

§8301-A. Licensure of child care facilities and family child care providers

1. Definitions.

[PL 2001, c. 645, §6 (RP).]

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

(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. [PL 2001, c. 645, §6 (NEW).]

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. [PL 2009, c. 211, Pt. B, §20 (AMD).]

B-1. "Emergency circumstances" means a situation in which the department determines there are extenuating and urgent circumstances that necessitate a family child care provider's or child care facility's having to relocate or the establishment of a new family child care provider or child care facility. "Emergency circumstances" includes, but is not limited to, a situation affecting the home or child care facility such as a natural disaster, contamination, fire, water damage, unsafe environmental conditions, a pandemic or the unplanned closure of another family child care provider or child care facility. [PL 2023, c. 567, §3 (NEW).]

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 licensed as a family child care provider. [PL 2021, c. 35, §17 (AMD).]

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. [PL 2009, c. 211, Pt. B, §21 (AMD).]

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. [PL 2001, c. 645, §6 (NEW).]

[PL 2023, c. 567, §3 (AMD).]

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.

[PL 2005, c. 640, §2 (AMD).]

3. Family child care provider licensure. A family child care provider shall pay the licensing fee required under section 8303-A. A family child care provider must be licensed 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 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.

[PL 2021, c. 35, §18 (AMD).]

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

[PL 2021, c. 35, §19 (AMD).]

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 license of the family child care provider or child care facility 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.

[PL 2021, c. 35, §20 (AMD).]

6. Temporary license.

[PL 2023, c. 567, §4 (RP).]

6-A. Temporary license. The department may issue a temporary license to a licensed child care facility or family child care provider in a new location or to a new child care facility or family child care provider. The department may issue a temporary license, which is valid pending final action on the application by the department, only under the following conditions:

A. The licensed child care facility or family child care provider moves to a new location and:

(1) 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

(2) Through no action by the child care facility or family child care provider that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor under subparagraph (1); or [PL 2023, c. 567, §5 (NEW).]

B. Due to emergency circumstances, the licensed child care facility or family child care provider moves to a new location or a new child care facility or family child care provider is established and the department determines that:

- (1) The child care facility or family child care provider has completed a criminal background check as required by rules adopted pursuant to section 8302-A, subsection 1, paragraph J and section 8302-A, subsection 2, paragraph K;
- (2) The child care facility or family child care provider is eligible to provide child care; and
- (3) A preliminary evaluation of the facility or home finds that all applicable laws and rules relating to minimum standards of health and safety have been met. [PL 2023, c. 567, §5 (NEW).]

[PL 2023, c. 567, §5 (NEW).]

7. Injunctive relief. The department may seek an injunction to require compliance with the provisions of this section or rules adopted pursuant to this section.

[PL 1999, c. 363, §5 (NEW).]

8. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[PL 2005, c. 530, §7 (AMD).]

9. Exemption from certain requirements for accredited Montessori schools. Notwithstanding any provision of this chapter or rules adopted pursuant to this chapter, a child care facility that is accredited as a Montessori school by a national or international accreditation organization may apply to the commissioner for an exemption from those requirements of this chapter or rules adopted pursuant to this chapter that conflict with the recognized tenets of the Montessori philosophy.

The commissioner 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.

[PL 2005, c. 224, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 494, §8 (NEW). PL 1997, c. 494, §15 (AFF). PL 1999, c. 363, §§4,5 (AMD). PL 2001, c. 645, §6 (AMD). PL 2005, c. 224, §1 (AMD). PL 2005, c. 530, §7 (AMD). PL 2005, c. 640, §§2,3 (AMD). PL 2007, c. 324, §16 (AMD). PL 2009, c. 211, Pt. B, §§20, 21 (AMD). PL 2021, c. 35, §§16-21 (AMD). PL 2023, c. 567, §§3-5 (AMD).

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