

TITLE 22  
CHAPTER 252

LEAD POISONING CONTROL ACT

**§1319-C. Screening for potential lead hazards**

**1. Annual screening required.** The department shall require a child care facility and the premises of a family child care provider as defined in chapter 1673 and a nursery school as defined in chapter 1675 to have an annual screening for potential lead hazards. If potential lead hazards are identified, a full lead inspection must be conducted.

**1-A. Lead-safe status.** A facility found to have lead hazards shall abate or remediate the hazards to at least a lead-safe status.

**2. Exemptions.** A facility may be exempt from subsection 1 if:

- A. The facility was constructed in 1978 or later;
- B. The facility has been certified as lead-safe within the previous 12 months;
- C. The facility has been certified as lead-free; or
- D. The facility does not serve any children under 6 years of age.

**3. Approval dependent on compliance.** As of July 1, 1998, a family child care provider, child care facility or nursery school may not be licensed, registered, **certified** or otherwise approved or receive any state funds unless it is in compliance with this section.

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CHAPTER 602

PUBLIC POOLS AND SPAS

**§2662. Definitions**

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

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**5. Residential swimming pool.** "Residential swimming pool" means any constructed pool that is used for swimming in connection with a single or multifamily residence, used by tenants of apartment buildings, owners of condominiums and members of property owners associations and available only to these residents and their private guests. A pool on the premises of a family child care provider who is **certified** or required to be **certified** under section 8301-A is a residential pool.

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FACILITIES FOR CHILDREN AND ADULTS

CHAPTER 1661

GENERAL PROVISIONS

**§7701. Definitions**

**1. Children.** As used in this subtitle, the word "children" means persons who are not related by blood or marriage to, or who have not been legally adopted by, the licensee or administrator of any facility, defined in section 8101, 8201 or 8301-A, that provides services to these children.

**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-A, paragraph B.

**3. Abuse or neglect.** For purposes of section 7703, "abuse or neglect," in the case of children refers to the definition found in section 4002, subsection 1. In the case of adults, "abuse" and "neglect" refers to the definitions found in section 3472, subsections 1 and 11, and also incorporates exploitation, as defined in section 3472, subsection 9.

**4. Division.** As used in section 7707, "division" means the Department of Health and Human Services, Division of Licensing and Regulatory Services.

**5. Reportable incident.** As used in section 7707, "reportable incident" means:

A. A child's death that occurs while the child is in the care of an entity required to report under section 7707, subsection 1; and

B. An injury or trauma to a child that occurs while the child is in the care of an entity required to report under section 7707, subsection 1 and results in the transportation of the child to a hospital by emergency medical services personnel.

#### §7702-A. Violations; penalties

**1. Criminal penalties.** Except as otherwise provided by law, a person who violates any provision of this subtitle commits a Class E crime.

**2. Civil penalties.** The following penalties apply to the following violations:

A. A person who violates section 7703 or 8603 or rules adopted pursuant to those sections commits a civil violation for which a fine of not more than \$500 may be adjudged.

B. A person who violates rules governing child-to-staff ratios adopted under section 8302-A, subsection 1, paragraph A or subsection 2, paragraph G commits a civil violation for which a fine of not more than \$500 per incident or \$500 per number of children above the limitation set by rule, or both, may be adjudged.

**3. Licensure provisions.** A person who violates the following sections or rules adopted pursuant to those sections is subject to the sanctions provided for under the rules of licensure applicable to the facility, child care facility or family child care provider:

A. Section 7801, subsection 1, paragraph A;

B. Section 8301-A; or

C. Section 8302-A, subsection 1, paragraphs B to J and subsection 2, paragraphs A to F and H to K.

**4. Dedicated funds.** Fines and forfeitures adjudged under this section are payable to the Purchased Social Services Other Special Revenue account.

#### §7702-B. Operating without a license or certificate; violations; penalties

**1. License or certificate required.** A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license:

A. Manage or operate a long-term care facility as defined in chapter 1666-B;

B. Operate a child care facility as defined in section 8301-A, subsection 1-A, paragraph B; or

C. Operate as a family child care provider as defined in section 8301-A, subsection 1-A, paragraph C.

**2. Civil penalties.** A person, firm, partnership, association, corporation or other entity who violates subsection 1 commits a civil violation and is subject to a civil penalty of not less than \$500 nor more than \$10,000 per day. Each day of violation constitutes a separate offense.

