

SENATE BILL NO. 269

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DAY-CARE LAWS; REVISING REQUIREMENTS FOR FAMILY DAY-CARE HOMES PROVIDING CARE FOR 3 TO 8 CHILDREN AND GROUP DAY-CARE HOMES PROVIDING CARE FOR 9 TO 15 CHILDREN; PROVIDING HEALTH, SANITATION, AND SAFETY REQUIREMENTS; PROVIDING FOR PARENTAL INVOLVEMENT; PROVIDING CAREGIVER QUALIFICATIONS AND REQUIREMENTS; PROVIDING PROFESSIONAL DEVELOPMENT REQUIREMENTS; REQUIRING CERTAIN BACKGROUND CHECKS; PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM ADOPTING REQUIREMENTS IN ADMINISTRATIVE RULE THAT ARE MORE STRINGENT THAN STATUTORY REQUIREMENTS; PROVIDING A DEFINITION; AMENDING SECTION ~~52-2-704~~, 52-2-714, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definition. For the purposes of [sections 1 through 13], "provider" means a family day-care home provider or a group day-care home provider who is registered as a family day-care home or group day-care home by the department.

NEW SECTION. Section 2. Family and group day-care homes -- general requirements. (1) The provider shall maintain:

- (a) proof of current liability insurance that is provided on request to the department; and
 - (b) a signed contract between the provider and each family for whom the provider cares for one or more children. The contract must include a provision that parents or legal guardians are informed of any changes in the composition of the provider's household.
- (2) The provider shall ensure that there is indoor and outdoor space at the family day-care home or group day-care home that is adequate for the number of children in care to play, rest, and eat.
- (3) Children in the care of the provider may not ever be left alone with a visitor or another adult

1 who is not authorized to care for children.

2 (4) The provider shall adopt a policy that prohibits the use of corporal punishment or other
3 negative discipline methods that hurt, humiliate, or frighten children.

4 (5) The provider shall ensure that the telephone number for the department's child abuse hotline is
5 displayed in a highly visible area where parents or legal guardians can see it and is printed in the published
6 materials that are provided to parents or legal guardians.

7 (6) Nothing in this part may be construed or applied in any manner to infringe on or usurp the
8 moral and legal responsibilities of parents or legal guardians.

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10 NEW SECTION. **Section 3. Family and group day-care homes -- health and sanitation.** (1) The
11 provider shall submit to the department documentation that comprehensive fire, safety, and sanitation
12 inspections have been completed. The inspections must be performed annually, and the provider shall make
13 the inspection reports available for review on request by the department.

14 (2) The provider shall notify the parents or legal guardians and the department of any medical
15 emergency or communicable disease or illness of a child, the provider, or a member of the provider's family.

16 (3) The provider may readmit a previously ill child for care only when the child's presence no
17 longer endangers the health of other children.

18 (4) The provider may only administer a physician-prescribed medication to a child in care. A
19 medication may be given only with the written approval of the child's parent or legal guardian. The provider
20 must maintain records documenting the administration of medication to a child.

21 (5) Before applying basic topical care items, including but not limited to sunscreen, insect repellent,
22 and lotion, the provider must have written permission from the child's parent or legal guardian.

23 (6) (a) Before a child may attend a family or group day-care home, the provider must be provided
24 with adequate documentation that the child has been vaccinated as provided in 20-5-403(1)(a) and (1)(b) or is
25 exempt as provided in 20-5-403(1)(d).

26 (b) If a child is not current on all of the vaccines required under subsection (6)(a), the child may be
27 admitted conditionally pursuant to 20-5-403(1)(c). Before the child may attend conditionally, the child's parent or
28 legal guardian shall file a conditional attendance form prescribed by the department to the provider.

(c) The family or group day-care home shall keep immunization data for each enrolled child, including the day, month, and year of administration of all required vaccines.

(d) If a religious or medical exemption is claimed, the family or group day-care home shall maintain the record of the exemption in accordance with the requirements of 20-5-405.

(7) The provider shall follow procedures for diapering and toileting in accordance with national recommendations.

(8) The provider and children shall follow hand-washing procedures in accordance with national recommendations. The provider shall post signs in the facility with reminders of proper hand-washing procedures.

(9) The facility must be maintained in a sanitary manner.

(a) Individual bedding must be washed at least once a week. The bedding may only be used by one child between washings. Individual cribs, cots, and mats must be washed if soiled.

