

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1729

S.P. 693

In Senate, April 20, 2023

An Act to Reduce Child Care Provider Regulation

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MOORE of Washington.

Cosponsored by Senator BRAKEY of Androscoggin, Representative JAVNER of Chester and Senators: GUERIN of Penobscot, KEIM of Oxford, Representative: FREDERICKS of Sanford.

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

2 **Sec. 1. 5 MRSA §12004-G, sub-§5-B** is enacted to read:

3 **5-B.**

4 Child Care Child Care Appeal Review Panel Not Authorized 22 MRSA
5 §8371

6 **Sec. 2. 22 MRSA §3737, sub-§3**, as amended by PL 2021, c. 138, §1, is repealed.

7 **Sec. 3. 22 MRSA §3737, sub-§4**, as enacted by PL 2017, c. 412, §1, is amended to
8 read:

9 **4. Child care rates.** The department shall establish payment rates for child care
10 services that are ~~up~~ at least equal to the 75th percentile of local market rates for the various
11 categories of child care services. The payment rates for child care services for children
12 with special needs ~~may~~ must be higher than the 75th percentile of local market rates.

13 **Sec. 4. 22 MRSA §3737, sub-§5** is enacted to read:

14 **5. Choice of provider.** The recipient of a child care subsidy may pay the difference
15 between the amount of the subsidy provided by the department and the amount charged by
16 a provider of child care services.

17 **Sec. 5. 22 MRSA §3762, sub-§3, ¶B**, as corrected by RR 2021, c. 2, Pt. B, §176,
18 is amended by amending subparagraph (9), division (c) to read:

19 (c) If an ASPIRE-TANF recipient does not respond or notifies the department
20 of the choice to have the child care assistance paid directly to the child care
21 provider from the total benefit package, the department shall pay the child care
22 assistance directly to the designated child care provider for the recipient. The
23 department shall pay the balance of the total benefit package to the recipient.

24 **Sec. 6. 22 MRSA §3762, sub-§3, ¶B**, as corrected by RR 2021, c. 2, Pt. B, §176,
25 is amended by enacting a new subparagraph (9), division (d) to read:

26 (d) An ASPIRE-TANF recipient may choose to pay the difference between
27 the total benefit package and the amount charged by a designated child care
28 provider for child care assistance.

29 If authorized by the ASPIRE-TANF recipient, the department shall notify the
30 designated child care provider of the ASPIRE-TANF recipient's eligibility for
31 child care assistance, any changes to eligibility, including renewals and
32 information requests, and advance notice of no less than 4 weeks of
33 ineligibility.

34 **Sec. 7. 22 MRSA §3762, sub-§8, ¶E**, as repealed and replaced by PL 2017, c. 412,
35 §3, is amended to read:

36 E. The department shall establish payment rates for child care services that are ~~up~~ at
37 least equal to the 75th percentile of local market rates for the various categories of child
38 care services. The payment rates for child care services for children with special needs
39 ~~may~~ must be higher than the 75th percentile of local market rates.

1 **Sec. 8. 22 MRSA §3782-A, sub-§5, ¶A**, as enacted by PL 2017, c. 412, §4, is
2 amended to read:

3 A. The department shall establish payment rates for child care services that are ~~up~~ at
4 least equal to the 75th percentile of local market rates for the various categories of child
5 care services. The payment rates for child care services for children with special needs
6 ~~may~~ must be higher than the 75th percentile of local market rates.

7 **Sec. 9. 22 MRSA §3782-A, sub-§5, ¶C** is enacted to read:

8 C. An ASPIRE-TANF program participant may choose to pay the difference between
9 the total benefit package provided by the department and the amount charged by a
10 designated child care provider for child care assistance.

11 **Sec. 10. 22 MRSA §3931, sub-§10, ¶B**, as enacted by PL 2021, c. 457, §2, is
12 amended to read:

13 B. Must be in good standing with the department's division of licensing and
14 certification; and

15 **Sec. 11. 22 MRSA §3931, sub-§10, ¶C**, as enacted by PL 2021, c. 457, §2, is
16 repealed.