**3. Injunctive relief.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of subsection 1.

**4. Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of subsection 1.

**5. Jurisdiction.** The District Court has jurisdiction pursuant to Title 4, section 152 for violations of subsection 1.

**6. Burden of proof.** The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of subsection 1 occurred.

**7. Right of entry.** To inspect the premises of a long-term care facility, child care facility or family child care provider that the department knows or believes is being operated without a license or certificate, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

*Sec. 3 of the bill amends this sub-§*

*Sec. 4 of the bill repeals this sub-§*

*x-refs*



**8. Administrative inspection warrant.** The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed long-term care facility or child care facility or an **uncertified** family child care provider with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with subsection 1. Pursuant to the Maine Rules of Civil Procedure, Rule 80E the department's right of entry and inspection may extend to any premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license or a certificate.

**9. Noninterference.** An owner or person in charge of an unlicensed long-term care facility or child care facility or an **uncertified** family child care provider may not interfere with or prohibit the interviewing by the department of residents or consumers of services.

**10. Violation of injunction.** A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this section shall pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense. In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this section, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.

**11. Rules.** The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§7707. Reportable incidents**

**1. Reporting requirements.** A child care facility licensed pursuant to section 8301-A, subsection 2; a family child care provider **certified** pursuant to section 8301-A, subsection 3; and a nursery school licensed pursuant to section 8402 shall report reportable incidents in accordance with this section.

**2. Notification by next business day.** An entity required to report pursuant to subsection 1 shall submit a division-approved reportable incident form to the division by the next business day after a reportable incident occurred. The form must include at least the following information:

- A. The date of the reportable incident;
- B. The time the reportable incident occurred;
- C. The name of the entity;
- D. The name of the entity's contact person;
- E. A description of the reportable incident;
- F. The condition of the child;
- G. The name of the child;
- H. The action taken by the entity; and
- I. The involvement of a fire or police department, emergency medical services or other entity.

**3. Rules.** The department may adopt rules necessary to implement the reporting of reportable incidents. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## **CHAPTER 1663**

### **LICENSES**

#### **§7801. License or approval required**

**1. License required.** Except as provided in subsection 3 or section 7805, a person, firm, corporation or association may not operate any of the following without having, subject to this Subtitle and to the rules adopted by the department under this Subtitle, a written license from the department:

A. A residential care facility;

A-1. In accordance with subparagraphs (1) and (2), an assisted housing program either directly or by contract providing to its residents any of the following services: personal care assistance, the administration of medication or nursing services.

(1) An assisted housing program may directly provide to its residents meals, housekeeping and chore assistance, case management and personal care assistance delivered on the site of congregate housing without obtaining a separate license to do so.

(2) An assisted housing program licensee may hold at any one time only one license under this subsection. A qualified assisted housing program may obtain a license for a different category under this subsection, upon application and surrender of the previous license;

B. A drug treatment center;

C. A children's home;

D. A child placing agency;

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

F.

G. An adult day care program.

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## §7802. Issuance of license or approval

**1. Types of license or approval.** The department shall issue the following types of licenses.

A. A provisional license or approval shall be issued by the department to an applicant who:

(1) Has not previously operated the facility for which the application is made or is licensed or approved but has not operated during the term of that license or approval;

(2) Complies with all applicable laws and rules, except those which can only be complied with once clients are served by the applicant; and

(3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license or approval term.

B. The department shall issue a full license or approval to an applicant who complies with all applicable laws and rules.

C. A conditional license or approval may be issued by the department when the individual or agency fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license or approval. The conditional license or approval shall specify when and what corrections must be made during the term of the conditional license or approval.

D. A temporary license to operate a family foster home may be issued on a one-time basis when a preliminary evaluation of the home by the department has determined that the applicants are capable of providing foster care, in accordance with applicable laws and rules relating to minimum standards of health, safety and well-being, except that it is not possible to obtain a fire safety inspection in accordance with section 8103 prior to licensure and there are no obvious fire safety violations and, in the judgment of the commissioner, the best interest of the public will be so served by issuing a temporary license.