(b) Infant equipment must be washed and disinfected at least daily. A toy that has been mouthed by a child must be removed immediately after mouthing and washed and sanitized prior to being used by another child.

(10) A window used for ventilation must be properly screened.

(11) A provider may not consume alcohol while children are in the provider's care.

(12) Smoking is not permitted in the family day-care home or group day-care home or in the outdoor area while children are in the provider's care.

NEW SECTION. Section 4. Family and group day-care homes -- fire and safety requirements.

(1) The provider shall adopt and enforce policies to ensure that the family or group day-care home operates to protect children against the risk of fire and safety hazards.

(2) The provider shall report any death of or serious injury to a child in the provider's care to the department within 24 hours of the death or injury.

(3) The provider shall adopt and enforce a policy to keep children protected from hazards, including poisonous substances, toxic materials, electrical shock risks, standing water, unsafe playground equipment, and strangulation risks.

(4) The provider must have a written plan for reporting and managing emergencies, including terrorist attacks, severe storm warnings, medical and pandemic emergencies, and a lost or missing child. The written plan must include procedures to shelter in place and to evacuate. The provider shall ensure that any employee or volunteer understands the emergency plan.

(5) The provider shall ensure that first aid supplies are readily available for emergencies and kept in a well-maintained and stocked condition.

(6) The provider shall conduct evacuation drills at least once a quarter at different times of the day or evening when children are in the provider's care. The provider shall document the drills.

(7) The family or group day-care home must have a working landline or cellular phone within the home. Emergency telephone numbers, including police, fire, rescue, and poison control services, and instructions must be accessible or kept with each telephone.

(8) The provider shall use safety gates to prevent children from falls. Door locks that can entrap a child inside a bathroom or a bedroom must be able to be opened from the outside.

(9) If there are firearms in the facility, the ammunition must be removed from the firearm. Firearms and ammunition must be stored separately in locked cabinets that are inaccessible to children.

(10) Young infants must be placed on their backs for sleeping to lower the risk of sudden infant death syndrome. Soft cushions, pillows, thick blankets, and comforters may not be used in cribs.

(11) The provider may not allow children to sleep in family beds unless a separate bed is designated for the child and clean linens are provided.

(12) The provider shall use cribs that meet guidelines established by the U.S. consumer product safety commission. The sides of an infant's crib must be locked in position when the crib is occupied and may not present a strangulation or entrapment hazard.

(13) The provider shall inform parents or legal guardians if the provider will be taking children away from the facility while the children are in the provider's care. If the provider transports children in a vehicle, the provider shall ensure age-appropriate restraint devices are used and appropriate safety precautions are taken.

(14) The provider shall maintain a current copy of the driver's license and proof of insurance on file for the provider and for any other person who will transport children.

NEW SECTION. Section 5. Family and group day-care homes -- parent or legal guardian

involvement and participation. (1) Parents or legal guardians must have access to the family or group day-care home at all times when their children are present at the home.

(2) Parents or legal guardians must receive copies of all policies adopted by the provider. The provider shall maintain a prominent place in the facility to display information for parents or legal guardians.

(3) The provider shall communicate regularly with all parents or legal guardians and recognize the parents or legal guardians as partners in the care of the children.

NEW SECTION. Section 6. Family and group day-care homes -- learning activities -- interaction

with children. (1) The provider shall offer activities and experiences daily that enhance children's physical, social, emotional, and cognitive development. The activities must include age-appropriate nutrition education. The provider shall plan a variety of indoor and outdoor activities each day with a balance between child-initiated and adult-directed activities. The provider shall post a daily schedule of activities for parents or legal guardians to see.

(2) The provider shall ensure there are sufficient toys and materials in the facility to engage all the children in developmentally appropriate ways. Toys and materials may be homemade or purchased. Any toys, materials, and equipment must be maintained in good repair and must be arranged so that children are able to select and put away the toys and materials with little or no assistance.

(3) The provider shall plan and participate in the children's active play. The provider shall interact frequently with the children and show the children affection and respect. The provider shall speak to the children in a friendly, courteous manner.

(4) The provider shall handle the children's routines in a relaxed and individualized manner that promotes respect and provides opportunities to develop each child's self-esteem and self-discipline and opportunities for each child to learn by doing.

(5) Screen time and the use of passive media, including television and audio tapes, must be limited in duration and developmentally appropriate. Media view and computer use are prohibited for children younger than 2 years old.

