

STATE OF NEW YORK

4545

2007-2008 Regular Sessions

IN SENATE

April 18, 2007

Introduced by Sen. KRUGER -- (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 Social Services, Children and Families

AN ACT to amend the social services law and the penal law, in relation to enforcement of child day care safety and standards; and to repeal section 260.30 of the penal law relating to the misrepresentation by a child day care provider

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

1 Section 1. Paragraph (b) of subdivision 3 of section 390 of the social
2 services law, as added by chapter 750 of the laws of 1990, is amended to
3 read as follows:

4 (b) Where inspections have been made and violations of applicable
5 statutes or regulations have been found, the [~~department~~] office of
6 children and family services shall within ten days advise the child day
7 care provider in writing[~~, within ten days,~~] of the violations and
8 require the provider to correct such violations. [~~If the child day care~~
9 ~~provider fails to correct such violations within thirty days after~~
10 ~~notice, the department~~] The office of children and family services may
11 also act pursuant to subdivisions ten and eleven of this section.

12 § 2. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 11 of
13 section 390 of the social services law, as amended by chapter 416 of the
14 laws of 2000, are amended to read as follows:

15 (i) The office of children and family services shall adopt regulations
16 establishing civil penalties of no more than [~~five hundred~~] one thousand
17 dollars per day to be assessed against child day care centers, school
18 age child care programs, group family day care homes or family day care
19 homes for violations of this section, [~~sections~~] section three hundred
20 ninety-a [~~and~~], three hundred ninety-b, three hundred ninety-c (as added
21 by chapter four hundred sixty of the laws of two thousand) or three

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

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1 hundred ninety-d of this title, and any regulations promulgated there-
2 under. The regulations establishing civil penalties shall specify the
3 violations subject to penalty.

4 (ii) The office of children and family services shall adopt regu-
5 lations establishing civil penalties of no more than [~~five hundred~~] one
6 thousand dollars per day to be assessed against child day care providers
7 who operate child day care centers or group family day care homes with-
8 out a license or who operate family day care homes, school-age child
9 care programs, or child day care centers required to be registered with-
10 out obtaining such registration.

11 § 3. Paragraph (c) of subdivision 11 of section 390 of the social
12 services law, as added by chapter 416 of the laws of 2000, is amended to
13 read as follows:

14 (c)(i) Except as provided for in this paragraph, a child day care
15 provider may avoid payment of a penalty imposed pursuant to this subdivi-
16 sion where the provider has rectified the condition [~~resulting~~] which
17 resulted in the imposition of the penalty within thirty days of notifi-
18 cation of the [~~imposition of the penalty~~] existence of the violation of
19 statute or regulation.

20 (ii) Clause (i) of this paragraph notwithstanding, rectification shall
21 not preclude the imposition of a penalty pursuant to this subdivision
22 where:

23 (A) the child day care provider has operated a child day care center
24 or group family day care home without a license, has refused to seek a
25 license for the operation of such a center or home, or has continued to
26 operate such a center or home after denial of a license application,
27 revocation of an existing license or suspension of an existing license;

28 (B) the child day care provider has operated a family day care home,
29 school-age child care program or child day care center required to be
30 registered without being registered, has refused to seek registration
31 for the operation of such home, program or center or has continued to
32 operate such a home, program or center after denial of a registration
33 application, revocation of an existing registration or suspension of an
34 existing registration;

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

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

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

41 (F) the child day care provider or an assistant, employee [~~or~~], volun-
42 teer [~~has~~] or, for a family day care home or group family day care home,
43 a member of the provider's household, has injured a child in care,
44 failed to obtain medical attention for a child in care requiring such
45 attention, used corporal punishment against a child in care or abused or
46 maltreated a child in care; [~~or~~]

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

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

53 (I) the child day care provider or an assistant, employee or volunteer
54 has submitted forged or altered documents to the office of children and
55 family services;

1 (J) the child day care provider or an assistant, employee or volunteer
2 has failed to complete the training required pursuant to this section,
3 section three hundred ninety-a of this title, or any regulations promul-
4 gated thereunder; or

5 (K) the child day care provider or an assistant, employee or volunteer
6 has administered medications to a child in care without having an
7 approved plan for administration of medications or has administered
8 medications to a child in care in a manner inconsistent with the
9 approved plan.