E. A 2-year full license may be issued by the department for a residential care facility or a congregate housing service program as long as it is in substantial compliance with licensing rules and has no history of health or safety violations.

**1-A. Consolidation of functions.** All staff performing general licensing functions within the Office of Child and Family Services, including the out-of-home abuse and neglect investigating team when investigating pursuant to section 5005, subsection 3, paragraph C, shall be consolidated as a single organizational unit.

*Sec. 14  
of the bill  
amends  
sub-¶(6)*

## **2. Term of license or approval; compliance visits.**

A. The provisional license or approval shall be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the department, not to exceed 12 consecutive months.

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

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

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

(3) The term of a drug treatment center license is for 2 years.

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

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

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

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

C. The conditional license shall be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the department determines appropriate based on the laws and rules violated.

C-1. The term of a temporary family foster home license shall be for a specific period not to exceed 120 days.

D. The department shall inspect for continued compliance with applicable laws and rules prior to the expiration of the license or approval.

E. Residential care facilities and congregate housing services programs for which a license has been issued must be periodically inspected for continued compliance with applicable laws and rules under the rules to be established by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**3. Failure to comply with applicable laws and rules.** In taking action pursuant to this subsection, the department shall notify the licensee of the opportunity to request an administrative hearing or shall file a complaint with the District Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

A. When an applicant fails to comply with applicable law and rules, the department may refuse to issue or renew the license or approval.

B. If, at the expiration of a full or provisional license or approval, at the expiration of a temporary family foster home license or during the term of a full license or approval, the facility fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be served, the department may issue a conditional license or approval, or change a full license or approval to a conditional license or approval. Failure by the conditional licensee to meet the conditions specified by the department shall permit the department to void the conditional license or approval or refuse to issue a full license or approval. The conditional license or approval shall be void when the department has delivered in hand or by certified mail a written notice to the licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term "licensee" means the person, firm, corporation or association to whom a conditional license or approval has been issued.

C. Whenever, upon investigation, conditions are found which, in the opinion of the department, immediately endanger the health or safety of persons living in or attending a facility, the department may request the District Court for an emergency suspension pursuant to Title 4, section 184, subsection 6.

D. Any license or approval issued under this subtitle may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending the facility.

When the department believes that a license or approval should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5, chapter 375.

**4. Subsequent application for a full license or approval.** Subsequent to any of the following actions, a subsequent application for a full license or approval may be considered by the department when the deficiencies identified by the department have been corrected:

- A. Issuance of a conditional license or approval;
- B. Refusal to issue or renew a full license or approval;
- C. Revocation or suspension of a full license or approval;
- D. Refusal to issue a provisional license or approval; or
- E. Expiration of a temporary family foster home license.

**5. Appeals.** Any person aggrieved by the department's decision to take any of the following actions, may request an administrative hearing, as provided by the Maine Administrative Procedure Act, Title 5, chapter 375:

- A. Issue a conditional license or approval;
- B. Amend or modify a license or approval;
- C. Void a conditional license or approval;
- D. Refuse to issue or renew a full license or approval;
- E. Refuse to issue a provisional license or approval; or
- F. Refuse to issue a temporary family foster home license.

**6. Time limit on reapplication after denial or revocation.** The following time limit applies to a reapplication after denial or revocation.

- A. When a license or certificate for a child care facility or a family child care provider has been denied or revoked on one occasion, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of one year from the effective date of the denial or revocation decision if not appealed, or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.
- B. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of 2 years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.
- C. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 3 occasions, the applicant or licensee may not receive another license or certificate for the care of children.

**7. Rules.** The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## CHAPTER 1673

### CHILD CARE FACILITIES

#### §8301-A. Licensure of child care facilities; **certification** of family child care providers

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

A. "Child care center" means:

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

x-refs



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

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

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

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

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

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

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

**2. Child care facility licensure.** The owner or operator of a child care facility shall pay the licensing fee required under section 8303-A. A child care facility must be licensed under this chapter and must comply with the rules adopted by the commissioner under section 8302-A and the fire safety requirements of section 8304-A. The department shall make at least one unannounced inspection of a child care facility licensed under this chapter during the term of the license. The inspection must take place between 6 and 18 months after the issuance of the license. Except as otherwise provided, a nursery school must meet the requirements of this chapter and chapter 1675.

