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No. 1417

S.P. 511

In Senate, April 23, 2013

**An Act To Amend the Laws Governing Certain Human Services
Licensing and Certification Requirements**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
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 HAMPER of Oxford.
Cosponsored by Representative SANDERSON of Chelsea.

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

2 **Sec. 1. 5 MRSA §19508**, as amended by PL 2005, c. 662, Pt. A, §3, is further
3 amended to read:

4 **§19508. Application to residents in children's homes**

5 This chapter also applies to children with disabilities in children's homes, emergency
6 children's shelters, family foster homes, specialized children's homes and children's
7 residential ~~child~~ care facilities, as defined in Title 22, section 8101, and to other
8 residential educational facilities, including the Maine Educational Center for the Deaf and
9 Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities.

10 **Sec. 2. 17-A MRSA §253, sub-§2, ¶G**, as amended by PL 2009, c. 211, Pt. B,
11 §15, is further amended to read:

12 G. The other person, not the actor's spouse, has not attained the age of 18 years and
13 is a resident in or attending a children's home, ~~day child~~ care facility, facility operated
14 by a family child care provider, children's residential ~~child~~ care facility, drug
15 treatment center, youth camp licensed under Title 22, section 2495 or similar school,
16 facility or institution regularly providing care or services for children, and the actor is
17 a teacher, employee or other person having instructional, supervisory or disciplinary
18 authority over the other person. Violation of this paragraph is a Class C crime;

19 **Sec. 3. 20-A MRSA §1, sub-§24-A, ¶¶A and D**, as enacted by PL 1985, c. 789,
20 §§1 and 9, are amended to read:

21 A. An "emergency children's shelter," which is a facility operated by a corporation
22 and licensed for the purpose of providing board and care to no more than 10 children
23 over the age of 12 years, who may be runaways or abused children or whose
24 well-being is jeopardized by some other crisis or emergency, and providing services
25 to a child for not more than 21 consecutive days, except with special permission;

26 D. A "children's residential ~~child~~ care facility," which provides board and care for
27 one or more children on a regular, 24-hours-a-day, residential basis. A children's
28 residential ~~child~~ care facility does not mean family foster home, specialized children's
29 home or an emergency children's shelter ~~facility~~. The term includes, but is not
30 limited to:

31 (1) A "group home," which is a children's residential ~~child~~ care facility operated
32 by a corporation and licensed for the purpose of providing board and care for up
33 to 10 children;

34 (2) A "residential agency," which is a children's residential ~~child~~ care facility
35 operated by a corporation and licensed for the purpose of providing board and
36 care to more than 10 children;

37 (3) A "residential treatment center," which is a children's residential ~~child~~ care
38 facility operated by a corporation and licensed for the purpose of providing
39 ~~therapeutically planned~~ therapeutically planned, group living situations within
40 which educational, recreational, medical and sociopsychotherapeutic components

1 are ~~intergrated~~ integrated for children whose present handicaps preclude
2 community outpatient treatment;

3 (4) A "residential treatment facility," which is a children's residential ~~child~~ care
4 facility operated by a corporation and licensed for the purpose of providing
5 board, care and treatment for more than 10 moderately to severely handicapped
6 children and which does not contain an educational component; and

7 (5) A "therapeutic group home," which is a children's residential ~~child~~ care
8 facility operated by a corporation and licensed for the purpose of providing
9 board, care and treatment for up to 10 moderately to severely handicapped
10 children.

11 **Sec. 4. 20-A MRSA §7001, sub-§8**, as enacted by PL 1981, c. 693, §§5 and 8, is
12 amended to read:

13 **8. Children's residential care facility.** "~~Residential-child~~ Children's residential care
14 facility" is a facility defined in Title 22, section 8101, subsection 4.

15 **Sec. 5. 22 MRSA §1812-K** is enacted to read:

16 **§1812-K. Intermediate care facility for persons with intellectual disabilities**

17 **1. Survey.** A state survey agency shall conduct a survey of each intermediate care
18 facility for persons with intellectual disabilities not later than 15 months after the last day
19 of the previous survey. The statewide average interval between surveys must be 12
20 months or less. The statewide average interval is computed at the end of each federal
21 fiscal year by comparing the last day of the most recent survey for each participating
22 facility to the last day of each facility's previous survey. As used in this section, "state
23 survey agency" means the agency specified in 42 United States Code, Sections 1395aa
24 and 1396 responsible for determining whether institutions and agencies meet
25 requirements for participation in the State's Medicare and Medicaid programs.

26 **2. Rules.** The department shall adopt rules necessary to license intermediate care
27 facilities for persons with intellectual disabilities in accordance with the Maine
28 Administrative Procedure Act. Rules adopted pursuant to this subsection are routine
29 technical rules as defined in Title 5, chapter 275, subchapter 2-A.