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

12 (e)(i) The office of children and family services shall deny a new
13 application for licensure or registration made by a day care provider
14 whose license or registration was previously revoked or terminated based
15 on a violation of statute or regulation for a period of three years from
16 the date that the revocation or termination of the license or registra-
17 tion became finally effective, unless such office determines, in its
18 discretion, that approval of the application will not in any way jeop-
19 ardize the health, safety or welfare of children in the center, program
20 or home. For the purposes of this paragraph, the date that the revoca-
21 tion or termination became finally effective shall be, as applicable:

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

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

26 (C) the date of issuance of a final court order affirming the revoca-
27 tion or termination or affirming a hearing decision that upheld the
28 revocation or termination; or

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

31 (ii)(A) Such office shall deny a new application for licensure or
32 registration made by a day care provider who is enjoined or otherwise
33 prohibited by a court order from operation of a day care center, group
34 family day care home, family day care home or school-age child care
35 program without a license or registration for a period of three years
36 from the date of the court order unless the court order specifically
37 enjoins the provider from providing day care for a period longer than
38 three years, in which case the office shall deny any new application
39 made by the provider while the provider is so enjoined.

40 (B) Such office shall deny a new application for licensure or regis-
41 tration made by a day care provider who is assessed a second civil
42 penalty by such office for having operated a day care center, group
43 family day care home, family day care home or school-age child care
44 program without a license or registration for a period of three years
45 from the date of the second fine. For the purposes of this paragraph,
46 the date of the second fine shall be either the date upon which the day
47 care provider signs a stipulation agreement to pay the second fine or
48 the date upon which a hearing decision is issued affirming the determi-
49 nation of such office to impose the second fine, as applicable.

50 (iii) A day care provider who surrenders the provider's license or
51 registration while such office is engaged in enforcement seeking suspen-
52 sion, revocation or termination of such provider's license or registra-
53 tion pursuant to the regulations of such office, shall be deemed to have
54 had their license or registration revoked or terminated and shall be
55 subject to the prohibitions against licensing or registration pursuant

1 to subparagraph (i) of this paragraph for a period of three years from
2 the date of surrender of the license or registration.

3 § 5. Subparagraph (ix) of paragraph (b) of subdivision 3 of section
4 390-a of the social services law, as amended by chapter 552 of the laws
5 of 2003, is amended to read as follows:

6 (ix) for operators, program directors, employees and assistants of
7 family day care homes, group family day care homes and child day care
8 centers, education and information on the identification, diagnosis and
9 prevention of shaken baby syndrome.

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

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

18 § 7. Section 260.30 of the penal law, as added by chapter 600 of the
19 laws of 1998, is REPEALED and a new section 260.31 is added to read as
20 follows:

21 § 260.31 Misrepresentation by a child day care provider.

22 A person is guilty of misrepresentation by a child day care provider
23 when:

24 1. being a child day care provider, including a caregiver of informal
25 child care who provides child care assistance funded pursuant to title
26 five-C of article six of the social services law in his or her own home
27 or in the children's home, who is not subject to licensure, certifi-
28 cation or registration under section three hundred ninety of the social
29 services law, or holding himself or herself out as such, he or she makes
30 any willful and intentional misrepresentation, by act or omission, to a
31 parent or guardian of a child in the care of such provider (or a child
32 whose prospective placement in such care is being considered by such
33 parent or guardian) to any state or local official having jurisdiction
34 over child day care providers, or to any police officer or peace officer
35 as to the facts pertaining to such child day care provider, including,
36 but not limited to: (a) the number of children in the facility or home
37 where such number is in violation of the provisions of section three
38 hundred ninety of the social services law, (b) the area of the facility,
39 home, or center used for child day care, (c) the credentials or quali-
40 fications of any child day care provider, assistant, employee, or volun-
41 teer, (d) documentation required for child care subsidy enrollment, or
42 (e) compliance with minimum health and safety standards to which the
43 person is subject pursuant to section three hundred ninety or four
44 hundred ten-x of the social services law; or

45 2. the person is precluded from obtaining a license or registration as
46 a day care provider pursuant to paragraph (e) of subdivision eleven of
47 section three hundred ninety of the social services law and such person
48 engages in providing child day care as defined in section three hundred
49 ninety of the social services law, either for payment or without payment
50 or other recompense.

