

LAWS OF DELAWARE
VOLUME 83
CHAPTER 249
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 169

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE DELAWARE CHILD CARE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3002A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3002A. Definitions.

For the purpose of this chapter:

(1)~~a.~~ “Child care” means ~~and includes: a. Any person, association, agency or organization which:~~ an individual or entity that meets all of the following:

1. Has in custody or control 1 child or more under the age of 18 years, unattended by parent or guardian, for the purpose of providing ~~such child or children with care, education, protection, supervision or guidance;~~ supervision, or guidance.

2. Is compensated for ~~their services;~~ the individual’s or entity’s services.

3. ~~Advertises or holds himself, herself or itself out as conducting such child care;~~ Holds the individual’s or entity’s self out as conducting child care.

~~b. The provision of, or arranging for, the placement of children in foster care homes, adoptive homes or supervised independent living arrangements pursuant to the provisions of Title 31; and~~

~~e.b.~~ “Child care” includes all of the following:

1. ~~Family child care homes, homes.~~

2. ~~large Large family child care homes, homes.~~

3. ~~day care centers, Child care centers, including early education programs for children below the grade of kindergarten that are operated by public or private schools.~~

4. ~~child placing agencies, Child placing agencies.~~

5. ~~residential Residential child care facilities facilities.~~

6. ~~and day treatment programs as currently defined by regulation. Day treatment programs.~~

7. ~~Day care centers operating part- or full-day are subject to licensure. Child care programs operating part-day or full-day.~~

~~c. Homes~~ “Child care” does not include individual foster or adoptive homes in which children have been placed by any a State-licensed child placing agency properly licensed to place children in this State shall not be regarded as “child care.” agency.

(2) “Entity” means an estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

~~(2)(3)~~ “Office of Child Care Licensing” (or “OCCL”) “OCCL” means the Office of Child Care Licensing within the Department of Education.

Section 2. Amend § 3003A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3003A. ~~Powers of the Office of Child Care Licensing with respect to child care.~~Office of Child Care Licensing; powers.

(a)~~(1)~~Any person or association conducting child care and all institutions, agencies, and associations or organizations receiving and placing or caring for dependent, neglected or delinquent minors, including organizations providing care of children whether dependent or otherwise, in lieu of the care and supervision ordinarily provided by parents in their own homes for periods of less than 24 hours a day, must accord the Office of Child Care Licensing or its authorized agents right of entrance, privilege of inspection, and access to its accounts and reports. The Office of Child Care Licensing is established within the Department of Education to do all of the following:

a. Promulgate and enforce regulations for child care.

b. License child care facilities.

c. Develop and implement policies and procedures for ensuring compliance with child care regulations.

(2) An individual or entity shall provide OCCL or OCCL's authorized agents right of entrance, privilege of inspection, and access to the individual's or entity's accounts and reports.

~~(b) A person or association conducting child care and all institutions, agencies, associations, or organizations receiving and placing or caring for dependent, neglected, or delinquent minors shall make reports at such time as is required by the Office of Child Care Licensing as to conditions of such child care, the manner and way in which children are taken care of, former addresses, and such other information as will show the social status of the child, how and to whom dismissed, the extent and source of its income, the cost of maintenance, and such other reasonable information as will enable the Office of Child Care Licensing to promote the general welfare of the children and to work out a general program for their care and protection.~~[Repealed.]

~~(c) The Office of Child Care Licensing may prescribe, OCCL may prescribe and enforce, by regulation or otherwise, any reasonable standards for the conduct of such child care facilities, institutions, agencies, associations, or organizations and may license such of these as conform to such standards.~~facilities and shall license child care facilities that conform to the standards. Regulations promulgated under this chapter must include all of the following:

(1) Any application form required to apply for licensure under this chapter.

(2) ~~All of the~~The specific requirements to obtain, retain, or renew a license under this chapter.

(3) Due process provisions that provide all of the following:

a. That notice is required when a deficiency is alleged.

b. The informal and formal procedures to contest an alleged deficiency.

Section 3. Amend § 3004A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3004A. Child care licenses; investigation; requirements; notice; hearings and appeals.