30 **Sec. 6. 22 MRSA §7802, sub-§2, ¶B**, as amended by PL 2007, c. 324, §8, is
31 further amended to read:

32 B. The terms of full licenses or approvals are as follows.

33 (1) Except as provided in subparagraphs (2) to (7), the term of all full licenses
34 and approvals issued pursuant to this chapter is for one year or the remaining
35 period of a conditional or provisional license that has been issued for less than
36 one year.

37 (2) The term of a children's residential ~~child~~ care facility license is for 2 years.

38 (3) The term of a drug treatment center license may be for either one or 2 years.

1 (4) The term of a family foster home or specialized foster home license is for 2
2 years.

3 (5) The term of a child care facility license issued under section 8301-A,
4 subsection 2 is for 2 years.

5 (6) The term of a home day care certificate issued under section 8301-A,
6 subsection 3 is for 2 years.

7 (7) The term of an adult day care program license pursuant to chapter 1679 is for
8 either one or 2 years at the discretion of the department.

9 **Sec. 7. 22 MRSA §7853, first ¶**, as amended by PL 2003, c. 673, Pt. V, §2 and
10 affected by §29, is further amended to read:

11 The commissioner shall adopt rules for licensed assisted housing programs. Rules
12 adopted pursuant to this section are ~~major substantive rules as defined in Title 5, chapter~~
13 ~~375, subchapter 2-A, except that rules to establish categories of licensed assisted housing~~
14 ~~programs, including private nonmedical institutions, are~~ routine technical rules as defined
15 in Title 5, chapter 375, subchapter 2-A.

16 **Sec. 8. 22 MRSA §8101**, as amended by PL 2011, c. 186, Pt. A, §1 and c. 187, §1,
17 is further amended to read:

18 **§8101. Definitions**

19 As used in this subtitle, unless the context otherwise indicates, the following terms
20 have the following meanings.

21 **1. Children's home.** "Children's home" means any residence maintained exclusively
22 or in part for the board and care of one or more children under the age of 18. "Children's
23 home" does not include:

- 24 A. A facility established primarily to provide medical care;
- 25 B. A youth camp licensed under section 2495; or
- 26 C. A school established solely for educational purposes except as provided in
27 subsection 4.

28 **2. Emergency children's shelter.** "Emergency children's shelter" means a ~~children's~~
29 ~~home facility~~ that operates to receive children 24 hours a day and that limits placement to
30 30 consecutive days or less. For purposes of this section, the definition of "children"
31 includes a person under ~~the age of~~ 21 years of age. "Emergency children's shelter" does
32 not mean a family foster home or specialized children's home ~~and, if~~. If emergency
33 shelter is a service of provided by a children's residential child care facility, the service is
34 restricted to a designated physical area of the facility.

35 **3. Family foster home.** "Family foster home" means a children's home, other than
36 an Indian foster family home, that is a private dwelling where substitute parental care is
37 provided within a family on a regular, 24-hour a day, residential basis. The total number
38 of children in care may not exceed 6, including the family's legal children under 16 years

1 of age, with no more than 2 of these children under the age of 2. "Family foster home"
2 includes the home of a resource family whether the family provides foster care, kinship
3 care, adoption or permanency guardianship services, as long as the home meets the
4 requirements and standards for adoption of children in foster care. Family foster homes
5 licensed by the Department of Health and Human Services or relatives' homes approved
6 by the Department of Health and Human Services as meeting licensing standards are
7 eligible for insurance pursuant to Title 5, section 1728-A. In any action for damages
8 against a family foster home provider insured pursuant to Title 5, section 1728-A, for
9 damages covered under that policy, the claim for and award of those damages, including
10 costs and interest, may not exceed \$300,000 for any and all claims arising out of a single
11 occurrence. When the amount awarded to or settled for multiple claimants exceeds the
12 limit imposed by this section, any party may apply to the Superior Court for the county in
13 which the governmental entity is located to allocate to each claimant that claimant's
14 equitable share of the total, limited as required by this section. Any award by the court in
15 excess of the maximum liability limit must be automatically abated by operation of this
16 section to the maximum limit of liability. Nothing in this subsection may be deemed to
17 make the operation of a family foster home a state activity nor may it expand in any way
18 the liability of the State or foster parent.

19 **3-A. Indian foster family home.** "Indian foster family home" means a foster home
20 licensed, approved or specified by the Indian child's tribe where substitute parental care is
21 provided for an Indian child as defined in the Indian Child Welfare Act, 25 United States
22 Code, Section 1901, et seq.

