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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT

Introduced By: Representatives Diaz, Slater, Blazejewski, Johnston, and Maldonado

Date Introduced: February 28, 2018

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 42-72.1-2, 42-72.1-3 and 42-72.1-6 of the General Laws in  
2 Chapter 42-72.1 entitled "Licensing and Monitoring of Child Care Providers and Child-Placing  
3 Agencies" are hereby amended to read as follows:

4           **42-72.1-2. Definitions.**

5           As used in this chapter:

6           (1) "Administrator of licensing" means the director of the licensing unit (or his/her  
7 designee) that carries out the provisions of this chapter, hereafter referred to as the  
8 "administrator".

9           (2) "Applicant" means a child-placing agency or childcare provider that applies for a  
10 license to operate.

11           (3) "Child" means any person less than eighteen (18) years of age; provided, that a child  
12 over eighteen (18) years of age who is nevertheless subject to continuing jurisdiction of the  
13 family court, pursuant to chapter 1 of title 14, or defined as emotionally disturbed according to  
14 chapter 7 of title 40.1, shall be considered a child for the purposes of this chapter.

15           (4) "Childcare provider" means a person or agency, which offers residential or  
16 nonresidential care and/or treatment for a child outside of his/her natural home.

17           (5) "Child day care" or "child care" means daily care and/or supervision offered  
18 commercially to the public for any part of a twenty-four (24) hour day to children away from  
19 their homes.

1 (6) "Child day care center" or "child care center" means any person, firm, corporation,  
2 association, or agency who, on a regular or irregular basis, receives any child under the age of  
3 sixteen (16) years, for the purpose of care and/or supervision, not in a home or residence, apart  
4 from the child's parent or guardian for any part of a twenty-four (24) hour day irrespective of  
5 compensation or reward. It shall include childcare programs that are offered to employees at the  
6 worksite. It does not include nursery schools or other programs of educational services subject to  
7 approval by the commissioner of elementary and secondary education.

8 (7) "Child-placing agency" means any private or public agency, which receives children  
9 for placement into independent living arrangements, supervised apartment living, residential  
10 group care facilities, family foster homes, or adoptive homes.

11 (8) "Department" means the department of children, youth, and families (DCYF).

12 (9) "Director" means the director of the department of children, youth, and families, or  
13 the director's designee.

14 (10) "Family day care home" means any home other than the child's home in which child  
15 day care in lieu of parental care and/or supervision is offered at the same time to four (4) or more  
16 children who are not relatives of the care giver.

17 (11) "Group family day care home" means a residence occupied by an individual of at  
18 least twenty-one (21) years of age who provides care for not less than nine (9) and not more than  
19 twelve (12) children, with the assistance of one or more approved adults, for any part of a twenty-  
20 four (24) hour day. The maximum of twelve (12) children shall include children under six (6)  
21 years of age who are living in the home, school-age children under the age of twelve (12) years  
22 whether they are living in the home or are received for care, and children related to the provider  
23 who are received for care. These programs shall be subject to yearly licensing as addressed in this  
24 chapter and shall comply with all applicable state and local fire, health, and zoning regulations.

25 (12) "Licensee" means any person, firm, corporation, association, or agency, which holds  
26 a valid license under this chapter.

27 (13) "Regulation" means any requirement for licensure, promulgated pursuant to this  
28 chapter having the force of law.

29 (14) "Related" means any of the following relationships, by marriage, blood or adoption,  
30 even following the death or divorce of a natural parent: parent, grandparent, brother, sister, aunt,  
31 uncle, and first cousin. In a prosecution under this chapter or of any law relating thereto, a  
32 defendant who relies for a defense upon the relationship of any child to him or herself, the  
33 defendant shall have the burden of proof as to the relationship.

34 **42-72.1-3. Powers and scope of activities.**

1 (a) The department shall issue, deny, and revoke licenses for, and monitor the operation  
2 of, facilities and programs by child placing agencies and child care providers, as defined in § 42-  
3 72.1-2 or assess any administrative penalty under the provisions of chapter 72.11 of title 42  
4 relating to licensed child care centers, family child care homes, or group family child care homes.

5 (b) The department shall adopt, amend, and rescind regulations in accordance with this  
6 chapter and implement its provisions. The regulations shall be promulgated and become effective  
7 in accordance with the provisions of the Administrative Procedures Act, chapter 35 of title 42.

8 (c) The department through its licensing unit shall administer and manage the regulations  
9 pertaining to the licensing and monitoring of those agencies, and shall exercise all statutory and  
10 administrative powers necessary to carry out its functions.

11 (d) The administrator shall investigate complaints of noncompliance, and shall take  
12 licensing action as required.