~~(a) No person may conduct child care, nor may any institution, agency, association, or organization conduct child care, unless first having obtained a license from the Office of Child Care Licensing. Such license shall expire 1 year from the date it is issued unless renewed. An individual or entity may not engage in child care unless the individual or entity first obtains a license from OCCL. Unless renewed, a license expires 1 year from the date the license is issued.~~An individual or entity may not engage in child care unless the individual or entity first obtains a license from OCCL. Unless renewed, a license expires 1 year from the date the license is issued.

~~(b) In the case of a person conducting child care, no license shall be issued to such person until the Office of Child Care Licensing~~OCCL may not issue a license to an individual until OCCL has made a thorough investigation and has determined all of the following, in accordance with reasonable standards:

(1) The good character and intention of the ~~applicant or applicants;~~individual

(2) That the individual home or facility meets the physical, social, moral, mental, and educational needs of the average ~~child;~~child.

(3) Whether ~~the rules and requirements of the Office of Child Care Licensing~~OCCL regulations are properly met; ~~and met.~~

(4) That the required criminal background checks are completed and approved.

~~(c) In the case of an institution, agency, association, or organization, no license shall be issued until the Office of Child Care Licensing~~OCCL may not issue a license to an entity until OCCL has made a thorough investigation and has made a favorable determination of: determined all of the following, in accordance with reasonable standards:

(1) The good character and intention of the ~~applicant or applicants;~~entity.

(2) ~~The present and prospective need of the service rendered;~~ [Repealed.]

(3) The employment of capable, ~~trained~~trained, and experienced ~~workers;~~workers.

(4) Sufficient financial backing to ensure effective ~~work;~~work.

(5) ~~The probability of the service being continued for a reasonable period of time;~~ [Repealed.]

(6) ~~Whether the methods used and disposition made of the children served will be to their best interests and that of society;~~ [Repealed.]

(7) Whether ~~the rules and requirements of the Office of Child Care Licensing~~OCCL regulations are properly met; ~~and met.~~

(8) That the required criminal background checks are completed and approved.

~~(d)(1) This section shall not apply to any institution, agency, association, or organization~~ applies to an entity under state ownership and control, control that operates an early education program. Only the early education program must be licensed and meet OCCL requirements.

~~(2) nor shall it~~ This section does not apply to any a maternity ward of a general hospital.

(e) Before ~~any a~~ license issued under this chapter is revoked or a license application is denied, notice ~~shall~~ must be given in writing to the ~~holder of the license~~ individual or entity who is licensed or applying for a license setting forth the particular reasons for ~~such~~ the action.

~~(1)a. Such revocation or license application denial shall become~~ Except as provided under paragraph (e)(1)b. of this section, a license revocation or license application denial becomes effective 30 business days after the date of the receipt by certified mail, regular U.S. mail, or personal ~~service of the notice, delivery of the notice.~~

~~b. unless the applicant or licensee~~ If, within 10 business days from the date of the receipt of such notice the notice under paragraph (e)(1)a. of this section, the individual or entity gives written notice to the Office of Child Care Licensing OCCL requesting a hearing, in which case hearing, the proposed action ~~shall be deemed to be~~ is suspended.

(2) If a hearing has been requested, the ~~applicant or licensee shall~~ individual or entity must be given an opportunity for a prompt and fair hearing before a hearing officer designated by the Department of Education ~~in accordance with~~ under § 10125 of Title 29.

(3) At any ~~time during, or prior to~~ time, during or before the hearing, the Office of Child Care Licensing OCCL may rescind ~~any notice upon a notice on~~ being satisfied that the reasons for a revocation or license application denial have been or will be removed.

~~(f) The procedure governing hearings authorized by this section shall be in accordance with § 10125 of Title 29 and regulations promulgated by the Department of Education. [Repealed.]~~

(g) A full and complete record ~~shall~~ must be kept of all proceedings, and all testimony ~~shall~~ must be reported but need not be transcribed unless the decision is appealed ~~pursuant to~~ under this section. A copy ~~or copies~~ of the transcript may be obtained by a party ~~upon~~ on payment of the cost of preparing the transcript. Witnesses may be subpoenaed by either party.

