

STATE OF NEW YORK

3895--B

2009-2010 Regular Sessions

IN SENATE

April 3, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to enforcement of child day care safety and standards; to amend the penal law, in relation to making technical corrections thereto; and to repeal paragraph (b) of subdivision 12 of section 390 of the social services law relating to the use of single family dwellings for family day care or group family day care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (d) and (e) of subdivision 1 of section 390 of  
2 the social services law, as amended by chapter 587 of the laws of 1997,  
3 are amended to read as follows:  
4 (d) "Group family day care home" shall mean a program caring for chil-  
5 dren for more than three hours per day per child in which child day care  
6 is provided in a family home for seven to [~~ten~~] twelve children of all  
7 ages, [~~or up to twelve children where all of such children are over two~~  
8 ~~years of age,~~] except for those programs operating as a family day care  
9 home, as such term is defined in paragraph (e) of this subdivision,  
10 which care for seven or eight children. A group family day care provider  
11 may provide child day care services to [~~two~~] four additional children if  
12 such additional children are of school age and such children receive  
13 services only before or after the period such children are ordinarily in  
14 school or during school lunch periods, or school holidays, or during

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 those periods of the year in which school is not in session. There shall  
2 be one caregiver for every two children under two years of age in the  
3 group family home. A group family day care home must have at least one

4 assistant to the operator present when child day care is being provided  
5 to seven or more children when none of the children are school age, or  
6 nine or more children when at least two of the children are school age  
7 and such children receive services only before or after the period such  
8 children are ordinarily in school or during school lunch periods, or  
9 school holidays, or during those periods of the year in which school is  
10 not in session. This assistant shall be selected by the group family day  
11 care operator and shall meet the qualifications established for such  
12 position by the regulations of the [~~department~~] office of children and  
13 family services.

14 (e) "Family day care home" shall mean a program caring for children  
15 for more than three hours per day per child in which child day care is  
16 provided in a family home for three to six children. There shall be one  
17 caregiver for every two children under two years of age in the family  
18 day care home. A family day care provider may, however, care for seven  
19 or eight children at any one time if no more than six of the children  
20 are less than school age and the school-aged children receive care  
21 primarily before or after the period such children are ordinarily in  
22 school, during school lunch periods, on school holidays, or during those  
23 periods of the year in which school is not in session in accordance with  
24 the regulations of the [~~department~~] office of children and family  
25 services and the [~~department~~] office inspects such home to determine  
26 whether the provider can care adequately for seven or eight children.

27 § 2. Paragraph (a) of subdivision 2 of section 390 of the social  
28 services law, as added by chapter 750 of the laws of 1990, is amended to  
29 read as follows:

30 (a) Child day care centers caring for seven or more children and group  
31 family day care programs, as defined in subdivision one of this section,  
32 shall obtain a license from the [~~department~~] office of children and  
33 family services and shall operate in accordance with the terms of such  
34 license and the regulations of [~~the department~~] such office. Initial  
35 licenses shall be valid for a period of up to two years; subsequent  
36 licenses shall be valid for a period of up to four years so long as the  
37 provider remains substantially in compliance with applicable law and  
38 regulations during such period.

39 § 3. Clause (A) of subparagraph (ii) of paragraph (d) of subdivision 2  
40 of section 390 of the social services law, as amended by chapter 416 of  
41 the laws of 2000, is amended to read as follows:

42 (A) [~~Registration~~] Initial registrations shall be valid for a period  
43 of up to two years, subsequent registrations shall be valid for a period  
44 of up to four years so long as the provider remains substantially in  
45 compliance with applicable law and regulations during such period.

46 § 4. Paragraph (b) of subdivision 3 of section 390 of the social  
47 services law, as added by chapter 750 of the laws of 1990, is amended to  
48 read as follows:

49 (b) Where inspections have been made and violations of applicable  
50 statutes or regulations have been found, the [~~department~~] office of  
51 children and family services shall within ten days advise the child day  
52 care provider in writing[~~, within ten days,~~] of the violations and  
53 require the provider to correct such violations. [~~If the child day care~~  
54 ~~provider fails to correct such violations within thirty days after~~  
55 ~~notice, the department~~] The office of children and family services may  
56 also act pursuant to subdivisions ten and eleven of this section.