17 **Sec. 12. 22 MRSA §8301-A, sub-§1-A**, as amended by PL 2021, c. 35, §17, is
18 further amended to read:

19 **1-A. Definitions.** As used in this chapter, unless the context otherwise indicates, the
20 following terms have the following meanings.

21 A. "Child care center" means:

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

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

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

38 C. "Family child care provider" means a person who provides day care in that person's
39 home on a regular basis, for consideration, for ~~3~~ 5 to 12 children under 13 years of age
40 who are not the children of the provider or who are not residing in the provider's home.
41 If a provider is caring for children living in that provider's home and is caring for no

1 more than ~~2~~ 4 other children, the provider is not required to be licensed as a family
2 child care provider.

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

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

12 "Nursery school" does not include any facility operated as a child care center or small
13 child care facility licensed under subsection 2, a youth camp licensed under section
14 2495 or a public or private school in the nature of a kindergarten approved by the
15 Commissioner of Education, in accordance with Title 20-A.

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

20 **Sec. 13. 22 MRSA §8301-A, sub-§2**, as amended by PL 2005, c. 640, §2, is further
21 amended to read:

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

33 **Sec. 14. 22 MRSA §8301-A, sub-§3**, as amended by PL 2021, c. 35, §18, is further
34 amended to read:

35 **3. Family child care provider licensure.** A family child care provider shall pay the
36 licensing fee required under section 8303-A. A family child care provider must be licensed
37 under this chapter and shall comply with the rules adopted by the commissioner under
38 section 8302-A and the fire safety requirements of section 8304-A. The department shall
39 make at least one unannounced inspection of a family child care provider licensed under
40 this chapter during the term of the license. The inspection must take place between 6 and
41 18 months after the issuance of the license. A licensed family child care provider that has
42 been continuously in operation for at least 5 years and has completed satisfactory

1 inspections pursuant to this subsection is, at the provider's next renewal, eligible for a
2 license for a term of 5 years.

3 **Sec. 15. 22 MRSA §8301-A, sub-§4**, as amended by PL 2021, c. 35, §19, is further
4 amended to read:

5 **4. Complaints.** Upon receipt of a complaint about a licensed child care facility or
6 family child care provider and if the department has reasonable cause to suspect that a
7 violation of the licensure requirements has occurred, the department may investigate the
8 complaint and enter the premises at any reasonable time for the purposes of the
9 investigation. The inspection may only relate to the complaint.

10 **Sec. 16. 22 MRSA §8302-A, first ¶**, as amended by PL 2005, c. 530, §8, is further
11 amended to read:

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

16 **Sec. 17. 22 MRSA §8302-A, sub-§1, ¶F**, as enacted by PL 1997, c. 494, §10 and
17 affected by §15, is repealed.

18 **Sec. 18. 22 MRSA §8302-A, sub-§2, ¶D-1**, as enacted by PL 2021, c. 35, §22, is
19 repealed.

20 **Sec. 19. 22 MRSA §8357, sub-§5**, as enacted by PL 2015, c. 283, §3, is repealed.

21 **Sec. 20. 22 MRSA c. 1674-A** is enacted to read:

22 CHAPTER 1674-A

23 CHILD CARE APPEAL REVIEW PANEL

24 §8371. Child Care Appeal Review Panel

25 The Child Care Appeal Review Panel, established by Title 5, section 12004-G,
26 subsection 5-B, referred to in this chapter as "the review panel," shall review disputes
27 between the department and a child care facility, as defined in section 8301-A, subsection
28 1-A, paragraph B, a family child care provider as defined in section 8301-A, subsection
29 1-A, paragraph C or a nursery school as defined in section 8301-A, subsection 1-A,
30 paragraph D, collectively referred to in this chapter as "the facility," relating to compliance
31 with licensing complaints and disputes. The review panel may not review investigations
32 of out-of-home child abuse and neglect.

33 **1. Membership.** The review panel has 10 voting members appointed by the Governor
34 as follows:

35 A. Three early childhood professionals;

36 B. One pediatric health care professional;

1 C. One parent of a child in a child care facility as defined in section 8301-A, subsection
2 1-A, paragraph B or family child care provider as defined in section 8301-A, subsection
3 1-A, paragraph C; and

4 D. Five members representing a range of facilities from different geographic areas of
5 the State.

6 The director of the department's Division of Licensing and Regulatory Services or the
7 director's designee shall chair the review panel and is a nonvoting member.