51 Misrepresentation by a child day care provider is a class A misdemea-
52 nor.

53 § 8. This act shall take effect on the thirtieth day after it shall
54 have become a law; except that section seven of this act shall take
55 effect on the first of November next succeeding the date on which it
56 shall have become a law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4545

SPONSOR: KRUGER

TITLE OF BILL:

An act to amend the social services law and the penal law, in relation to enforcement of child day care safety and standards; and to repeal section 260.30 of the penal law relating to the misrepresentation by a child day care provider

PURPOSE:

This bill would strengthen the authority of the Office of Children and Family Services (OCFS) to enforce standards for child day care and enhance the protection of children receiving care.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends Social Services Law (SSL) § 390(3)(b) to delete a provision permitting a child day care provider to avoid a sanction by correcting regulatory violations within 30 days of notification by OCFS. The bill enables OCFS in appropriate instances to seek fines and/or revocation of the provider's license or registration without having to wait 30 days.

Section 2 of the bill amends SSL § 390(11)(a) to increase from \$500 to \$1,000 per day the maximum amount which a child day care provider could be fined for a regulatory violation or for operation of a day care program without a license or registration. The bill also clarifies that a fine may be imposed for a violation of § 390-c of the SSL pertaining to notification of police and fire officials of the existence and location of child day care programs and section § 390-d of the SSL pertaining to barriers around swimming pools and bodies of water on the grounds of family day care homes and group family day care homes.

Section 3 of the bill amends SSL § 390(11)(c) to provide additional exceptions to those instances where a child day care provider may rectify a regulatory violation in order to avoid a sanction. The bill authorizes OCFS to impose a sanction for the initial violation in these serious situations even though the violation subsequently was corrected. These additional exceptions are where a provider or staff: has injured a child in care; failed to obtain necessary medical attention for a child; used corporal punishment against a child; failed to report suspected child abuse or maltreatment; submitted forged or altered documents to OCFS; failed to comply with staff training requirements; or administered medication to a child without authority or in violation of the provider's approved plan.

Section 4 of the bill adds a new SSL §390(11)(e) prohibiting the issuance of a license or registration to a child day care provider whose license or registration was revoked or terminated during the previous three years, unless OCFS determines that licensure or registration would not jeopardize the health, safety or welfare of the children for whom care would be provided. The prohibition also applies to a child day care provider facing enforcement action who surrenders a license or registration in order to avoid a suspension, revocation or termination. The prohibition may apply to a child day care program that is found to be operating without a required license or registration.

Section 5 of the bill amends SSL § 390-a(3)(b) to limit mandated training on the shaken baby syndrome to those programs that legally may care for infants. The bill exempts programs licensed or registered as school-age child care as those programs cannot legally care for infants.

Section 6 of the bill adds a new subdivision seven to SSL § 410-x permitting a social services district to suspend the enrollment of an informal legally-exempt provider of child care funded by the block grant where the informal legally-exempt provider is under investigation by the child protective service as the subject of a report of child abuse or maltreatment.

Section 7 of the bill renumbers and amends Penal Law (PL) § 260.30, as enacted by Chapter 600 of the Laws of 1998, known as "Jeremy and Julia's Law". Two PL sections numbered 260.30 were enacted in 1998. The bill renumbers "Jeremy and Julia's Law" as PL § 260.31 for purposes of clarity. In addition, the renumbered section is amended to apply to an informal legally-exempt child day care provider and eliminates the requirement that a material misrepresentation by the provider to either a parent or OCFS must be proved to have put at risk the health or safety of a child in care. The amendment criminalizes an intentional misrepresentation by a child day care provider in documentation required for enrollment as a provider of subsidized child care or documentation pertaining to the provider's compliance with minimum health and safety standards. The bill adds a new subdivision (b) to renumbered section 260.31 of the PL making it a class A misdemeanor for a person to provide child day care if he or she is ineligible to receive a license or registration. to operate a child day care program pursuant to SSL § 390(11).

Section 8 of the bill provides for an effective date of 30 days after enactment, except for the PL amendments in section seven of the bill, which take effect on November 1st.

