

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.

[PL 1997, c. 494, §4 (AMD); PL 1997, c. 494, §15 (AFF).]

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.

[PL 2001, c. 645, §2 (AMD).]

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.

[PL 1985, c. 437, §3 (NEW).]

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

[PL 2015, c. 278, §1 (NEW).]

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 [PL 2015, c. 278, §1 (NEW).]

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. [PL 2015, c. 278, §1 (NEW).]

[PL 2015, c. 278, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 719, §6 (NEW). PL 1985, c. 437, §3 (AMD). PL 1989, c. 502, §A80 (AMD). PL 1997, c. 494, §§4,5 (AMD). PL 1997, c. 494, §15 (AFF). PL 2001, c. 645, §2 (AMD). PL 2015, c. 278, §1 (AMD).

§7702. Violation; penalty

(REPEALED)

SECTION HISTORY

PL 1975, c. 719, §6 (NEW). PL 1981, c. 309, §1 (AMD). PL 1983, c. 691, §1 (AMD). PL 1987, c. 389, §1 (AMD). PL 1987, c. 774, §3 (AMD). PL 1997, c. 494, §6 (AMD). PL 1997, c. 494, §15 (AFF). PL 1999, c. 363, §2 (RP).

§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.

[PL 1999, c. 363, §3 (NEW).]

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. [PL 2003, c. 452, Pt. K, §27 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

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. [PL 2003, c. 452, Pt. K, §27 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who violates the following sections or rules adopted pursuant to those sections commits a civil violation for which a fine of not more than \$500 per incident may be adjudged:

(1) Section 7801, subsection 1, paragraph A;

(2) Section 8301-A; or

(3) Section 8302-A, subsection 1, paragraphs B to J and subsection 2, paragraphs A to F and H to K. [PL 2021, c. 35, §3 (NEW).]

A civil violation under this subsection must be enforced pursuant to Title 17-A, section 4-B. [PL 2021, c. 35, §3 (AMD).]

3. Licensure provisions.

[PL 2021, c. 35, §4 (RP).]

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

[PL 1999, c. 363, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 363, §3 (NEW). PL 2003, c. 452, §K27 (AMD). PL 2003, c. 452, §X2 (AFF). PL 2005, c. 530, §6 (AMD). PL 2015, c. 497, §1 (AMD). PL 2021, c. 35, §§3, 4 (AMD).

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

1. License 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; [PL 2007, c. 324, §5 (NEW).]

B. Operate a child care facility as defined in section 8301-A, subsection 1-A, paragraph B; or [PL 2007, c. 324, §5 (NEW).]

C. Operate as a family child care provider as defined in section 8301-A, subsection 1-A, paragraph C. [PL 2007, c. 324, §5 (NEW).]

[PL 2021, c. 35, §6 (AMD).]

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.

[PL 2007, c. 324, §5 (NEW).]

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.

[PL 2007, c. 324, §5 (NEW).]

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.

[PL 2007, c. 324, §5 (NEW).]

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

[PL 2007, c. 324, §5 (NEW).]

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.

[PL 2007, c. 324, §5 (NEW).]

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, 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.

[PL 2021, c. 35, §7 (AMD).]

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, child care facility or 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.

[PL 2021, c. 35, §8 (AMD).]

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

[PL 2021, c. 35, §9 (AMD).]

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.

[PL 2007, c. 324, §5 (NEW).]

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.

[PL 2007, c. 324, §5 (NEW).]

SECTION HISTORY

PL 2007, c. 324, §5 (NEW). PL 2021, c. 35, §§5-9 (AMD).

§7703. Records; disclosure

1. Records. Except as otherwise provided by law and this section, any records that are made, acquired or retained by the department in connection with its responsibilities under this subtitle shall be available to the public.

[PL 1983, c. 691, §2 (NEW).]

2. Confidential information. Except as provided in subsections 3 and 4, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested. The following information is confidential:

A. Information that identifies, directly or indirectly, a recipient of services of the facility, a client of the facility or the client's family or custodian, except when the family member or custodian is an owner or operator of the facility; [PL 2007, c. 324, §6 (AMD).]

