. Definitions**

25 As used in this chapter, unless the context otherwise
26 indicates, the following terms have the following meanings.

27 ~~1. **Children.** "Children" means persons 7 years of age and~~
28 ~~under who are not related by blood or marriage to or who have not~~
29 ~~been legally adopted by the licensee or administrator of the~~
30 ~~nursery school which the children attend.~~

31 ~~2. **Nursery school.** "Nursery school" means a house or other~~
32 ~~place in which a person or combination of persons maintains or~~
33 ~~otherwise carries out for consideration during the day a regular~~
34 ~~program which provides care for 3 or more children, provided~~
35 ~~that: has the same meaning as in section 8301-A, subsection 1-A,~~
36 ~~paragraph D.~~

37 ~~A. No session conducted for the children is longer than 3~~
38 ~~1/2 hours in length;~~

39 ~~B. No more than 2 sessions are conducted per day;~~

40 ~~C. Each child in attendance at the nursery school attends~~
41 ~~only one session per day; and~~

42 ~~D. No hot meal is served to the children.~~

~~This term does not include any facility operated as a day care center, a summer camp established solely for recreational and educational purposes or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20, section 911.~~

Sec. 10. 22 MRSA §8402, sub-§3, as amended by PL 1977, c. 497, §8, is further amended to read:

3. **Requirements.** In order to receive a license from the department, a nursery school shall must meet the requirements of chapter 1673 applicable to nursery schools and the following requirements:

A. ~~Each licensee, administrator or other staff member of the nursery school, who provides care for the children, shall be declared, annually, by a licensed physician to be free from communicable disease. The department shall adopt rules regarding the health of staff as required to protect the health and safety of the children. The rules must include a requirement that every 2 years each licensee, administrator or other staff member of the nursery school who provides care for children be declared free from communicable disease by a licensed physician, except that this requirement may be waived for a person who objects on the grounds of sincerely held religious or philosophical belief. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

B. Drinking water which that is taken from sources other than a public water system shall must pass a test for bacteria, nitrates and nitrites every year and shall must pass a partial chemical test every 4 years.

C. The nursery school shall ~~carry~~ carries minimum liability insurance of \$100,000 per person and \$300,000 per occurrence.

~~D. During any nursery school session there shall be at least one adult present for every 12 children. When only one adult is present, another responsible adult shall be on call and available in case of any emergency.~~

E. The nursery school shall ~~meet~~ meets, annually, the fire safety requirements specified in section 8403, subsection 2.

~~F. The nursery school shall comply with rules and regulations for the administration of medication as established by the department.~~

2 **Sec. 11. 22 MRSA §8402, sub-§6**, as enacted by PL 1975, c. 709,
§2, is amended to read:

4
6 **6. Relationship to licensing of child care facilities.** ~~No~~
~~facility-licensed-as-a~~ A nursery school ~~shall-be-required-to~~ must
8 be licensed as a day child care facility; ~~--but-any-facility~~
~~licensed-as-a-nursery-school-may-also-be-licensed-as-a-day-care~~
10 ~~facility,--if-the-nursery-school-complies-with-the-law-and-rules~~
~~applicable-to-day-care-facilities~~ under chapter 1673.'

12 Further amend the bill by inserting at the end before the
14 summary the following:

16 **·FISCAL NOTE**

18 The Community Services Center in the Department of Human
20 Services will incur some minor additional costs to modify its
22 licensing rules for child care facilities. These costs can be
24 absorbed within the department's existing budgeted resources.'

24 **SUMMARY**

26 This amendment is the minority report of the Joint Standing
28 Committee on Health and Human Services. This amendment replaces
30 the bill. It rewrites the definition of child care facilities,
32 exempts nursery schools from the rules on program quality
 applicable to other child care facilities, and subjects nursery
 school staff to health requirements imposed by law and by rule,
 including annual certifications regarding health. It also adds a
 fiscal note to the bill.