

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 2027

H.P. 1523

House of Representatives, December 26, 2001

### **An Act Regarding Child Care Facility Laws.**

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

Received by the Clerk of the House on December 19, 2001. 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 SIMPSON of Auburn.

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

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

6 E. A day child care facility; or

8 **Sec. 2. 22 MRSA §7801, sub-§1, ¶F**, as amended by PL 1987, c. 389, §3, is repealed.

10 **Sec. 3. 22 MRSA c. 1673** is amended by repealing the chapter headnote and enacting the following in its place:

14 **CHAPTER 1673**

16 **CHILD CARE FACILITIES**

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

20 **§8301-A. Licensure of child care facilities; certification of**  
22 **home day care providers**

24 ~~1.---Definitions.---As---used---in---this---chapter,---unless---the~~  
26 ~~context---otherwise---indicates,---the---following---terms---have---the~~  
~~following-meanings.~~

28 A. ~~"Day-care-center" means:~~

30 ~~{1}---A-house-or-other-place-in-which-a-person-maintains~~  
32 ~~or---otherwise---carries---out---a---regular---program,---for~~  
~~consideration,---for-any-part-of-a-day-providing-care-and~~  
34 ~~protection-for-13-or-more-children-under-13-years-of~~  
~~age;~~

36 ~~{2}---A-facility-that-is-not-part-of-a-person's-own-home~~  
38 ~~where-there-are-between-3-and-12-children-being-cared~~  
~~for;-or~~

40 ~~{3}---Any-location-or-locations-that-are-operated-as-a~~  
42 ~~single-day-care-program-or-by-a-single-person-or~~  
~~persons-when-there-are-more-than-12-children-being~~  
44 ~~cared-for.~~

46 ~~"Day-care-center" does not include a facility operated as a~~  
~~nursery school, a facility operated by a home day care~~  
48 ~~provider or a summer camp established solely for~~  
~~recreational and educational purposes or a formal public or~~  
~~private school in the nature of a kindergarten or elementary~~

2 er--secondary--school--approved--by--the--Commissioner--of  
Education--in--accordance--with--Title--20--A.

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

8  
10 1-A. Definitions. As used in this chapter, unless the  
context otherwise indicates, the following terms have the  
following meanings.

12  
14 A. "Child care center" has the same meaning as in section  
8401, subsection 1-A.

16 B. "Child care facility" means a house or other place in  
which a person maintains or otherwise carries out a regular  
18 program, for consideration, for any part of a day providing  
care and protection for 3 or more children under 13 years of  
20 age. There are 3 types of child care facilities:

22 (1) Child care center;

24 (2) Small child care facility; and

26 (3) Nursery school.

28 "Child care facility" does not include a facility operated  
by a home day care provider or a summer camp established  
30 solely for recreational and educational purposes or a formal  
public or private school in the nature of a kindergarten or  
32 elementary or secondary school approved by the Commissioner  
of Education in accordance with Title 20-A.

34  
36 C. "Nursery school" means a house or other place in which a  
person or combination of persons maintains or otherwise  
38 carries out for consideration during the day a regular  
program that provides care for 3 or more children, provided  
that:

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

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

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

48  
50 (4) No hot meal is served to the children.

2            D. "Small child care facility" has the same meaning as in  
3            section 8401, subsection 3.

4            **2. Child care facility licensure.** The owner or operator of  
5            a ~~day~~ child care ~~center~~ facility shall pay the licensing fee  
6            required under section 8303-A. A ~~day~~ child care ~~center~~ facility  
7            must be licensed under this chapter and must comply with the  
8            rules adopted by the commissioner under section 8302-A and the  
9            fire safety requirements of section 8304-A.

10           **3. Home day care provider certification.** A home day care  
11           provider shall pay the certification fee required under section  
12           8303-A. A home day care provider must be certified under this  
13           chapter and shall comply with the rules adopted by the  
14           commissioner under section 8302-A and the fire safety  
15           requirements of section 8304-A.

16           **4. Complaints.** Upon receipt of a complaint about a  
17           licensed ~~day~~ child care ~~center~~ facility or a certified home day  
18           care provider and if the department has reasonable cause to  
19           suspect that a violation of the licensure or certification  
20           requirements has occurred, the department may investigate the  
21           complaint and enter the premises at any reasonable time for the  
22           purposes of the investigation.

23           **5. Administrative suspension.** Whenever conditions exist  
24           that immediately jeopardize the health and safety of children,  
25           the commissioner may issue an order of closure, which suspends  
26           the certification of the home day care provider or the ~~day~~ child  
27           care ~~center~~ facility license for up to 10 days, pending further  
28           investigation or prior to obtaining an order of emergency  
29           suspension from the court. The department shall require that an  
30           order of closure be posted at the facility and made public as it  
31           determines to be most appropriate for parents and other potential  
32           customers.

33           **6. Temporary license.** Whenever a certified home day care  
34           provider or licensed ~~day~~ child care ~~center~~ facility moves to a  
35           new location the department may issue a temporary license, valid  
36           pending final action on the application for the new location by  
37           the department, when:

38                   A. All applicable standards have been met except a  
39                   requirement that is dependent on the action of an agency of  
40                   ~~state-government~~ State Government or a contractor of that  
41                   agency; and

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

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

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

10           **Sec. 5. 22 MRSA §8302-A**, as corrected by RR 1997, c. 1, §21,  
12 is amended to read:

14           **§8302-A. Rules for child care facilities and home day care  
16 providers**

18           The commissioner shall adopt rules for day child care  
~~centers~~ facilities and home day care providers according to this  
20 section.

