

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1423

S.P. 493

In Senate, April 11, 2017

An Act To Amend Certain Laws Governing Child Care Providers

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator LIBBY of Androscoggin.

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

2 **Sec. 1. 22 MRSA §3736, sub-§4** is enacted to read:

3 **4. Cost of child care.** If the cost of child care exceeds the amount of subsidy for a
4 publicly funded child care program for an otherwise eligible applicant, the applicant may
5 pay the outstanding balance of child care costs after subtracting the amount of subsidy
6 without losing the subsidy.

7 **Sec. 2. 22 MRSA §8301-A, sub-§1-A,** as amended by PL 2009, c. 211, Pt. B,
8 §§20 and 21, is further amended to read:

9 **1-A. Definitions.** As used in this chapter, unless the context otherwise indicates, the
10 following terms have the following meanings.

11 A. "Child care center" means:

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

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

17 B. "Child care facility" means a child care center, small child care facility or nursery
18 school. "Child care facility" does not include a facility operated by a family child
19 care provider, a youth camp licensed under section 2495, programs offering
20 instruction to children for the purpose of teaching a skill such as karate, dance or
21 basketball, a formal public or private school in the nature of a kindergarten or
22 elementary or secondary school approved by the Commissioner of Education in
23 accordance with Title 20-A or a private school recognized by the Department of
24 Education as a provider of equivalent instruction for the purpose of compulsory
25 school attendance. Any program for children under 5 years of age that is located in a
26 private school and programs that contract with one or more Child Development
27 Services System sites are required to be licensed as a child care facility.

28 B-1. "Director" means the individual having responsibility for administering and
29 carrying out the policy of a child care facility. If the child care facility is owned or
30 operated by a corporation or trust, "director" means the individual delegated to carry
31 out or enforce the policies of the child care facility developed by the governing body
32 or trustees of the corporation or trust.

33 C. "Family child care provider" means a person who provides day care in that
34 person's home on a regular basis, for consideration, for ~~3~~ 5 to 12 children under 13
35 years of age who are not the children of the provider or who are not residing in the
36 provider's home. If a provider is caring for children living in that provider's home
37 and is caring for no more than ~~2~~ 4 other children, the provider is not required to be
38 certified as a family child care provider.

39 C-1. "Infant" means a child who has not attained 12 months of age.

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

- 5 (1) No session conducted for the children is longer than 3 1/2 hours in length;
6 (2) No more than 2 sessions are conducted per day;
7 (3) Each child in attendance at the nursery school attends only one session per
8 day; and
9 (4) No hot meal is served to the children.

10 "Nursery school" does not include any facility operated as a child care center or small
11 child care facility licensed under subsection 2, a youth camp licensed under section
12 2495 or a public or private school in the nature of a kindergarten approved by the
13 Commissioner of Education, in accordance with Title 20-A.

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

18 F. "Toddler" means a child 12 months of age or older and under 36 months of age.

19 **Sec. 3. 22 MRSA §8301-A, sub-§2**, as amended by PL 2005, c. 640, §2, is
20 further amended to read:

21 **2. Child care facility licensure.** The owner or operator of a child care facility shall
22 pay the licensing fee required under section 8303-A. A child care facility must be
23 licensed under this chapter and must comply with the rules adopted by the commissioner
24 under section 8302-A and the fire safety requirements of section 8304-A. The
25 department shall make at least one unannounced inspection of a child care facility
26 licensed under this chapter during the term of the license. The inspection must take place
27 between 6 and 18 months after the issuance of the license. If a child care facility licensed
28 under this chapter has been in operation and licensed in good standing for at least 5
29 consecutive years, the department shall issue a license renewal for the term of 5 years.
30 Except as otherwise provided, a nursery school must meet the requirements of this
31 chapter and chapter 1675.

32 **Sec. 4. 22 MRSA §8301-A, sub-§3**, as amended by PL 2005, c. 640, §3, is
33 further amended to read:

34 **3. Family child care provider certification.** A family child care provider shall pay
35 the certification fee required under section 8303-A. A family child care provider must be
36 certified under this chapter and shall comply with the rules adopted by the commissioner
37 under section 8302-A and the fire safety requirements of section 8304-A. The
38 department shall make at least one unannounced inspection of a family child care
39 provider certified under this chapter during the term of the certificate. The inspection
40 must take place between 6 and 18 months after the issuance of the certificate. If a family
41 child care provider certified under this chapter has been in operation and certified in good

1 standing for at least 5 consecutive years, the department shall issue a certification renewal
2 for the term of 5 years.

3 **Sec. 5. 22 MRSA §8301-A, sub-§4**, as amended by PL 2005, c. 530, §7, is
4 further amended to read:

5 **4. Complaints.** Upon receipt of a complaint about a licensed child care facility or a
6 certified family child care provider and if the department has reasonable cause to suspect
7 that a violation of the licensure or certification requirements has occurred, the department
8 may investigate the complaint and enter the premises at any reasonable time for the
9 purposes of the investigation. An investigation under this subsection may involve only a
10 suspected violation related to the complaint and may not involve any other matter unless
11 the department has reasonable cause to investigate another suspected violation.