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1 § 5. Paragraph (c) of subdivision 11 of section 390 of the social  
2 services law, as added by chapter 416 of the laws of 2000, is amended to

3 read as follows:

4 (c)(i) Except as provided for in this paragraph, a child day care  
5 provider ~~[may]~~ **shall** avoid payment of a penalty imposed pursuant to this  
6 subdivision where the provider has rectified the condition ~~[resulting]~~  
7 **which resulted** in the imposition of the penalty within thirty days of  
8 notification of the ~~[imposition of the penalty]~~ **existence of the**  
9 **violation of statute or regulation.**

10 (ii) Clause (i) of this paragraph notwithstanding, rectification shall  
11 not preclude the imposition of a penalty pursuant to this subdivision  
12 where:

13 (A) the child day care provider has operated a child day care center  
14 or group family day care home without a license, has refused to seek a  
15 license for the operation of such a center or home, or has continued to  
16 operate such a center or home after denial of a license application,  
17 revocation of an existing license or suspension of an existing license;

18 (B) the child day care provider has operated a family day care home,  
19 school-age child care program or child day care center required to be  
20 registered without being registered, has refused to seek registration  
21 for the operation of such home, program or center or has continued to  
22 operate such a home, program or center after denial of a registration  
23 application, revocation of an existing registration or suspension of an  
24 existing registration;

25 (C) there has been a total or substantial failure of the facility's  
26 fire detection or prevention systems or emergency evacuation procedures;

27 (D) the child day care provider or an assistant, employee or volunteer  
28 has failed to provide adequate and competent supervision;

29 (E) the child day care provider or an assistant, employee or volunteer  
30 has failed to provide adequate sanitation;

31 (F) the child day care provider or an assistant, employee ~~[or]~~, volun-  
32 **teer [has] or, for a family day care home or group family day care home,**  
33 **a member of the provider's household, has injured a child in care,**  
34 **unreasonably failed to obtain medical attention for a child in care**  
35 **requiring such attention, used corporal punishment against a child in**  
36 **care or** abused or maltreated a child in care; ~~[or]~~

37 (G) the child day care provider has violated the same statutory or  
38 regulatory standard more than once within a six month period;

39 **(H) the child day care provider or an assistant, employee or volunteer**  
40 **has failed to make a report of suspected child abuse or maltreatment**  
41 **when required to do so pursuant to section four hundred thirteen of this**  
42 **article; or**

43 **(I) the child day care provider or an assistant, employee or volunteer**  
44 **has submitted to the office of children and family services a forged**  
45 **document as defined in section 170.00 of the penal law.**

46 § 6. Subdivision 11 of section 390 of the social services law is  
47 amended by adding a new paragraph (e) to read as follows:

48 **(e)(i) The office of children and family services shall deny a new**  
49 **application for licensure or registration made by a day care provider**  
50 **whose license or registration was previously revoked or terminated based**  
51 **on a violation of statute or regulation for a period of two years from**  
52 **the date that the revocation or termination of the license or registra-**  
53 **tion became finally effective, unless such office determines, in its**  
54 **discretion, that approval of the application will not in any way jeop-**  
55 **ardize the health, safety or welfare of children in the center, program**

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1 **or home. For the purposes of this paragraph, the date that the revoca-**  
2 **tion or termination became finally effective shall be, as applicable:**

3 (A) the date that the revocation or termination became effective based  
4 on the notice of revocation or termination;

5 (B) the date that the hearing decision was issued upholding the revo-  
6 cation or termination;

7 (C) the date of issuance of a final court order affirming the revoca-  
8 tion or termination or affirming a hearing decision that upheld the  
9 revocation or termination; or

10 (D) another date mutually agreed upon by the office of children and  
11 family services and the provider.