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

**4. Complaints.** Upon receipt of a complaint about a licensed child care facility or a **certified** family child care provider and if the department has reasonable cause to suspect that a violation of the licensure or certification requirements has occurred, the department may investigate the complaint and enter the premises at any reasonable time for the purposes of the investigation.

**5. Administrative suspension.** Whenever conditions exist that immediately jeopardize the health and safety of children, the commissioner may issue an order of closure, which suspends the **certification** of the family child care provider or the child care facility license for up to 10 days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The department shall require that an order

of closure be posted at the facility and made public as it determines to be most appropriate for parents and other potential customers.

**6. Temporary license.** Whenever a **certified family child care provider** or licensed child care facility moves to a new location the department may issue a temporary **certificate** or license, valid pending final action on the application for the new location by the department, when:

- A. All applicable standards have been met except a requirement that is dependent on the action of an agency of State Government or a contractor of that agency; and
- B. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor.

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### **§8302-A. Rules for child care facilities and family child care providers**

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

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

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G.
- H. The administration of medication;
- I. Licensing procedures; and
- J. Requiring a criminal background check that meets the requirements of 42 United States Code, Section 9858f(b) for each child care staff member. For the purposes of this paragraph, "child care staff member" means an individual:

- (1) Who is employed by a child care facility for compensation, including a contract employee or self-employed individual; or
- (2) Whose activities involve the care or supervision of children for a child care facility or unsupervised access to children who are cared for or supervised by a child care facility.

"Child care staff member" does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the child care facility who does not have unsupervised access to children who are cared for or supervised by the child care facility.

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

**2. Rules for family child care providers.** Rules for family child care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;
- B. Water for drinking and cooking;



Secs 22 &  
23 enact  
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x-refs



- C. Wastewater;
- D. Rabies vaccinations for pets;
- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- 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;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of **certification**; and
- J.
- K. Requiring a criminal background check that meets the requirements of 42 United States Code, Section 9858f(b) for a family child care provider and each child care staff member. For the purposes of this paragraph, "child care staff member" means an individual:
  - (1) Who is employed by a family child care provider for compensation, including a contract employee or self-employed individual;
  - (2) Whose activities involve the care or supervision of children for a family child care provider or unsupervised access to children who are cared for or supervised by a family child care provider; or
  - (3) Who is 18 years of age or older and who resides in the home of a family child care provider.

"Child care staff member" does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the home of a family child care provider who does not have unsupervised access to children who are cared for or supervised by the family child care provider.

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to K are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

**3. Payment for criminal background checks.** Fees for the criminal background checks required for a child care staff member pursuant to subsection 1, paragraph J and subsection 2, paragraph K must be paid by the department from the funds available under the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. The fees for the criminal background checks reimbursed under this subsection may not exceed the actual costs for processing and administration.

#### **§8302-B. Providers subject to standards**

A person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds is not required to be **certified** as a family child care provider pursuant to section 8301-A but is subject to the provisions of this section.

**1. Investigation.** A person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds and a child care staff member, as defined in section 8302-A, subsection 2, paragraph K, of the person must pass a criminal background check pursuant to section 8302-C that meets the requirements of 42 United States Code, Section 9858f(b).

**1-A. Payment for criminal background checks.** Fees for and costs related to processing and administering criminal background checks required for a child care staff member pursuant to subsection 1 must be paid by the department from the funds available under the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. The fees for and costs related to processing and administering criminal background checks reimbursed under this subsection may not exceed the actual costs for processing and administration. A transfer of payment by the department to the Department of Public Safety from the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105 must be made pursuant to a schedule agreed upon by the department and the Department of Public Safety, in

consultation with the State Controller, and based on documentation of fees and processing and administration costs incurred.

**2. Information provided by department.** The department shall supply providers with information on the following topics:

- A. Health and safety, including the control of communicable disease, and immunization requirements;
- B. Physical premises safety; and
- C. Training opportunities in health and safety, first aid and cardiopulmonary resuscitation and early care and education.