EXISTING LAW:

SSL § 390 defines child day care and governs the licensing and registration of child day care providers by OCFS. It includes authority for suspension or revocation of a license or registration and civil penalties against child day care providers who violate applicable statutes or regulations. The holder of a license or registration is entitled to a hearing before OCFS prior to the imposition of any sanction. A child day care provider may avoid imposition of a penalty for most regulatory and statutory violations by correcting the violation. Even where the penalty imposed is the loss of the provider's license or registration, the provider may apply to OCFS for a new license or registration almost immediately.

SSL § 390-a sets forth standards and training requirements for child day care providers. In 2004, legislation was enacted requiring training on

the shaken baby syndrome for all operators, program directors, employees and assistants of child day care programs, including school age child care programs that cannot care for infants.

SSL § 410-x governs the use of child day care subsidies by social services districts and requires providers of legally-exempt child care who receive subsidy funds to meet minimum health and safety standards. Informal legally-exempt child day care providers are not required to be licensed or registered by OCFS. Informal legally-exempt child day care providers must be enrolled with a social services district to be eligible to provide subsidized child day care.

Chapter 381 of the Laws of 1998 enacted PL § 260.30 pertaining to the endangerment of vulnerable elderly adults.

Chapter 600 of the Laws of 1998 also enacted a PL § 260.30, known as Jeremy and Julia's Law, and criminalized an intentional misrepresentation by a child day care provider pertaining to: the number of children in care where such number violates section SSL § 390; the area or the home, facility or center used for child day care; or the credentials of the provider and/or staff where the misrepresentation substantially places the health or safety of a child at risk. Such a misrepresentation, when made to a parent, OCFS or law enforcement agency, is a class A misdemeanor.

Chapter 416 of the Laws of 2000 enacted the Quality Child Care and Protection Fund as State Finance Law §97-www Penalties assessed against child day care providers are deposited in the fund. Monies in the fund may be used for grants to child day care providers for health and safety purposes, for training of child day care providers' staff and for other activities to increase the availability and/or quality of child day care programs.

LEGISLATIVE HISTORY:

Portions of this bill were previously proposed as OCFS #7-04 and OCFS #10-04 and were introduced as S.6642 and S.6712/A.11506 of 2004 respectively, but were not enacted.

STATEMENT IN SUPPORT:

The availability of safe, affordable, accessible child care is important to working families and to families that otherwise need child care for a portion of the day or week. Quality child care enormously benefits the development of children and should be available to families seeking such care.

The proposal would enhance OCFS' capability to require child day care providers to meet high standards by further limiting those instances where a provider who is in violation of a statutory or regulatory requirement can avoid a penalty by merely fixing the violation. In addition, a provider who has been penalized by the revocation or termination of a license or registration, or sanctioned for illegal operation within the previous three years, would be ineligible to receive a child day care license or registration unless OCFS determines that the health, safety or welfare of children in care would not be jeopardized. The proposal increases from \$500 to \$1,000 a day the potential maximum civil penalty that may be imposed against a child day care provider for serious violations including operation of an illegal day care program. These provisions would deter child day care providers from operating substandard or illegal programs by increasing the potential consequences for statutory and regulatory violations.

The proposal also provides a local social services district with the authority to suspend the enrollment of an informal legally-exempt provider who is being investigated for child abuse or maltreatment. The

social services districts currently lack an effective means to safeguard a child receiving subsidized child day care from an informal legally exempt provider who is the subject of a report of abuse or maltreatment. Finally, the proposal strengthens Jeremy and Julia's Law pertaining to misrepresentation by a child day care provider by eliminating the requirement that the material misrepresentation by a child day care provider put at risk the health or safety of a child in care. The proposal applies the provisions of Jeremy and Julia's Law to legally exempt providers and adds new provisions making it a crime for them to submit false information on the child care subsidy enrollment form. It also makes it a crime for regulated and legally-exempt child care providers to misrepresent compliance with minimum health and safety standards. In addition, the proposal makes it a crime for persons who have lost their license or registration to provide regulated child day care to provide any form of child care, including legally-exempt care, within three years after the loss of the license or registration.

BUDGET IMPLICATIONS:

The funds deposited in the Quality Child Care and Protection Fund may increase due to provisions increasing the maximum civil penalty and imposing additional limits on those statutory and regulatory violations for which prompt rectification by the child day care provider precludes imposition of any further penalty.

EFFECTIVE DATE:

This act shall take effect on the thirtieth day after it shall have become a law; except that section seven of this act shall take effect on the first of November next succeeding the date on which it shall have become a law.