(h) Within 10 business days of ~~the date of the~~ a revocation or license application denial hearing, or within 5 business days of ~~the date of~~ a suspension hearing, the hearing officer ~~will~~ shall issue recommendations to the Secretary of the Department of Education, with a copy to each ~~party, which shall include:~~ party. The hearing officer's recommendations must include all of the following:

(1) A brief summary of the evidence and recommended findings of fact based ~~upon the evidence;~~ on the evidence.

(2) Recommended conclusions of ~~law; and~~ law.

(3) Recommended decision.

(i) The Secretary of the Department of Education shall accept, deny, or accept in part, ~~and/or~~ and deny in part the recommendations of the hearing officer in the case and issue a final decision within 10 business days of the date of ~~mailing of the~~ recommendations.

(j) A copy of the ~~Department's decision of the Department~~ setting forth the finding of facts and the particular reasons for the decision ~~shall~~ must be sent by certified mail, regular U.S. mail, or ~~served personally upon the applicant or licensee.~~ delivered to the individual or entity. The decision ~~shall become~~ becomes final 10 business days after it is so mailed or served. ~~The applicant or licensee shall have 30 business days in which to appeal the decision to the Superior Court as provided in this section. The final decision of the Secretary will not be stayed pending appeal unless the Court so determines pursuant to § 10144 of Title 29.~~ delivered.

(k) ~~Any applicant or licensee who is~~ If an individual or entity is dissatisfied with the decision of the Department as a result of the hearing ~~provided in~~ under this section, ~~the individual or entity~~ may, within 30 business days after the mailing or ~~service~~ delivery of the notice of ~~decision as provided in said section;~~ decision, file a notice of appeal to the Superior Court in the office of the Prothonotary of the Superior Court of the county in which the child care facility is located or to be located and serve a copy of ~~said~~ the notice of appeal ~~upon~~ on the Department. The Department shall promptly certify and file with the Court a copy of the record and decision, including the transcript of the hearings on which the decision is based. ~~Proceedings thereafter shall be governed by the Rules of the Superior Court of the State. This review shall be in accordance with the provisions of § 10142 of Title 29. The Rules of the Superior Court and § 10142 of Title 29 govern the appeal.~~

(l) *Emergency suspension order.* — If the health, safety, or well-being of children in care of a ~~licensee~~ an individual or entity is in serious or imminent danger, ~~the Office of Child Care Licensing OCCL~~ may immediately suspend the license on a temporary basis without notice.

(1) ~~Such~~ The emergency suspension may be verbal or written, and the ~~licensee~~ individual or entity shall cease all operation as stated in the emergency suspension order.

(2) Any verbal suspension order ~~shall~~ must be followed by a written emergency suspension order within ~~3 business days~~. 1 business day.

(3) The order ~~shall be~~ is temporary and must state the ~~reason(s)~~ reason for the suspension.

(4) Within 10 business days of the issuance of the suspension order, the ~~licensee~~ individual or entity may give written notice to ~~the Office of Child Care Licensing OCCL~~ requesting a hearing. This hearing ~~will~~ must be scheduled within 10 business days of the receipt of the request.

(5) If ~~no~~ a hearing is not requested ~~as provided above~~, under paragraph (l)(4) of this section, the temporary order becomes a final order.

(6) At any ~~time during, or prior to time, during or before~~ the hearing, ~~the Office of Child Care Licensing OCCL~~ may reinstate the individual's or entity's license ~~upon~~ on being satisfied that the reasons for the emergency suspension order have been removed.

Section 4 Amend § 3005A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3005A. Penalties for violations.

(a) ~~The Office of Child Care Licensing OCCL~~ may impose civil penalties not to exceed ~~\$100~~ \$1,000 for each violation of § 3004A of this title.

(b) ~~The Office of Child Care Licensing OCCL~~ may proceed for the collection of the ~~money~~ monetary civil penalty not otherwise paid through an action brought by ~~the Office of Child Care Licensing OCCL~~ in any court of competent jurisdiction.

(c) ~~Anyone who violates a provision of~~ An individual or entity that violates this chapter may be fined not more than ~~\$100~~ \$1,000 or imprisoned not more than ~~3-6~~ 6 months, or both.