NEW SECTION. Section 7. Family and group day-care homes -- nutrition -- meal service. (1)

The provider may enroll in the U.S. department of agriculture's child and adult care food program, 7 CFR, part 226, with all meals and snacks prepared, handled, transported, and served according to the program's guidelines.

(2) The provider shall develop a written menu to show all foods to be served during each month. The menu must be posted for meals and snacks and must be made available to all parents or legal guardians.

(3) The provider shall make dietary modifications on the basis of written recommendations from a child's primary care provider. The provider shall make available to families a form to document dietary substitutions for religious and medical purposes.

(4) The provider shall limit the amount of juice, beverages with added sweetener, high-fat foods, and salted foods provided with meals and snacks.

(5) The provider shall ensure that food is prepared, served, and stored in a sanitary manner. If meals are provided by parents or legal guardians, the provider shall store and handle that food in accordance with procedures approved by local health and sanitation authorities.

(6) All children who are present must be served meals and snacks. Meals and snacks for children who are toddler age and older must be served in the manner of family-style dining.

(7) (a) For children who take bottles, bottle-feeding must be done in a manner that:

(i) minimizes the risk of transmitting disease; and

(ii) promotes interaction between the child and the person who is feeding the child.

(b) Infants must be held for bottle feeding. Bottles are prohibited from being propped during feeding. The provider is prohibited from putting an infant to sleep with a bottle.

(c) The provider shall implement an accountability system for bottles, including bottles for breast milk.

(8) The provider shall encourage, provide arrangements for, and support breastfeeding.

NEW SECTION. Section 8. Family and group day-care homes -- supervision of children. (1) (a)

The maximum number of children a provider may care for in a family day-care home is eight children, including the provider's own children who are under 8 years of age.

(b) The maximum number of children a provider may care for in a group day-care home is 15 children, including the provider's own children who are under 8 years of age.

(2) (a) When all of the children in the provider's care in a family day-care home are under 2 years of age, the maximum number of children the provider may care for at any one time is four children.

(b) When all of the children in the provider's care in a group day-care home are under 2 years of age, the maximum number of children who may be cared for at any one time is four children for each staff member.

(c) In mixed-age groups, the number of children who are under 2 years of age must be limited to three children for each provider or staff member.

(3) A provider may offer overlap care for up to 3 hours each day. A family day-care home provider may care for a maximum of 10 children during overlap care times. A group day-care home provider may care for a maximum of 19 children during overlap care times. To be authorized for overlap care, the provider shall submit a written plan to the department that includes the specific hours during which the overlap care will be provided and proof of insurance to care for the total number of children.

(4) The provider shall ensure that parents or legal guardians sign their children in and out of the family day-care home or group day-care home each day. Children may only be released to a person that the parents or legal guardians have authorized in writing.

(5) The provider shall supervise all children in the provider's care inside and outdoors. School-age children may be outside without direct supervision by the provider as long as the children are within sight or sound of the provider.

NEW SECTION. Section 9. Family and group day-care homes -- caregiver training and professional development. (1) A provider and any other individual who will work in the family day-care home or group day-care home shall complete a department-approved orientation training that must be completed within 3 months of the first date on which care is provided for children.

(2) The following orientation training is required:

(a) prevention and control of infectious diseases, including immunizations;

(b) prevention of sudden infant death syndrome and use of safe sleeping practices;

(c) administration of medication, consistent with standards for parental consent;

(d) prevention and response to emergencies due to food and allergic reactions;

(e) building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(f) prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(g) emergency preparedness and response planning for emergencies resulting from a natural disaster or human-caused event;

(h) handling and storage of hazardous materials and appropriate disposal of biocontaminants;

(i) appropriate precautions in transporting children, if applicable;

(j) pediatric first aid and cardiopulmonary resuscitation;

(k) recognition and mandatory reporting of child abuse and neglect;

(l) cognitive, social, emotional, and physical development of children; and

(m) approaches to learning that reflect current research and best practices to meet the developmental needs of participating children and to engage families, including culturally and linguistically appropriate practices.

(3) A provider shall complete the training in pediatric first aid and cardiopulmonary resuscitation prior to providing care for any children.

(4) A provider and a staff member working more than 500 hours annually shall complete 16 hours of ongoing professional development annually.