8 **2. Legal counsel.** The Office of the Attorney General shall provide legal counsel for
9 the review panel.

10 **3. Terms.** Voting members of the review panel are appointed for 5-year terms. A
11 voting member of the review panel appointed to fill a vacancy occurring other than by
12 expiration of a term is appointed only for the unexpired term.

13 **4. Duties.** The review panel shall review disputes between the department and a
14 facility. The review panel shall, as it considers necessary, review records and conduct
15 interviews or inspections, make a determination of fault and, if necessary, determine
16 appropriate action to be taken by the department or the facility. Determinations of the
17 review panel subject to appeal in accordance with the Maine Administrative Procedure Act
18 include the following:

19 A. Revocation or suspension of a license to operate a facility;

20 B. Denial of an application for a license to operate a facility;

21 C. Conversion of a license from regular to conditional status;

22 D. Resolution of a dispute between a facility and the department concerning
23 compliance with rules; and

24 E. Denials of alternative compliance requests.

25 **5. Timely review of disputes.** A facility that is aggrieved by a decision by the
26 department shall file a request for the review panel to review the dispute within 30 days of
27 receiving the decision by the department. The review panel shall schedule an initial meeting
28 to review the dispute within 14 days of a request by a facility. A final decision on the
29 dispute must be made no later than 30 days after the review panel has met to review the
30 dispute. Any review conducted by the review panel must be conducted in accordance with
31 Title 5, chapter 375, subchapter 4.

32 **6. Authority.** The department and the facility shall abide by the final decision by the
33 review panel.

34 **Sec. 21. 22 MRSA §9057, sub-§4**, as enacted by PL 2015, c. 299, §25, is amended
35 to read:

36 **4. Conditional employment.** In accordance with subsection 2, an employer may
37 employ an individual as a direct access worker on a conditional basis for up to 60 calendar
38 days, or in a child care facility for up to 90 days, before the employer receives a final
39 background check report or from the date the employer receives a disqualifying
40 background report on the following conditions:

41 A. The employer initiates the background check by entering the individual into the
42 Background Check Center database as a conditionally employed worker;

- 1 B. The individual is not identified in the Background Check Center database as a
2 disqualified person based on an earlier background check;
- 3 C. The individual has agreed to submit to the steps necessary to comply with this
4 chapter, including taking substantial steps toward correcting inaccurate data in the
5 disqualifying background check report if applicable;
- 6 D. The individual signs a statement declaring that a background check will not reveal
7 a disqualifying offense or that an offense that appears is inaccurate;
- 8 E. The employer verifies and documents that the individual has submitted the
9 mandatory identity verification and employment eligibility documents required by
10 rules adopted in accordance with this chapter; and
- 11 F. The individual is subject to direct personal supervision during the course of the
12 conditional employment as described in rules adopted pursuant to this chapter.

13 **Sec. 22. Department of Health and Human Services to develop welfare cliff**
14 **plan.** The Department of Health and Human Services shall develop a plan for a sliding
15 scale of income and subsidy to eliminate the so-called welfare cliff as it relates to child care
16 subsidies so that an individual continues to receive some amount of subsidy for a period of
17 time after reaching certain income thresholds. The department shall report the plan to the
18 Joint Standing Committee on Health and Human Services no later than December 6, 2023.
19 The committee is authorized to report out a bill regarding the plan to eliminate the welfare
20 cliff to the Second Regular Session of the 131st Legislature.