B. Notwithstanding sections 3474 and 4008, any information gathered in the course of an investigation of neglect or abuse, except a statement indicating whether or not a report of abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the department, if any; [PL 1983, c. 691, §2 (NEW).]

C. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected abuse or neglect; [PL 2007, c. 324, §6 (AMD).]

D. Information pertaining to the adoption of an individual; [PL 2007, c. 324, §6 (AMD).]

E. Information about the private life of a person, other than an owner, operator or employee of a facility, in which there is no legitimate public interest and that would be offensive to a reasonable person, if disclosed, except as provided in paragraph F; [PL 2007, c. 324, §6 (AMD).]

F. Information about the private life of a person who has applied for a license or approval or is or has been licensed or approved as an adult foster home, licensed pursuant to chapter 1663, and family foster home as defined in section 8101, subsection 3, in which there is no legitimate public interest and that would be offensive to a reasonable person, if disclosed; and [PL 2007, c. 324, §6 (AMD).]

G. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected licensing violations. [PL 2007, c. 324, §6 (NEW).]

Within the department, confidential information must be available to and used by appropriate departmental personnel and legal counsel in carrying out their various functions. Nothing in this section may prevent the release of statistical information regarding the population of the facility by diagnosis or other classification, as long as it does not directly or indirectly identify the clients or recipients of services of the facility.

[PL 2007, c. 324, §6 (AMD).]

3. Optional disclosure of confidential information. Relevant information made confidential by subsection 2 may be released to the following:

A. An agency investigating a report of child or adult abuse or neglect when the investigation is authorized by law or by an agreement with the department; [PL 1983, c. 691, §2 (NEW).]

B. A physician treating a child or adult who the physician reasonably suspects may be abused or neglected; [RR 2021, c. 2, Pt. B, §218 (COR).]

C. A person, the parent or guardian of a minor, or the guardian of an incapacitated adult named in a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected when appropriate; [PL 1983, c. 691, §2 (NEW).]

D. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a client or recipient of services of the facility. This shall include a member of a treatment team or group convened to plan for or treat a person named in a record, provided that the identity

of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; [PL 1983, c. 691, §2 (NEW).]

E. A person engaged in bona fide research, as long as personally identifying information is not made available, unless it is essential to the research and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent must be obtained by the department prior to the contact; [RR 2021, c. 2, Pt. B, §219 (COR).]

F. Any agency involved in approving homes for the placement of children, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; [PL 1983, c. 691, §2 (NEW).]

G. An individual seeking to place a child or adult in a particular facility with protection for the identity of any reference, complainant, reporter of suspected abuse or neglect or other person, when appropriate; [PL 1987, c. 714, §8 (AMD).]

H. An owner or operator of a facility which is the subject of a record, provided that the identity of any reference, complainant, reporter of suspected abuse or neglect or other person is protected, when appropriate; or [PL 1987, c. 714, §8 (AMD).]

I. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857. [PL 1987, c. 714, §9 (NEW).]
[RR 2021, c. 2, Pt. B, §§218, 219 (COR).]

4. Mandatory disclosure of confidential information. The department shall disclose relevant information in the records made confidential by subsection 2 to the following persons:

A. The guardian ad litem of a child or adult named in a record who is reported to be abused or neglected; [PL 1983, c. 691, §2 (NEW).]

B. A law enforcement agency investigating a report of child or adult abuse or neglect or the commission of a crime by an owner, operator or employee of a facility against a client or recipient of services of the facility; [PL 1985, c. 437, §4 (AMD).]

C. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it; [PL 1983, c. 691, §2 (NEW).]

D. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [PL 1983, c. 691, §2 (NEW).]

E. An appropriate state executive or legislative official with responsibility for adult or child protection services in carrying out the state executive's or legislative official's official functions, except that personally identifying information may not be made available unless necessary to the state executive's or legislative official's functions; [RR 2021, c. 2, Pt. B, §220 (COR).]

F. The Protection and Advocacy Agency for the Developmentally Disabled in Maine in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; and [PL 2005, c. 683, Pt. B, §18 (AMD).]

G. The Commissioner of Education, when the information concerns teachers and other professional personnel issued certificates under Title 20-A. [PL 1989, c. 700, Pt. A, §94 (AMD).]
[RR 2021, c. 2, Pt. B, §220 (COR).]