13 (e) Regulations formulated pursuant to the foregoing authority shall include, but need not  
14 be limited to, the following:

15 (1) Financial, administrative and organizational ability, and stability of the applicant;

16 (2) Compliance with specific fire and safety codes and health regulations;

17 (3) Character, health suitability, qualifications of child care providers;

18 (4) Staff/child ratios and workload assignments of staff providing care or supervision to  
19 children;

20 (5) Type and content of records or documents that must be maintained to collect and  
21 retain information for the planning and caring for children;

22 (6) Procedures and practices regarding basic child care and placing services to ensure  
23 protection to the child regarding the manner and appropriateness of placement;

24 (7) Service to families of children in care;

25 (8) Program activities, including components related to physical growth, social,  
26 emotional, educational, and recreational activities, social services and habilitative or rehabilitative  
27 treatment;

28 (9) Investigation of previous employment, criminal record check and department records  
29 check; and

30 (10) Immunization and testing requirements for communicable diseases, including, but  
31 not limited to, tuberculosis, of child care providers and children at any child day-care center or  
32 family day-care home as is specified in regulations promulgated by the director of the department  
33 of health. Notwithstanding the foregoing, all licensing and monitoring authority shall remain with  
34 the department of children, youth, and families.

- 1 (f) The administrator may:
- 2 (1) Prescribe any forms for reports, statements, notices, and other documents deemed
- 3 necessary;
- 4 (2) Prepare and publish manuals and guides explaining this chapter and the regulations to
- 5 facilitate compliance with and enforcement of the regulations;
- 6 (3) Prepare reports and studies to advance the purpose of this chapter;
- 7 (4) Provide consultation and technical assistance, as requested, to assist licensees in
- 8 maintaining compliance; and
- 9 (5) Refer to the advisory council for children and families for advice and consultation on
- 10 licensing matter.
- 11 (g) The department may promulgate rules and regulations for the establishment of child
- 12 day care centers located on the second floor.
- 13 (h) When the department is otherwise unsuccessful in remedying noncompliance with the
- 14 provisions of this chapter and the regulations promulgated under it, it shall petition the family
- 15 court for an order enjoining the noncompliance or for any order that equity and justice may
- 16 require.
- 17 (i) The department shall collaborate with the departments of human services, elementary
- 18 and secondary education, and health to provide monitoring, mentoring, training, technical
- 19 assistance, and other services which are necessary and appropriate to improving the quality of
- 20 child care offered by child care providers who are certified, licensed, or approved by the
- 21 department or the department of elementary and secondary education or who are seeking
- 22 certification, licensure, or approval pursuant to § 42-72-1 or § 16-48-2, including non-English
- 23 speaking providers.
- 24 (j) The department shall adopt, amend, and rescind regulations in the same manner as set
- 25 forth above in order to permit the placement of a pregnant minor in a group residential facility
- 26 which provides a shelter for pregnant adults as its sole purpose.

27 **42-72.1-6. Violations, suspensions and revocations of license.**

28 (a) When a licensee violates the terms of the license, the provisions of this chapter, or any

29 regulation thereunder, the department may pursue the administrative remedies herein provided,

30 [including the assessment of administrative penalties under the provisions of chapter 72.11 of title](#)

31 [42 relating to licensed child care centers, family child care homes, or group family child care](#)

32 [homes](#), in addition to other civil or criminal remedies according to the general laws.

33 (b) After notice and hearing, as provided by the Administrative Procedures Act, chapter

34 35 of title 42, the administrator may revoke the license, or suspend the license for a period not

1 exceeding six (6) months.

2 (c) During a suspension, the agency, facility or program shall cease operation.

3 (d) To end a suspension, the licensee shall, within thirty (30) days of the notice of  
4 suspension, submit a plan of corrective action to the administrator. The plan shall outline the  
5 steps and timetables for immediate correction of the areas of noncompliance and is subject to the  
6 approval of the administrator.

7 (e) At the end of the suspension, the administrator may reinstate the license for the term  
8 of the original license, revoke the license, issue a new license, or deny a reapplication.

9 (f) Upon revocation, the licensed agency, program or facility shall cease operation. The  
10 licensee whose license has been revoked may not apply for a similar license within a three (3)  
11 year period from the date of revocation.

12 (g) Except in those instances wherein there is a determination that there exists a danger to  
13 the public health, safety, or welfare or there is a determination that the child care provider has  
14 committed a serious breach of state law, orders, or regulation, the director shall utilize  
15 progressive penalties for noncompliance of any rule, regulation or order relating to child care  
16 providers. Progressive penalties could include written notice of noncompliance, education and  
17 training, suspending enrollment to the program, assessing fines, suspension of license, and  
18 revocation of license.

19 SECTION 2. Title 42 of the General Laws entitled "STATE AFFAIRS AND  
20 GOVERNMENT" is hereby amended by adding thereto the following chapter:

21 CHAPTER 72.11

22 ADMINISTRATIVE PENALTIES FOR CHILD CARE LICENSING VIOLATIONS

23 **42-72.11-1. Short title.**

24 This chapter shall be known and may be cited as the "Administrative Penalties for Child  
25 Care Licensing Violations".

26 **42-72.11-2. Definitions.**

27 As used in this chapter, the following words, unless the context clearly requires  
28 otherwise, shall have the following meanings:

29 (1) "Administrative penalty" means a monetary penalty not to exceed the civil penalty  
30 specified by statute or, where not specified by statute, an amount not to exceed five hundred  
31 dollars (\$500).