21 **Sec. 23. Department of Health and Human Services to amend child care**
22 **facility rules.** No later than January 1, 2024, the Department of Health and Human
23 Services shall amend its rule in 10-148 C.M.R. Chapter 32, Child Care Facility Licensing
24 Rule-Child Care Centers, Nursery Schools, Small Child Care Facilities, Other Programs
25 to:

- 26 1. Eliminate the requirement for a minimum space of 35 square feet per child;
- 27 2. Allow for extenuating circumstances when child care facilities cannot meet staff-
28 child ratios to allow for unusual circumstances as long as the facility documents the
29 situation;
- 30 3. Change the staff-child ratios as follows: one staff person to 6 infants up to 12 months
31 of age with a maximum of 10 children in the room; one staff person to 7 children 12 months
32 to up to 24 months of age with a maximum of 12 children in the room; one staff person to
33 12 children 24 months to up to 36 months of age with a maximum of 20 children in the
34 room; one staff person to 18 children 36 months to up to 4 years of age with a maximum
35 of 30 children in the room; one staff person to 20 children 4 years to up to 5 years of age
36 with a maximum of 36 children in the room; and one staff person to 25 children 5 years of
37 age and older with no maximum for children in the room. Staff employed on a conditional
38 basis pursuant to the Maine Revised Statutes, Title 22, section 9057, subsection 4 are
39 included as staff for the purpose of calculating the staff-child ratios. The ratio for children
40 of mixed ages should be an average of the groups for staff-child ratios;
- 41 4. Allow for a change in staff-child ratios when a child is within 6 months of the age
42 that would result in lower staff-child ratios as long as the change is developmentally
43 appropriate for the child;

1 5. Remove the authority of the department to post inspection reports and reports of
2 violations on the department's publicly accessible website except for criminal and child
3 abuse reports. Criminal and child abuse reports may be posted only after any appeals
4 process has been completed;

5 6. Require the department to act in a respectful manner when posting or removing a
6 plan to address violations;

7 7. Require the department to provide the child care facility with a copy of all notes
8 relating to an inspection or investigation prior to leaving the facility;

9 8. Allow a child care facility access to all records kept by the department relating to
10 that child care facility at no cost to the facility and in a timely fashion;

11 9. Require the department to notify a child care facility of any information regarding
12 the facility that is shared with parents, the public or the media for any reason, including a
13 freedom of access request or inquiries related to posted or unposted information about the
14 facility;

15 10. Require that persons conducting inspections for the department provide one hour
16 of advance notice to the director and owner of the child care facility of the intention to
17 conduct an inspection;

18 11. Require the department to notify a child care facility if the individual who regularly
19 inspects the facility changes;

20 12. Allow a child care facility license to be issued to a corporation;

21 13. Set licensing fees for 5-year licenses at 150% of the 2-year license fee;

22 14. Require the department to refund a license fee if the department does not issue the
23 license;

24 15. Remove the requirement for the department to be notified of a change in director
25 at a child care facility;

26 16. Remove the requirement for references to be supplied to the department for a
27 license application;

28 17. Remove the requirement for personnel files of the director, owner, administrator,
29 staff members and volunteers to include references;

30 18. Remove the requirement for the child care facility to provide extra clothing for
31 preschool-aged children;

32 19. Remove requirements for the specific types of food provided in child care facilities;

33 20. Remove the requirement that dishes and nursing bottles must be made of
34 unbreakable materials; and

35 21. Remove requirements for staff qualifications at child care facilities.

36 Rules adopted pursuant to this section are routine technical rules as defined in the
37 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

38 **Sec. 24. Department of Health and Human Services to amend family child**
39 **care provider rules.** No later than January 1, 2024, the Department of Health and

1 Human Services shall amend its rule in 10-148 C.M.R. Chapter 33, Family Child Care
2 Provider Licensing Rule to make the following changes:

3 1. Define an infant as 0 months to up to 12 months of age and a toddler as one year to
4 up to 3 years of age for the purposes of staff-child ratios;

5 2. Change the staff-child ratios as follows: one staff person to 6 infants up to 12 months
6 of age with a maximum of 10 children in the room; one staff person to 7 children 12 months
7 to up to 24 months of age with a maximum of 12 children in the room; one staff person to
8 12 children 24 months to up to 36 months of age with a maximum of 20 children in the
9 room; one staff person to 18 children 36 months to up to 4 years of age with a maximum
10 of 30 children in the room; one staff person to 20 children 4 years to up to 5 years of age
11 with a maximum of 36 children in the room; and one staff person to 25 children 5 years of
12 age and older with no maximum for children in the room. The ratio for children of mixed
13 ages should be an average of the groups for staff-child ratios;