12 **Sec. 6. 22 MRSA §8302-A, sub-§§3 to 5** are enacted to read:

13 **3. Background checks.** A staff member undergoing a criminal background check
14 under subsection 1, paragraph J, subparagraph (1) or subsection 2, paragraph K,
15 subparagraph (2) may be employed by the child care facility or family child care provider
16 for up to 90 days without a completed criminal background check while the criminal
17 background check is being conducted.

18 **4. Extenuating circumstances.** Rules adopted under subsection 1, paragraph A and
19 subsection 2, paragraph G and rules involving the ages of children, infants or toddlers
20 must provide for extenuating circumstances, including allowing an exception to the rules
21 due to an unexpected absence of a staff member or an unexpected drop-off of a child by a
22 parent or due to the particular needs of an individual child. An extenuating circumstance
23 under this subsection requires the child care facility or family child care provider to
24 document the circumstance and make that documentation available for inspection by the
25 department upon request.

26 **5. Health and safety of children.** All rules adopted under this section must be
27 strictly limited to the health and safety of the children receiving child care services and
28 may not unnecessarily interfere with the unrelated business operations of the child care
29 facility or family child care provider. If a child care facility or family child care provider
30 provides 35 square feet of usable space per child within the premises occupied by the
31 child care facility or child care provider, the child care facility or family child care
32 provider is not required to provide 35 square feet of usable space per child in one room.
33 A rule under this section may not require a child care facility or family child care
34 provider to provide extra clothing for a child, but the child care facility or family child
35 care provider may accept and store extra clothing for a child provided by the child's
36 parent or guardian. A rule adopted under this section may not regulate the physical
37 arrangement of furniture, equipment, instructional posting or other physical feature of a
38 child care facility or the home of a family child care provider unless the rule directly
39 involves a health or safety concern. The department may not require a child care facility
40 to inform the department of a change of director of the child care facility.

41 **Sec. 7. 22 MRSA §8303-A, sub-§1**, as enacted by PL 2009, c. 590, §6, is
42 amended to read:

1 **1. Child care facilities and certified family child care providers.** The department
2 shall adopt rules to establish reasonable fees for both initial licensure or certification and
3 license or certification renewals for child care facilities and certified family child care
4 providers. The license or certification fee for a 5-year license under section 8301-A,
5 subsection 2 or 3 must be 1.5 times the fee for a child care facility or family child care
6 provider that has been in operation and licensed or certified in good standing for less than
7 5 consecutive years. If the department declines a license or certification renewal for a
8 child care facility or family child care provider, the department shall return to the facility
9 or provider all fees collected pursuant to the license or certification renewal. Rules
10 adopted pursuant to this subsection are major substantive rules pursuant to Title 5,
11 chapter 375, subchapter 2-A.

12 **Sec. 8. 22 MRSA §8309** is enacted to read:

13 **§8309. Inspections**

14 **1. Inspection processes.** Prior to an inspection of a child care facility or family
15 child care provider under this chapter, the department shall inform in writing a child care
16 facility or family child care provider of the identity of the department official who is
17 conducting the inspection. Upon an inspection of the child care facility or family child
18 care provider under this chapter, the department official conducting the inspection must
19 immediately contact the on-site manager or individual in charge of the child care facility
20 or family child care provider and inform the manager or individual in charge that an
21 inspection is taking place. Upon contact by a department official inspecting a child care
22 facility or family child care provider under this subsection, the on-site manager or
23 individual in charge of the child care facility or family child care provider may contact an
24 owner, director, board member or other person of authority over the child care facility or
25 family child care provider if the inspection will involve the on-site manager, individual in
26 charge or any other staff member of the child care facility or family child care provider
27 that causes a violation of the required child to staff ratio of the child care facility or
28 family child care provider. Before leaving a child care facility or family child care
29 provider after an inspection of the child care facility or family child care provider, the
30 department official conducting the inspection shall leave with the child care facility or
31 family child care provider a copy of all reports and notes taken by the department official
32 during the inspection.

33 **2. Post-inspection processes; public postings.** An inspection report by the
34 department concerning the inspection of a child care facility or family child care provider
35 may not be posted on a publicly accessible website for at least 2 weeks after an inspection
36 to allow a child care facility or family child care provider to remedy any deficiency or
37 violation identified by the inspection. If a child care facility or family child care provider
38 remedies a deficiency or violation cited by an inspection by the department and provides
39 verifiable documentation of the remedy within 2 weeks of the inspection, the department
40 may not post information of that deficiency or violation in any public posting of the
41 results of the inspection. Any public posting by the department regarding a child care
42 facility or family child care provider must have the purpose of reasonably informing the
43 public of an objectively documented deficiency or violation.

1 8. Requiring department rules to be narrowly based upon the health and safety of the
2 children and not to unreasonably interfere with facility or provider business operations in
3 which the health and safety of the children are not involved;

4 9. Requiring in the instance of the department's declining to renew a license or
5 certification of a child care facility or family child care provider that the renewal fee paid
6 by the facility or provider be refunded;

7 10. Detailing inspection and post-inspection processes including the posting of
8 information regarding a child care facility or family child care provider by the department
9 on a publicly accessible website; and

10 11. Directing the department to develop recommended legislation to create an
11 appeals board composed of members not employed or appointed by the department to
12 review department decisions regarding child care facilities and family child care
13 providers and to develop a child care provider bill of rights.