5. Dissemination of confidential information. Information released pursuant to subsections 3 and 4 shall be used solely for the purpose for which it was provided and shall not be further disseminated.

[PL 1983, c. 691, §2 (NEW).]

6. 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.

[PL 2007, c. 324, §7 (NEW).]

SECTION HISTORY

PL 1983, c. 691, §2 (NEW). PL 1985, c. 437, §4 (AMD). PL 1987, c. 714, §§8,9 (AMD). PL 1989, c. 502, §A81 (AMD). PL 1989, c. 700, §A94 (AMD). PL 2001, c. 596, §B11 (AMD). PL 2001, c. 596, §B25 (AFF). PL 2005, c. 683, §B18 (AMD). PL 2007, c. 324, §§6, 7 (AMD). RR 2021, c. 2, Pt. B, §§218-220 (COR).

§7704. Processing fee

Beginning October 1, 2010, a facility, health care provider or program subject to the licensing or certification processes of chapter 1663, 1664, 1667, 1669, 1671 or 1673; a nursery school subject to chapter 1675; an adult day care program subject to chapter 1679; or a hospice provider subject to chapter 1681 shall pay a processing fee not to exceed \$10 to the department for the reissuance of a license or certificate when the licensee or certificate holder made changes that require the reissuance of a license or certificate. [PL 2009, c. 590, §4 (NEW).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 590, §4 (NEW).]

REVISOR'S NOTE: §7704. Criminal background checks (As enacted by PL 2009, c. 621, §6 is REALLOCATED TO TITLE 22, SECTION 7706)

SECTION HISTORY

RR 2009, c. 2, §61 (RAL). PL 2009, c. 590, §4 (NEW). PL 2009, c. 621, §6 (NEW).

§7705. Transaction fee for electronic renewal of license

The department may collect a transaction fee from providers renewing their licenses electronically under this subtitle. The fee may not exceed the cost of providing the electronic license renewal service. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 590, §5 (NEW).]

SECTION HISTORY

PL 2009, c. 590, §5 (NEW).

§7706. Criminal background checks

(REALLOCATED FROM TITLE 22, SECTION 7704)

Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 1663, a nursery school subject to chapter 1675 or a hospice provider subject to chapter 1681, prior to hiring an individual who will work in direct contact with a consumer, or who has direct access to a consumer's property, personally identifiable information, financial information or resources, shall obtain a comprehensive background check in accordance with applicable federal and state laws. The comprehensive background check must include, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The entity seeking

to employ the individual shall pay for the criminal background check required by this section. [PL 2015, c. 196, §13 (AMD); PL 2015, c. 299, §21 (AMD).]

The department may adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [RR 2009, c. 2, §61 (RAL).]

SECTION HISTORY

RR 2009, c. 2, §61 (RAL). PL 2015, c. 196, §13 (AMD). PL 2015, c. 299, §21 (AMD).

§7707. Reportable incidents

1. Reporting requirements. A child care facility licensed pursuant to section 8301-A, subsection 2; a family child care provider licensed 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. [PL 2021, c. 35, §10 (AMD).]

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; [PL 2015, c. 278, §2 (NEW).]
 - B. The time the reportable incident occurred; [PL 2015, c. 278, §2 (NEW).]
 - C. The name of the entity; [PL 2015, c. 278, §2 (NEW).]
 - D. The name of the entity's contact person; [PL 2015, c. 278, §2 (NEW).]
 - E. A description of the reportable incident; [PL 2015, c. 278, §2 (NEW).]
 - F. The condition of the child; [PL 2015, c. 278, §2 (NEW).]
 - G. The name of the child; [PL 2015, c. 278, §2 (NEW).]
 - H. The action taken by the entity; and [PL 2015, c. 278, §2 (NEW).]
 - I. The involvement of a fire or police department, emergency medical services or other entity. [PL 2015, c. 278, §2 (NEW).]
- [PL 2015, c. 278, §2 (NEW).]

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. [PL 2015, c. 278, §2 (NEW).]

SECTION HISTORY

PL 2015, c. 278, §2 (NEW). PL 2021, c. 35, §10 (AMD).

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