14 3. Allow for a change in staff-child ratios when a child is within 6 months of the age
15 that would result in lower staff-child ratios as long as the change is developmentally
16 appropriate for the child;

17 4. Remove the authority of the department to post inspection reports and reports of
18 violations on the department's publicly accessible website except for criminal and child
19 abuse reports;

20 5. Require the department to act in a respectful manner when posting or removing a
21 plan to address violations;

22 6. Require the department to provide the family child care provider with a copy of all
23 notes relating to an inspection or investigation prior to leaving the premises of the family
24 child care provider;

25 7. Allow a family child care provider access to all records kept by the department
26 relating to that family child care provider at no cost to the family child care provider and
27 in a timely fashion;

28 8. Require the department to notify a family child care provider of any information
29 regarding the family child care provider that is shared with parents, the public or the media
30 for any reason, including a freedom of access request or inquiries related to posted or
31 unposted information about the family child care provider;

32 9. Require that persons conducting inspections for the department provide one hour of
33 advance notice to the director and owner of a family child care provider of the intention to
34 conduct an inspection. For a family child care provider, the department must give 2 hours
35 of advance notice to allow the family child care provider to bring in a support witness;

36 10. Require the department to notify a family child care provider if the individual who
37 regularly inspects the family child care provider changes;

38 11. Allow a family child care provider license to be issued to a corporation;

39 12. Set licensing fees for 5-year licensing at 150% of the 2-year license fee;

40 13. Require the department to refund a licensing fee if the department does not issue
41 the license;

1 14. Remove the requirement for references to be supplied to the department for a
2 license application;

3 15. Remove the requirement for the family child care provider to provide extra clothing
4 for preschool-aged children;

5 16. Remove requirements for the specific types of food provided by family child care
6 providers; and

7 17. Remove the requirement that dishes and nursing bottles be made of unbreakable
8 materials.

9 Rules adopted pursuant to this section are routine technical rules as defined in the
10 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

11 **Sec. 25. Staggered terms of Child Care Appeal Review Panel.**
12 Notwithstanding the Maine Revised Statutes, Title 22, section 8371, subsection 3, of the
13 10 members first appointed by the Governor to the Child Care Appeal Review Panel
14 pursuant to Title 22, section 8371, subsection 1, the Governor shall designate one member
15 whose term is one year, one member whose term is 2 years, one member whose term is 3
16 years and one member whose term is 4 years. The remaining members serve 5-year terms.

17 SUMMARY

18 This bill amends the laws related to child care providers as follows.

19 1. It establishes the Child Care Appeal Review Panel to review and make
20 determinations of disputes between the Department of Health and Human Services and a
21 child care facility, family child care provider or nursery school relating to compliance with
22 licensing or certification, complaints and disputes.

23 2. It requires the department to establish payment rates for child care services that are
24 at least equal to the 75th percentile of local market rates and requires that payment rates for
25 child care services for children with special needs be higher than the 75th percentile.

26 3. It establishes a license for a period of 5 years to a child care facility or family child
27 care provider that has been continuously in operation for at least 5 years and has completed
28 satisfactory inspections.

29 4. It limits an inspection as a result of a complaint to the substance of the complaint.

30 5. It authorizes conditional employment for up to 90 days for an individual working in
31 a child care facility.

32 6. It authorizes a recipient of a child care subsidy provided by the department to pay
33 the difference between the amount of the subsidy and the amount charged by the child care
34 provider.

35 7. It amends the definitions of "family child care provider," "nursery school" and
36 "small child care facility" to increase the minimum number of children from 3 to 5.

37 8. It removes the authority of the department to publish certain information regarding
38 an investigation on the department's publicly accessible website.

39 9. It requires the department to develop a plan for a sliding scale of income and subsidy
40 to eliminate the so-called welfare cliff.

1 10. It requires the department to amend its rules for child care facilities and family
2 child care providers in order to change staff-child ratios and change requirements relating
3 to inspections and the licensing process, among other changes.