12 (ii)(A) Such office shall deny a new application for licensure or  
13 registration made by a day care provider who is enjoined or otherwise  
14 prohibited by a court order from operation of a day care center, group  
15 family day care home, family day care home or school-age child care  
16 program without a license or registration for a period of two years from  
17 the date of the court order unless the court order specifically enjoins  
18 the provider from providing day care for a period longer than two years,  
19 in which case the office shall deny any new application made by the  
20 provider while the provider is so enjoined.

21 (B) Such office shall deny a new application for licensure or regis-  
22 tration made by a day care provider who is assessed a second civil  
23 penalty by such office for having operated a day care center, group  
24 family day care home, family day care home or school-age child care  
25 program without a license or registration for a period of two years from  
26 the date of the second fine. For the purposes of this paragraph, the  
27 date of the second fine shall be either the date upon which the day care  
28 provider signs a stipulation agreement to pay the second fine or the  
29 date upon which a hearing decision is issued affirming the determination  
30 of such office to impose the second fine, as applicable.

31 (iii) A day care provider who surrenders the provider's license or  
32 registration while such office is engaged in enforcement seeking suspen-  
33 sion, revocation or termination of such provider's license or registra-  
34 tion pursuant to the regulations of such office, shall be deemed to have  
35 had their license or registration revoked or terminated and shall be  
36 subject to the prohibitions against licensing or registration pursuant  
37 to subparagraph (i) of this paragraph for a period of two years from the  
38 date of surrender of the license or registration.

39 § 7. Paragraph (a) of subdivision 12 of section 390 of the social  
40 services law, as added by chapter 750 of the laws of 1990, is amended to  
41 read as follows:

42 (a) Notwithstanding any other provision of law, except as may be  
43 required as a condition of licensure or registration by regulations  
44 promulgated pursuant to this section, no village, town (outside the area  
45 of any incorporated village), city or county shall adopt or enact any  
46 law, ordinance, rule or regulation which would impose, mandate or other-  
47 wise enforce standards for sanitation, health, fire safety or building  
48 construction on a one or two family dwelling or multiple dwelling used  
49 to provide group family day care or family day care than would be appli-  
50 cable were such child day care not provided on the premises. No village,  
51 town (outside the area of any incorporated village), city or county  
52 shall prohibit or restrict use of a one or two family dwelling, or  
53 multiple dwelling for family or group family day care where a license or  
54 registration for such use has been issued in accordance with regulations  
55 issued pursuant to this section. Nothing in this paragraph shall  
56 preclude local authorities with enforcement jurisdiction of the applica-  
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1 ble sanitation, health, fire safety or building construction code from

2 making appropriate inspections to assure compliance with such standards.  
3 ~~[The department of social services shall provide to the secretary of~~  
4 ~~state on a monthly basis, a list of child day care registrants.]~~

5 § 8. Paragraph (b) of subdivision 12 of section 390 of the social  
6 services law is REPEALED and paragraph (c) is relettered paragraph (b).

7 § 9. Subparagraph (ix) of paragraph (b) of subdivision 3 of section  
8 390-a of the social services law, as amended by chapter 552 of the laws  
9 of 2003, is amended to read as follows:

10 (ix) for operators, program directors, employees and assistants of  
11 family day care homes, group family day care homes and child day care  
12 centers, education and information on the identification, diagnosis and  
13 prevention of shaken baby syndrome.

14 § 10. Section 410-x of the social services law is amended by adding a  
15 new subdivision 7 to read as follows:

16 7. A social services district may suspend the eligibility of a provid-  
17 er who is not required to be licensed or registered under section three  
18 hundred ninety of this article to provide child care assistance funded  
19 under the block grant, where the provider is the subject of a report of  
20 child abuse or maltreatment that is under investigation by child protec-  
21 tive services.

22 § 11. Section 260.30 of the penal law, as added by chapter 600 of the  
23 laws of 1998, is renumbered section 260.31.

24 § 12. This act shall take effect immediately.

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