23 **4. Children's residential care facility.** ~~"Residential child~~ Children's residential care
24 facility" means a children's ~~home~~ facility that provides board and care for one or more
25 children on a regular, 24-hour a day, residential basis. For purposes of this section, the
26 definition of "children" includes a person under 21 years of age. A children's residential
27 ~~child~~ care facility does not mean a family foster home, a specialized children's home or an
28 emergency children's shelter facility. The term includes, but is not limited to:

- 29 B. An approved treatment facility under Title 5, section 20003, subsection 3;
- 30 C. A drug treatment center under section 8001; ~~and~~
- 31 E. A residential facility under Title 34-B, section 1431-; and
- 32 F. A children's residential treatment facility with secure capacity.

33 **4-A. Shelter for homeless children.** "Shelter for homeless children" means ~~an~~
34 ~~emergency shelter~~ a facility designed to provide for the overnight lodging and supervision
35 of children 10 years of age or older for no more than 30 consecutive overnights. For
36 purposes of this section, the definition of "children" includes a person under 21 years of
37 age.

38 **4-B. Children's residential treatment facility with secure capacity.** ~~"Residential~~
39 Children's residential treatment facility with secure capacity" means a children's ~~home~~
40 residential care facility that provides a mental health intensive treatment program to a
41 child whose diagnostic assessment indicates that the persistent pattern of the child's
42 mental health presents a likely threat of harm to self or others and requires treatment in a

1 setting that prevents the child from leaving the program. For purposes of this section, the
2 definition of "children" includes a person under 21 years of age.

3 **5. Specialized children's home.** "Specialized children's home" means a children's
4 home where care is provided to no more than 4 moderately to severely handicapped
5 children by a caretaker who is specifically educated and trained to provide for the
6 particular needs of each child placed. The total number of children in a specialized
7 children's home may not exceed 4, including the caretaker's legal children under 16 years
8 of age, with no more than 2 children under the age of 2.

9 **Sec. 9. 22 MRSA §8102, sub-§1,** as amended by PL 2003, c. 673, Pt. V, §3 and
10 affected by §29, is further amended to read:

11 **1. Rules.** The department shall adopt rules for the various levels of children's ~~homes~~
12 residential care facilities, including, but not limited to, facilities that are private
13 nonmedical institutions, in conformity with the Maine Administrative Procedure Act,
14 Title 5, chapter 375. Rules adopted pursuant to this section are routine technical rules as
15 defined in Title 5, chapter 375, subchapter 2-A. The rules must be designed to protect the
16 health, safety, well-being and development of children and must include, but are not
17 limited to:

- 18 A. The number and qualifications of staff;
- 19 B. Rights and responsibilities of parents, children and staff;
- 20 C. The nature, provision, documentation and management of programs of care or
21 treatment; and
- 22 D. The physical environment.

23 **Sec. 10. 22 MRSA §8107, sub-§4,** as enacted by PL 2007, c. 320, §1, is amended
24 to read:

25 **4. Parents of children receiving services.** Adult parents may reside with their
26 children in a children's residential ~~child~~ care facility in order to facilitate the care of the
27 child when the department has determined it to be in the best interest of the child.

28 **Sec. 11. 26 MRSA §2164, sub-§3,** as amended by PL 2009, c. 628, §1, is further
29 amended to read:

30 **3. Certification.** Participants who complete training under this section with a
31 ~~200-hour~~ 180-hour curriculum approved by the Department of Health and Human
32 Services to include both theoretical and practical training receive a statewide certificate
33 granted by the Department of Health and Human Services. This certificate or a certificate
34 issued under subsection 4 is required for employment as an activities coordinator in this
35 State after December 31, 1993, except that a person employed as an activities coordinator
36 on October 9, 1991 who has completed a training program approved by the Department
37 of Health and Human Services is not required to obtain a certificate under this section.

1 **SUMMARY**

2 This bill accomplishes the following.

3 1. To comply with federal requirements, it provides that the survey interval may be
4 up to 15 months for intermediate care facilities for persons with intellectual disabilities.

5 2. It requires the Department of Health and Human Services to adopt routine
6 technical rules necessary to license intermediate care facilities for persons with
7 intellectual disabilities.

8 3. It changes the designation for most rules for licensed assisted housing programs
9 from major substantive to routine technical.

10 4. It changes definitions relating to children's homes by replacing the term
11 "residential child care facility" with "children's residential care facility," replacing the
12 term "emergency shelter" with "emergency children's shelter" and replacing the term
13 "residential treatment facility with secure capacity" with "children's residential treatment
14 facility with secure capacity."

15 5. It specifies that the Department of Health and Human Services is required to adopt
16 rules for various levels of children's residential care facilities. Current law requires the
17 department to adopt rules for various levels of children's homes.

18 6. It reduces training requirements for the certification of activity coordinators in
19 long-term care facilities from 200 hours to 180 hours.