**3. Authority to inspect.** The department has the authority to inspect the premises of the person providing the care.

### **§8302-C. Investigation**

A child care provider and any child care staff member subject to a criminal background check pursuant to sections 8302-A and 8302-B must pass a background check conducted in accordance with this section and rules adopted by the department under section 8302-A. As used in this section, "child care provider" means a person who provides child care in a child care facility, a family child care provider and a person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds. As used in this section, "child care staff member" has the same meaning as described in section 8302-A, subsection 1, paragraph J and section 8302-A, subsection 2, paragraph K.

**1. Investigation.** In accordance with the rules adopted by the department, the department shall request a criminal background check for a child care provider and child care staff members of the child care provider. The criminal background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation. The following provisions apply.

- A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.
- B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.
- C. A person subject to a criminal background check under this section shall submit to having fingerprints taken. The State Police, upon payment of the fee, shall take or cause to be taken the person's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.
- D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.
- E. State and federal criminal history record information may be used by the department for the purpose of screening a child care provider or child care staff member in accordance with this chapter.
- F. Information obtained pursuant to this subsection is confidential. The results of criminal background checks received by the department are for official use only and may not be disseminated to any other person or entity.
- G. If a person is no longer subject to this chapter that person may request in writing that the State Bureau of Identification remove the person's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the person's fingerprints from the fingerprint file and provide written confirmation of that removal.

The department, with the State Bureau of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## §8303-A. Fee for licenses

1. **Child care facilities and certified family child care providers.** The department shall adopt rules to establish reasonable fees for both initial licensure or certification and license or certification renewals for child care facilities and certified family child care providers. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

2. **Nursery schools.** The department shall adopt rules to establish reasonable initial and renewal licensing fees for nursery schools that may not exceed \$40 for an initial or renewal license. The department may adopt rules necessary to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## §8304-A. Fire safety

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 child care facility or certified family child 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 least the following.

A. The Commissioner of Public Safety shall issue a fire 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 technician certificate pursuant to this paragraph may perform fire safety inspections under this section.

B. In addition to ongoing license or certification requirements, inspection and certification are required under this section whenever a child care facility or certified family child care provider changes or augments a heating system or makes major structural alterations to the facility or home.

2. **Fees.** The department shall establish and pay reasonable fees to the Department of Public Safety for services rendered under this section. Fees collected by the Department of Public Safety under this section must be deposited into a special revenue account to carry out the purposes of this section. A balance remaining in the account at the end of the fiscal year may not lapse but must be carried forward into subsequent fiscal years.

3. **Inspectors.** The Commissioner of Public Safety may appoint subject to the Civil Service Law employees needed to carry out the purposes of this section. A person appointed pursuant to this subsection is under the administrative and supervisory direction of the Commissioner of Public Safety.

## CHAPTER 1674

### INVESTIGATION OF OUT-OF-HOME CHILD ABUSE AND NEGLECT

#### §8351. Short title

This chapter may be known and cited as "the Investigation of Out-of-home Child Abuse and Neglect Act."

#### §8352. Definitions

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

1. **Abuse or neglect.** "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or Title 20-A, section 5051-A, subsection 1, paragraph C by a person responsible for the child.

2. **Child.** "Child" means any person who is less than 18 years of age.

3. **Custodian.** "Custodian" means the person who has legal custody and power over the person of a child.

4. **Division.** "Division" means the division of licensing and regulatory services within the department.

5. **Family foster home.** "Family foster home" has the same meaning as set out in section 8101, subsection 3.

6. **Jeopardy.** "Jeopardy" means serious abuse or neglect, as evidenced by:

A. Serious harm or threat of serious harm;

- B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6;
- C. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;
- D. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or
- E. Other situations of serious abuse or neglect.

**7. Licensed.** "Licensed" means holding the whole or any part of any permit, certificate, approval, registration, charter or similar form of permission required by law that represents an exercise of the State's regulatory or police powers.

**8. Office.** "Office" means the Office of Child and Family Services in the department.

**9. Out-of-home child abuse or neglect investigation team; investigation team.** "Out-of-home child abuse or neglect investigation team" or "investigation team" means individuals employed by the division to investigate allegations of out-of-home child abuse or neglect.