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

- 26           A. Child to staff ratios;
- 28           B. The health and safety of the children and staff,  
including training on communicable diseases;
- 30           C. Water for drinking and cooking;
- 32           D. Wastewater;
- 34           E. Rabies vaccinations for pets;
- 36           F. The quality of the program provided;
- 38           G. The age, criminal record and personal history of the day  
child care provider and staff members;
- 40           H. The administration of medication; and
- 42           I. Licensing procedures.

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

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

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

28          Rules adopted pursuant to paragraphs A to F are routine technical  
30           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.

32           **Sec. 6. 22 MRSA §8304-A, sub-§1**, as amended by PL 1997, c.  
34           728, §13, is further amended to read:

36           **1. Inspection required.** As an ongoing condition of  
38           licensure or certification, the Commissioner of Public Safety  
40           must provide at least biennially to the department a written  
42           statement that the ~~day-care-center~~ child care facility, nursery  
44           school or certified home day care provider complies with  
            applicable fire safety rules adopted pursuant to Title 25,  
            section 2452. The Commissioner of Public Safety shall adopt  
            rules in accordance with the Maine Administrative Procedure Act  
            to implement this subsection. The rules must provide for at  
46           least the following.

- 48           A. The Commissioner of Public Safety shall issue a fire  
50           safety technician certificate to any person who successfully  
            completes a training course established by the Department of  
            Public Safety. A person who receives a fire safety

2 technician certificate pursuant to this paragraph may  
perform fire safety inspections under this section.

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

10 **Sec. 7. 22 MRSA §8401**, as amended by PL 1989, c. 700, Pt. A,  
12 §98, is further amended to read:

14 **§8401. Definitions**

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

18 1. **Children.** "Children" means persons 33 months of age or  
20 older and 7 years of age and-under or younger who are not related  
by blood or marriage to or who have not been legally adopted by  
22 the licensee or administrator of the nursery school ~~which~~ that  
the children attend.

24 **1-A. Child care center.** "Child care center" means:

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

32 B. Any location or locations operated as a single child  
care program or by a person or persons when there are more  
34 than 12 children being cared for.

36 2. **Nursery school.** "Nursery school" means a house or other  
place in which a person or combination of persons maintains or  
38 otherwise carries out for consideration during the day a regular  
program which provides care for 3 or more children, provided  
40 that:

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

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

46 C. Each child in attendance at the nursery school attends  
48 only one session per day; and

50 D. No hot meal is served to the children.



2 This term does not include any facility operated as a day child  
3 care center, small child care facility, a summer camp established  
4 solely for recreational and educational purposes or a public or  
5 private school in the nature of a kindergarten approved by the  
6 Commissioner of Education, in accordance with Title 20 20-A,  
7 section-911.

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

15 **Sec. 8. 22 MRSA §8402, sub-§3**, as amended by PL 1977, c. 497,  
16 §8, is further amended to read:

17  
18 **3. Requirements.** In order to receive a license from the  
19 department, a nursery school shall must meet the following  
20 requirements+.

21  
22 ~~A. Each licensee, administrator or other staff member of~~  
23 ~~the nursery school, who provides care for the children,~~  
24 ~~shall be declared, annually, by a licensed physician to be~~  
25 ~~free from communicable disease.~~

26  
27 B. Drinking water which that is taken from sources other  
28 than a public water system shall must pass a test for  
29 bacteria, nitrates and nitrites every year and shall must  
30 pass a partial chemical test every 4 years.

31  
32 C. The nursery school shall ~~carry~~ carries minimum liability  
33 insurance of \$100,000 per person and \$300,000 per occurrence.

34  
35 ~~D. During any nursery school session there shall be at~~  
36 ~~least one adult present for every 12 children. When only one~~  
37 ~~adult is present, another responsible adult shall be on call~~  
38 ~~and available in case of any emergency.~~

39  
40 E. The nursery school shall ~~meet~~ meets, annually, the fire  
41 safety requirements specified in section 8403, subsection 2.

42  
43 ~~F. The nursery school shall comply with rules and~~  
44 ~~regulations for the administration of medication as~~  
45 ~~established by the department.~~

46  
47 **Sec. 9. 22 MRSA §8402, sub-§6**, as enacted by PL 1975, c. 709,  
48 §2, is amended to read:

2           6. Relationship to licensing of child care facilities. No  
3     ~~facility-licensed-as-a~~ A nursery school ~~shall-be-required-to~~ must  
4     be licensed as a day child care facility; ~~but-any-facility~~  
5     ~~licensed-as-a-nursery-school-may-also-be-licensed-as-a-day-care~~  
6     ~~facility-if-the-nursery-school-complies-with-the-law-and-rules~~  
7     ~~applicable-to-day-care-facilities.~~

8

## SUMMARY

10

11           This bill makes the following changes to the laws governing  
12     day care centers and nursery schools. These changes are  
13     necessitated by anticipated changes to the rules governing these  
14     facilities:

16

1. References to "day care center" are changed to "child  
care facility";

18

2. The definition of "children" in the laws governing  
nursery schools, which is based on the age of a child, is changed;

20

22

3. Provisions in the laws governing nursery schools  
regarding communicable diseases, ratios and administration of  
medications are removed; and

24

26

4. The definitions of "day care centers" and "nursery  
school" are changed.