Section 5. Amend § 3006A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3006A. Provider Advisory Board; appointments; composition; terms; vacancies.

(a) There is ~~hereby~~ established within ~~the Office of Child Care Licensing OCCL~~, a Provider Advisory ~~Board~~ Board (“Board”).

(b)(1) The Board shall consist of 7 members, who are residents of this State and are appointed by the Governor. The following ~~shall be~~ are members of the Board:

(1)~~a~~. One provider from a family child care home ~~from each of~~ located in New Castle County, Kent County, and Sussex ~~County~~ County.

(2)~~b~~. One ~~director/owner~~ administrator or owner of a private ~~day~~ child care center ~~from each of~~ located in New Castle County, Kent County, and Sussex ~~County~~ and County.

(3)~~c~~. One provider from a family or large family child care home or 1 ~~director/owner~~ administrator or owner of a private ~~day~~ child care center ~~from~~ located in the City of Wilmington.

(2) ~~Furthermore, at~~ At least 1 of the members of the Board appointed ~~pursuant to this subsection (b)~~ shall also ~~under paragraph (b)(1) of this section~~ must be from a Boys and Girls Club or YMCA child care facility within this State. For purposes of this subsection, a ~~day care center at a Boys and Girls Club~~ shall be considered or YMCA child care facility is a private ~~day~~ child care ~~center~~. facility.

(c) The term of a Board member appointed by the Governor ~~shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Board~~ is 3 years. A Board member shall continue to serve until ~~his or her~~ the member's successor is duly ~~appointed~~ appointed, but a holdover under this ~~provision~~ subsection does not affect the expiration date of a succeeding term.

(d) In case of a vacancy on the Board before the expiration of a Board member's term, ~~a successor shall be appointed by the Governor~~ shall appoint a successor within 30 days of the vacancy for the remainder of the unexpired term.

(e) The Board shall elect 1 of ~~its~~the Board's members as Chair to serve for a 1-year ~~term and who shall be term.~~ The member who is elected Chair is eligible for reelection.

(f) The Board shall meet at the call of the Chair but no fewer than 4 times a year.

Section 6. Amend § 3007A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3007A. Provider Advisory Board; powers and duties.

The Board has the following powers and duties:

(1) Advise and consult with OCCL regarding the development, adoption, promulgation, and ~~any~~ amendment ~~to~~ of the rules, regulations, and policies ~~that are~~ required to carry out this chapter with respect to early care and education, family and large family child care homes, and school-age centers.

(2) Encourage OCCL to communicate with ~~persons~~ individuals and entities licensed under this chapter and to facilitate ~~such~~ the communication.

(3) Encourage OCCL to enforce this chapter in a manner that recognizes that most child care providers are private businesses that need stable and reasonable regulations.

Section 7. Amend § 3008A, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3008A. Transfers and continuity.

(a) ~~All investigations, petitions, hearings and legal proceedings pending before or instituted by the Office of Child Care Licensing within the Department of Services for Children, Youth and Their Families and not concluded prior to July 1, 2020, shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by, or in the name of the Department of Services for Children, Youth and Their Families. All orders, enforcement actions, agreements of understanding, rules, and regulations made by the Office of Child Care Licensing within the Department of Services for Children, Youth and Their Families and which are in effect on July 1, 2020, shall remain in full force and effect until revoked or modified in accordance with the law by the Department of Education. All~~ Notwithstanding this chapter, all contracts and obligations of the Department of Services for Children, Youth and Their Families made or undertaken in the performance of a function transferred to the Department of Education by this chapter and being in force on July 1, 2020, ~~shall, notwithstanding this chapter,~~ remain in full force and effect and must be performed by the Department of Education until and unless the Department of Education takes formal action to modify any such contracts or obligations.

(b) Employees of ~~the Office of Child Care Licensing~~ OCCL within the Department of Services for Children, Youth and Their Families whose functions are consistent with and have been transferred to the Department of Education by this chapter ~~shall~~ continue and ~~be~~ are deemed to be the employees of the Department of Education on July 1, 2020, and, where applicable, with all the benefits accrued as merit employees as of July 1, 2020.

Section 8. This Act takes effect on January 1, 2023.

Approved October 20, 2021