**10. Out-of-home child abuse or neglect.** "Out-of-home child abuse or neglect" means child abuse or neglect that occurs in a facility or by a person subject to licensure or inspection by the department, the Department of Education or the Department of Corrections or in a facility operated by any of these departments.

**11. Person.** "Person" means an individual, corporation, facility, institution, public or private agency or similar entity.

**12. Person responsible for the child.** "Person responsible for the child" means a person with responsibility for a child's health or welfare including a licensed facility that as part of its function provides for the care of the child.

**13. Resource family.** "Resource family" has the same meaning as in section 4002, subsection 9-D.

**14. Runaway.** "Runaway" has the same meaning as in section 4099-D, subsection 3.

**15. Serious harm.** "Serious harm" means:

- A. Serious injury;
- B. Serious mental or emotional injury or impairment that now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or
- C. Sexual abuse or exploitation.

**16. Serious injury.** "Serious injury" means serious physical injury or impairment.

**17. Suspicious child death.** "Suspicious child death" means the death of a child under circumstances in which there is reasonable cause to suspect that abuse or neglect was a cause of or factor contributing to the child's death.

### **§8353. Investigation team**

**1. Investigation team established.** The investigation team is established within the division to investigate reports of suspected abuse or neglect of children by persons or in facilities subject to department licensure in accordance with this chapter.

**2. Participation with other departments.** The investigation team, on its own or upon request, may assist and participate with another department or agency charged with the responsibility to investigate child abuse or neglect, including the Department of Education or the Department of Corrections.

**3. Addition of relevant professionals.** The investigation team shall include, as appropriate, relevant professionals to participate as members of the investigation team for investigations of residential treatment centers, group homes, **certified** family child care providers or child care facilities.

**4. Assistance by licensing staff.** Upon the request of the division, department staff that performs general licensing functions may assist the investigation team in conducting out-of-home child abuse or neglect investigations.

**5. Consultation with law enforcement and others.** The investigation team may consult with law enforcement personnel, advocates and others in the investigation of out-of-home child abuse or neglect.

**6. Results.** The investigation team shall provide the results of its investigation to the applicable department for appropriate action.

**7. Investigation team training.** The investigation team shall receive training in the following:

- A. Child development;
- B. Identification of abuse and neglect;
- C. Interview techniques, including but not limited to techniques for interviewing children who are nonverbal or have limited verbal ability;
- D. Licensing laws and rules applicable to facilities or persons subject to this chapter; and
- E. Remedies available to prevent, correct or eliminate abuse and neglect in out-of-home settings.

#### **§8354. Duties of the investigation team**

The duties of the investigation team include but are not limited to the following.

**1. Receive reports of alleged abuse or neglect.** The investigation team shall receive reports of alleged out-of-home abuse, neglect or suspicious child death under circumstances set out in this chapter.

A. When the investigation team receives a report that alleges abuse or neglect in facilities or by persons not subject to licensure by the department, the investigation team shall immediately refer the report to the agency or department charged with the responsibility to investigate such a report.

B. When the investigation team receives a report that alleges out-of-home abuse or neglect in a residential care facility, the team shall use the facility's name as the identifier.

C. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected abuse or neglect is confidential.

**2. Investigate.** The investigation team shall investigate reported out-of-home abuse or neglect or suspicious child death.

A. The investigation team shall complete an investigation within 90 days from the date that the investigation was initiated, except in circumstances when the information necessary to complete the investigation is unavailable to the investigation team.

B. The investigation team's investigation of a report that alleges jeopardy to a child in a residential care facility must be initiated within 3 business days of the date of receipt of the report. If the investigation team cannot initiate its investigation within 3 business days, the investigation team shall request a safety plan from the facility.

C. To minimize redundant department investigations in response to the same or related allegations of out-of-home abuse or neglect, the investigation team shall conduct a single investigation sufficient to determine whether abuse or neglect occurred and whether a licensing violation has occurred. The investigation team shall coordinate and consult with the department entity that performs general licensing functions.

D. The investigation team shall refer allegations of criminal activity to the office of the district attorney or the Office of the Attorney General when appropriate and shall coordinate its investigation with the office to which allegations are referred to minimize trauma to the child or children involved.