(5) The annual training required under this section must be aligned to a progression of professional development that:

(a) maintains and updates the health and safety orientation training provided pursuant to subsection (2);

(b) incorporates knowledge and application of the state's early learning and developmental guidelines;

(c) incorporates social-emotional behavior intervention models for children from birth through school-age; and

(d) is appropriate for a population of children that includes different age groups, English learners,

children with developmental delays and disabilities, and Indian children.

NEW SECTION. Section 10. Family and group day-care homes -- caregiver qualifications. (1) An

applicant for registration of a family day-care home or group day-care home must meet the following minimum qualifications:

(a) be 18 years of age or older;

(b) have obtained a high school diploma or high school equivalency diploma;

(c) read, speak, and write English; and

(d) be in good health and be physically and behaviorally capable of performing the duties of the job.

(2) Each provider, substitute provider, and person who is at least 18 years of age who resides at the family day-care home or group day-care home shall complete a background check at least once every 5 years pursuant to [section 11].

NEW SECTION. Section 11. Licensed or registered day-care facilities -- background checks. (1)

(a) Except as provided in subsection (1)(b), fingerprint and background checks are required for individuals employed by or associated with day-care facilities. The following individuals shall provide satisfactory results of background checks prior to approval of a license or registration:

(i) day-care directors, owners, site directors, lead teachers, teachers, substitutes, trainees, support staff, and volunteers who have unsupervised contact with children; and

(ii) an adult residing in the day-care facility or other adult who regularly or frequently stays in the facility.

(b) In the case of an individual caring for children from more than one sibling group in a child's home, all adults residing in the home must have satisfactory results of a background check.

(2) The following background checks are required prior to working in a day-care facility and at least once every 5 years:

(a) a fingerprint background check by the Montana department of justice and the federal bureau of investigation;

- 1 (b) a search of the national sexual offender registry from the national crime information center;
- 2 (c) a search of the Montana sex offender registry;
- 3 (d) a child protective services check for Montana and any state where the individual has resided in
- 4 the preceding 5 years; and
- 5 (e) a name-based criminal records check for Montana and any state where the individual has
- 6 resided in the preceding 5 years.
- 7 (3) Fingerprints must be processed by a trained individual within a certified fingerprinting agency.
- 8 The results must be transmitted electronically to the department by the department of justice.
- 9 (4) (a) After written notice to the applicant, licensee, or registration holder, the department shall
- 10 deny, suspend, restrict, revoke, or reduce a license or registration to a provisional or probationary status on
- 11 finding that a person who is required under subsection (1) to submit background checks has been convicted of
- 12 a crime under subsection (4) that makes the person ineligible to work in a day-care facility.
- 13 (b) The following crimes are felonies and misdemeanors that are direct crimes against a person's
- 14 physical or emotional well-being, and a person is ineligible to work or be present in a day-care facility if the
- 15 person has been convicted of one or more of the following crimes:
- 16 (i) homicide;
- 17 (ii) sexual intercourse without consent;
- 18 (iii) sexual assault;
- 19 (iv) aggravated assault;
- 20 (v) assault on a minor;
- 21 (vi) assault on an officer;
- 22 (vii) assault with a weapon;
- 23 (viii) kidnapping;
- 24 (ix) aggravated kidnapping;
- 25 (x) robbery;
- 26 (xi) arson;
- 27 (xii) child abuse or neglect;
- 28 (xiii) incest;

- (xiv) child sexual abuse;
- (xv) ritual abuse of a minor;
- (xvi) felony partner or family member assault;
- (xvii) child pornography;
- (xviii) child prostitution;
- (xix) internet crimes involving children;
- (xx) felony endangering the welfare of a child;
- (xxi) felony unlawful transactions with children; or
- (xxii) aggravated interference with parent-child contact.

(5) (a) After written notice to the applicant, licensee, or registration holder, the department may deny, suspend, restrict, revoke, or reduce a license or registration to a provisional or probationary status on finding that a person who is required under subsection (1) to submit background checks has been convicted of a crime under subsection (5)(b) that may make the person ineligible to work in a day-care facility.

(b) The following crimes are direct crimes against a person's physical or emotional well-being, and a conviction of one or more of the following crimes may make a person ineligible to work or be present in a day-care facility:

- (i) misdemeanor partner or family member assault;
- (ii) misdemeanor endangering the welfare of a child;
- (iii) misdemeanor unlawful transaction with children;
- (iv) prostitution;
- (v) burglary;
- (vi) a crime involving an abuse of public trust;
- (vii) abuse, neglect, or exploitation of an elderly person or a person with a developmental disability;

or

- (viii) a felony conviction for a drug-related offense within the preceding 5 years, including:
 - (A) distribution or possession of controlled substances;
 - (B) criminal possession of precursors to dangerous drugs;
 - (C) criminal manufacture of dangerous drugs;

(D) criminal possession of imitation dangerous drugs with the intent to distribute;

(E) criminal possession, manufacture, or delivery of drug paraphernalia; and

(F) driving under the influence of alcohol or other drugs.