32 (2) "Citation" means a notice of an assessment of an administrative penalty issued by the  
33 director or their duly authorized agent.

34 (3) "Director" means the director of the department of children, youth and families or

1 their duly authorized agent.

2 (4) "Person" means any public or private corporation, individual, partnership, association,  
3 or other entity that is licensed as a child care center, family child care home, group family child  
4 care home or any officer, employee or agent thereof.

5 **42-72.11-2. Authority of director to assess penalty.**

6 The director may assess an administrative penalty against a person who fails to comply  
7 with any provision of any rule, regulation, order, permit license, or approval issued or adopted by  
8 the director, or of any law which the director has the authority to enforce.

9 **42-72.11-3. Notice of violation and assessment of penalty.**

10 Whenever the director seeks to assess an administrative penalty against any person the  
11 director shall cause to be served upon the person, either by service in hand, or by certified mail,  
12 return receipt requested, a written notice of the director's intent to assess an administrative penalty  
13 which shall include:

14 (1) A concise statement of the alleged act or omission for which the administrative  
15 penalty is sought to be assessed;

16 (2) Each law, rule, regulation, or order which has not been complied with as a result of  
17 the alleged act or omission;

18 (3) The amount which the director seeks to assess as an administrative penalty for each  
19 alleged act or omission;

20 (4) A statement of the person's right to an adjudicatory hearing on the proposed  
21 assessment;

22 (5) The requirements the person must comply with to avoid waiving the right to an  
23 adjudicatory hearing; and

24 (6) The manner of payment thereof if the person elects to pay the penalty and waive an  
25 adjudicatory hearing.

26 **42-72.11-4. Right to adjudicatory hearing.**

27 (a) Whenever the director seeks to assess an administrative penalty against any person the  
28 person shall have the right to an adjudicatory hearing under chapter 35 of this title, the provisions  
29 of which shall apply except when they are inconsistent with the provisions of this chapter.

30 (b) A person shall be deemed to have waived their right to an adjudicatory hearing unless,  
31 within ten (10) days of the date of the director's notice that they seek to assess an administrative  
32 penalty, the person files with the director a written statement denying the occurrence of any of the  
33 acts or omissions alleged by the director in the notice, or asserting that the amount of the  
34 proposed administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to

1 chapter 35 of this title the director shall, by a preponderance of the evidence, prove the  
2 occurrence of each act or omission alleged by the director.

3 (c) If a person waives their right to an adjudicatory hearing, the proposed administrative  
4 penalty shall be final immediately upon the waiver.

5 **42-72.11-5. Judicial review.**

6 (a) If an administrative penalty is assessed at the conclusion of an adjudicatory hearing,  
7 the administrative penalty shall be final upon the expiration of thirty (30) days if no action for  
8 judicial review of the decision is commenced pursuant to chapter 35 of this title.

9 (b) The family court shall have exclusive jurisdiction to review all appeals filed under  
10 this chapter.

11 **42-72.11-6. Determination of administrative penalty.**

12 Prior to the imposition of an administrative penalty, the department shall complete a risk  
13 and safety analysis and the director shall consider the following:

14 (1) The actual and potential impact on health, safety and welfare of children impacted by  
15 the alleged noncompliance;

16 (2) Whether the person being assessed the administrative penalty took steps to prevent  
17 noncompliance, and to promptly come into compliance;

18 (3) Whether the person being assessed the administrative penalty has previously failed to  
19 comply with any rule, regulation, or order issued or adopted by the director, or any law which the  
20 director has the authority to enforce;

21 (4) Deterring future noncompliance;

22 (5) Eliminating the economic advantage of noncompliance;

23 (6) Consistency with state and/or federal penalties for a similar violation or failure to  
24 comply;

25 (7) Any other factor(s) that may be relevant in determining the amount of a penalty,  
26 provided that the other factors shall be set forth in the written notice of assessment of the penalty;  
27 and

28 (8) The public interest.

29 **42-72.11-7. Limitations on amount of penalty.**

30 The administrative penalty shall be not more than five hundred dollars (\$500) for each  
31 investigation or failure to comply unless a different amount is authorized by statute as a civil  
32 penalty for the subject violation.

33 **42-72.11-8. Rules and regulations.**

34 No administrative penalty shall be assessed by the director pursuant to this chapter until

1 the director has promulgated rules and regulations for assessing administrative penalties in  
2 accordance with the provisions of chapter 35 of this title.

3 **42-72.11-9. Severability.**

4 If any provision of this chapter or the application thereof to any person or circumstances  
5 is held invalid, that invalidity shall not affect other provisions or applications of the chapter,  
6 which can be given effect without the invalid provision or application, and to this end the  
7 provisions of this chapter are declared to be severable.

8 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO STATE AFFAIRS AND GOVERNMENT

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1           This act would provide a process for issuing administrative penalties for child care  
2   licensing violations.

3           This act would take effect upon passage.

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