E. The investigation team's investigation of a suspicious child death is subject to and may not interfere with the authority and responsibility of the Office of the Attorney General to investigate and prosecute homicides pursuant to Title 5, section 200-A.

F. The investigation team shall conduct interviews as needed to investigate allegations and determine if abuse or neglect has occurred.

(1) The investigation team shall conduct interviews of a child involved in the alleged abuse or neglect in a manner that is in the best interest of the child.

(2) The investigation team shall notify the parent, guardian or legal custodian of a child prior to initiating an interview of the child except under circumstances in which prior notification is not in the child's best interest.

(3) The investigation team shall conduct an interview of a child without prior notification in accordance with section 4021, subsection 3 and rules adopted pursuant to this chapter.

G. The investigation team, to the extent possible, shall record interviews using audio or video in accordance with applicable rules adopted by the department and pursuant to section 4021.

(1) Information collected in an interview that was not recorded may not be excluded from use in court proceedings solely because the interview was not recorded.

(2) A person being questioned or interviewed under this chapter may not be prohibited from recording the questioning or interview.

H. Notwithstanding Title 20-A, section 6101, subsection 2, when the investigation team is conducting an investigation of a person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is subject to licensure by the Department of Education, the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and the Department of Education shall disclose the following information to the investigation team:

(1) Background checks related to the person;

(2) The person's credentials;

(3) Any conduct on the part of the person related to the allegation; and

(4) Any action taken by the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf or the Department of Education in response to conduct of any person at the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that is similar to the allegation.

**3. Investigative powers of commissioner.** The following are investigative powers of the commissioner.

A. The commissioner may issue a subpoena requiring a person to disclose or provide to the department information or records in that person's possession that are necessary and relevant to an investigation of a report of suspected out-of-home child abuse or neglect or suspicious child death.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.

(3) Information or records obtained by subpoena must be treated in accordance with section 7703.

B. The commissioner may obtain confidential criminal history record information and other criminal history record information under Title 16, chapter 7 that the commissioner considers relevant to an investigation of out-of-home child abuse or neglect or a suspicious child death.

**4. Determination of harm.** The investigation team shall determine whether or not a child has been harmed, in which case the investigation team shall determine the degree of harm or threatened harm by a person responsible for the care of that child.

A. In the case of a suspicious child death, the investigation team shall determine:

(1) Whether abuse or neglect was a cause or factor contributing to the child's death; and

(2) The degree of threatened harm to any other child for whom the person or persons responsible for the deceased child may be responsible now or in the future.

**5. Issue a decision.** The investigation team shall issue a written decision that an allegation of abuse or neglect is unsubstantiated, indicated or substantiated. Each allegation of abuse or neglect must be considered separately. The written decision must include at least the following:

A. The factors supporting an indicated or substantiated decision;

B. The identity of the person or persons responsible in the case of an indicated or substantiated decision; and

C. The person's right to appeal the department's indicated or substantiated decision pursuant to paragraph B.

**§8355. Right to hearing; appeal**

A person who is the subject of the decision in section 8354, subsection 4 has the right to a hearing to appeal an indicated or substantiated finding of out-of-home child abuse or neglect in accordance with the provisions of the Maine Administrative Procedure Act.

### **§8356. Entities subject to investigation**

Reported child abuse or neglect that occurs in the following out-of-home entities is subject to investigation by the investigation team.

**1. Facility or person licensed by department; facility operated or funded by department.** Abuse or neglect that occurs in a facility or by a person licensed by the department or in a facility operated or funded by the department is subject to investigation by the investigation team, including, but not limited to, abuse or neglect that occurs in the following:

- A. A child care facility licensed pursuant to section 8301-A, subsection 2;
- B. A family child care provider **certified** pursuant to section 8301-A, subsection 3;
- C. A nursery school licensed pursuant to section 8402;
- D. A children's residential care facility licensed pursuant to chapter 1669;
- E. An emergency children's shelter licensed pursuant to chapter 1669;
- F. A shelter for homeless children licensed pursuant to chapter 1669;
- G. A licensed family foster home as defined in section 8101, subsection 3, including, but not limited to, the home of a resource family that provides foster care, kinship care or adoption or permanency guardianship services;
- H. An unlicensed relative's home approved by the department as meeting licensing standards; and
- I. An unlicensed provider for children with cognitive impairments and functional limitations that is funded by the department pursuant to rules adopted by the department.