(6) After written notice to the applicant, licensee, or registration holder, the department may deny, suspend, restrict, revoke, or reduce a license or registration to a provisional or probationary status on finding that a person who is required under subsection (1) to submit background checks has been named as a perpetrator in a substantiated report of abuse or neglect.

NEW SECTION. Section 12. Offenses and investigations -- resolution pending -- notice to department. (1) A staff member, support staff, trainee, volunteer, other adult residing in a day-care facility or other person who regularly or frequently stays in a day-care facility who is charged with a crime that may potentially make the person ineligible to work in a day-care facility is prohibited from providing care or being present in a day-care facility while children in care are on the premises while the resolution of the charges is pending.

(2) A provider shall notify the department within 48 hours of any charges that are filed against a staff member, support staff, trainee, volunteer, other adult residing in a day-care facility or other person who regularly or frequently stays in a day-care facility who is charged with a crime that may potentially make the person ineligible to work in a day-care facility.

(3) A staff member, support staff, trainee, volunteer, other adult residing in a day-care facility or other person who regularly or frequently stays in a day-care facility who is subject to an investigation by the department pursuant to Title 41, chapter 3, may be ineligible to be present in a day-care facility while children in care are on the premises.

NEW SECTION. Section 13. Administrative reconsideration of background check results -- department determination. (1) If the result of a background check is unsatisfactory based on a conviction or a determination pursuant to [section 11], the staff applicant, in conjunction with the license or registration holder if different, may submit additional information to correct inaccuracies or errors in the background check results.

(2) The staff applicant, in conjunction with the license or registration holder if different, may request

1 an administrative reconsideration of a denial based on background check results resulting in a permissive
2 denial pursuant to [section 11(5) or (6)]. The staff applicant and the license or registration holder if different
3 shall establish that the applicant has been sufficiently rehabilitated to warrant the public trust and not pose a
4 risk to children.

5
6 **Section 14.** Section 52-2-704, MCA, is amended to read:

7 **"52-2-704. Duties of department.** (1) The department is responsible for planning, implementing, and
8 coordinating programs under the Montana Child Care Act.

9 (2) The department shall:

- 10 (a) assess child care needs and resources within the state;
11 (b) develop a state child care plan;
12 (c) coordinate child care programs administered by all state agencies;
13 (d) issue licenses to persons to receive children into a day care center on a regular basis;
14 (e) prescribe the conditions and publish minimum standards upon which licenses and registration
15 certificates are issued;
16 (f) adopt rules for day care facilities consistent with the purposes of this part;
17 (g) adopt rules for day care centers that provide day care on an irregular basis, which includes
18 exceptions regarding requirements for immunization records and staffing ratios; and
19 (h) issue registration certificates to a person or persons to receive children into a family day care
20 home or group day care home on a regular basis.

21 (3) The department may:

- 22 (a) enter into interagency agreements to administer and coordinate child care programs;
23 (b) accept any federal funds made available for the improvement or promotion of child care
24 services within the state;
25 (c) administer any state and federal funds that may be appropriated for the purposes of the part;
26 and
27 (d) issue a license to a person to receive children into a day care center on an irregular basis if the
28 person chooses to apply for licensure.

(4) ~~_____ The department may not adopt rules pursuant to subsection (2)(f) that are more stringent than the requirements provided by law in this part."~~

SECTION 14. SECTION 52-2-714, MCA, IS AMENDED TO READ:

"52-2-714. Best beginnings child care scholarship program. (1) There is a best beginnings child care scholarship program administered by the department. The program is established to provide scholarships to qualified low-income families whose child received care provided by a licensed or registered child care provider or day-care facility.

(2) The department shall inspect all providers and facilities that participate in the best beginnings child care scholarship program for compliance with the requirements of 45 CFR 98.41 through 98.43."

NEW SECTION. Section 15. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [sections 1 through 13].

NEW SECTION. Section 16. Effective date. [This act] is effective on [the first day following the date of final adjournment of the 69th regular legislative session].

- END -