**2. Unlicensed person or facilities.** The investigation team may investigate a person or facility described in subsection 1 if the person or facility is not licensed or **certified**.

### **§8357. Records; confidentiality; disclosure**

Except as otherwise provided by law and the provisions of this chapter, records that are made, acquired or retained by the department in connection with its responsibilities under this chapter are subject to the provisions set out in section 7703.

**1. Disclosure; report of abuse or neglect.** Notwithstanding section 7703, subsection 2, paragraph B, the department may disclose a statement indicating whether or not a report of out-of-home child abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the investigation team, upon the conclusion of the investigation.

**2. Notification of parent, guardian or custodian of child reported to be abused.** When a report is received of child abuse or neglect in a facility or program described in section 8356, the investigation team may notify the child's parent, guardian or custodian that it has been reported that the child has been allegedly abused or neglected, whether an investigation is being conducted and, upon conclusion of the investigation, whether the investigation team determined that the allegations are supported or not supported.

**3. Notification of parents, guardians or custodians of children in facility.** When a report is received of child abuse or neglect in a facility or program described in section 8356, the investigation team, upon conclusion of the investigation, may notify a parent, guardian or custodian who has a child in the program or facility for whom there is no report of abuse or neglect whether the investigation team determined that a violation of law or rules adopted by the department has occurred.

**4. Disclosure to facility or program.** The investigation team shall notify a facility or program described in section 8356 when there is an indicated or substantiated finding of abuse or neglect against an employee of the facility or program.

**5. Disclosure of investigation.** The department may publish information regarding an investigation conducted pursuant to this chapter on the department's publicly accessible website upon the conclusion of an investigation in accordance with rules adopted by the department.

## §8358. Rules

The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules may include but are not limited to establishing the factors that support unsubstantiated, indicated and substantiated findings.

### Title 24-A (Insurance)

#### §3060. Insurance coverage for family child care providers

**1. Evidence of business liability insurance.** An insurer may not refuse to issue or renew a policy covering the primary residence of a family child care provider **certified** under Title 22, section 8301-A, subsection 3 or cancel such policy within the first 90 days of coverage unless the denial of coverage or cancellation is based solely on underwriting factors other than the presence of a family child care business on the premises if the family child care provider has demonstrated satisfactory evidence that the child care business is covered by separate insurance coverage for business liability, including medical payments coverage equivalent to coverage in the policy. For purposes of cancellation or nonrenewal under section 3049 or 3051, an insurer may not treat the presence of the family child care business activity as a factor related to the insurability of the primary residence of a family child care provider **certified** under Title 22, section 8301-A, subsection 3 if the family child care provider has demonstrated satisfactory evidence that the child care business is covered by separate insurance coverage for business liability in accordance with this subsection.

**2. No liability under property insurance policy.** An insurer has no duty to defend or indemnify a family child care provider **certified** under Title 22, section 8301-A, subsection 3 under a policy covering the primary residence of a family child care provider issued by the insurer if:

- A. The loss or damage for which the family child care provider is liable or alleged to be liable arises in whole or in part from the family child care business activity;
- B. The policy issued by the insurer expressly excludes that loss or damage arising from the family child care business activity;
- C. The family child care provider has demonstrated satisfactory evidence of separate insurance coverage for child care business liability in accordance with subsection 1; and
- D. The insurer issuing the policy covering the primary residence has disclosed to the family child care provider that failure to maintain separate insurance coverage for child care business liability might result in cancellation or nonrenewal of the policy covering the primary residence and that the child care business activity is excluded under the policy.

**3. Effect of cancellation or nonrenewal of business liability policy.** If a family child care provider has demonstrated satisfactory evidence of separate insurance coverage for child care business liability to the insurer as provided in subsection 2, paragraph C, the insurer issuing the policy covering the primary residence continues to have no duty to defend if the insurance policy for child care business liability is cancelled or nonrenewed during the term of the policy covering the primary residence.