

Regular Session, 2013

SENATE BILL NO. 222

BY SENATOR WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN. Revises licensure procedures for child day care centers and facilities. (8/1/13)

1 AN ACT

2 To amend and reenact R.S. 46:1402.1, 1403, 1404(A), 1405, 1414.1(A), (B), (C), and (D),

3 1415, 1419 through 1422, 1425(A) and (B), 1426 (introductory paragraph) and (C),

4 1427(introductory paragraph), 1428(A) and 1430(A)(1), to enact R.S. 46:1406 and

5 1407, and to repeal R.S. 46:1408, 1409, 1412, 1413, and 1424, relative to child care

6 facilities; to provide for licensure requirements; to provide for transitional

7 provisions; to provide for licensure and authorization certificate procedures; to

8 provide for rules; to provide for disclosure; to provide for agencies and facilities

9 subject to regulation; to provide for revocation or refusal to renew licenses; to

10 provide for violations; to provide for appeals; to provide for penalties; to provide for

11 injunctive relief; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 46:1402.1, 1403, 1404(A), 1405, 1414.1(A), (B), (C), and (D), 1415,

14 1419 through 1422, 1425(A) and (B), 1426 (introductory paragraph) and (C),

15 1427(introductory paragraph), 1428(A), and 1430(A)(1) are hereby amended and reenacted,

16 and R.S. 1406 and 1407 are hereby enacted to read as follows:

17 §1402.1. Licensing; prohibition of conflict of interest

1 All licenses **or authorization certificates** issued to child care facilities and
2 child-placing facilities pursuant to this Chapter shall specify that the facility shall not
3 enter into any contract or engage in any activities in conflict with its duties to the
4 mothers, fathers, and children that it is licensed **or authorized** to serve.

5 §1403. Definitions

6 A. As used in this Chapter, the following definitions shall apply unless the
7 context clearly states otherwise:

8 **(1) "Authorization certificate" means a certificate issued to a child day**
9 **care center or residential home that is owned or operated by a church or**
10 **religious organization that does not wish to be licensed as a Type I or Type II**
11 **center. "Authorization certificate" also means a certificate held by a child day**
12 **care center or residential home holding a Class B license prior to the effective**
13 **date of this Act.**

14 **(2) "Camp" means any place or facility operated by any institution,**
15 **society, agency, corporation, person or persons, or any other group which serves**
16 **only children at least five years of age or older and operates only when school**
17 **is not in session during the summer months and/or school holidays.**

18 ~~(1)(3)~~ **(3)** "Child" means a person who has not reached age eighteen or otherwise
19 been legally emancipated. The words "child" and "children" are used interchangeably
20 in this Chapter.

21 ~~(2)(4)~~ **(4)** "Child-placing agency" means any institution, society, agency,
22 corporation, facility, person or persons, or any other group engaged in placing
23 children in foster care or with substitute parents for temporary care or for adoption,
24 or engaged in assisting or facilitating the adoption of children, or engaged in placing
25 youth in transitional placing programs, but shall not mean a person who may
26 occasionally refer children for temporary care.

27 ~~(3)~~ **(3)** "Community home" means ~~any place, facility, or home operated by any~~
28 ~~institution, society, agency, corporation, person or persons, or any other group which~~
29 ~~receives therein at least four but not more than six individuals, who are not related~~

1 to the operator and whose parents or guardians are not residents of the same facility,
2 for supervision, care, lodging, and maintenance, with or without transfer of custody.

3 ~~(4)~~**(5)** "Day **Child day** care center" means any place or facility operated by
4 any institution, society, agency, corporation, person or persons, or any other group
5 for the purpose of providing care, supervision, and guidance of seven or more
6 children, not including those related to the caregiver, unaccompanied by parent or
7 guardian, on a regular basis for at least twelve and one-half hours in a continuous
8 seven-day week. **If a child day care center provides transportation or arranges**
9 **for transportation to and from the center, either directly or by contract with**
10 **third parties, all hours during which a child is being transported shall be**
11 **included in calculating the hours of operation.** A day care center that remains
12 open for more than twelve and one-half hours in a continuous seven-day week, and
13 in which no individual child remains for more than twenty-four hours in one
14 continuous stay shall be known as a full-time day care center. A day care center that
15 remains open after 9:00 p.m. shall meet the appropriate regulations established for
16 nighttime care.

17 ~~(5)~~**(6)** "Department" means ~~the Department of Health and Hospitals, with~~
18 ~~respect to facilities and agencies funded under Title XIX of the Social Security Act,~~
19 ~~and the Department of Children and Family Services for all other facilities and~~
20 ~~agencies.~~

21 ~~(6)~~ "Group home" means ~~any place, facility, or home operated by any~~
22 ~~institution, society, agency, corporation, person or persons, or any other group which~~
23 ~~receives therein at least seven but not more than fifteen children who are not related~~
24 ~~to the operators and whose parents or guardians are not residents of the same facility~~
25 ~~for supervision, care, lodging, and maintenance, with or without transfer of custody.~~

26 **(7) "License category" means the category of license applied for or held,**
27 **which shall include child day care centers, maternity homes, residential homes,**
28 **and child-placing agencies.**

29 **(8) "License type" means the type of license applied for or held, which**

1 **shall include Type I, Type II, and Type III licenses.**

2 ~~(7)~~**(9)** "Maternity home" means any place or facility in which any institution,
3 society, agency, corporation, person or persons, or any other group regularly receives
4 and provides necessary services for children before, during, and immediately
5 following birth. This definition shall not include any place or facility which receives
6 and provides services for women who receive maternity care in the home of a
7 relative within the sixth degree of kindred, computed according to civil law, or
8 general or special hospitals in which maternity treatment and care is part of the
9 medical services performed and the care of children only brief and incidental.

10 ~~(8)~~**(10)** "Related" or "relative" means a natural or adopted child or grandchild
11 of the caregiver or a child in the legal custody of the caregiver.

12 ~~(9)~~**(11)** "Residential home" means any place, facility, or home operated by
13 any institution, society, agency, corporation, person or persons, or any other group
14 to provide full-time care, **twenty-four hours per day**, for ~~more than fifteen~~ **more**
15 **than four** children who are not related to the operators and whose parents or
16 guardians are not residents of the same facility, with or without transfer of custody.
17 ~~A residential home as defined in this Paragraph includes facilities known as~~
18 ~~children's homes, halfway houses, residential treatment centers, training schools, and~~
19 ~~facilities for the mentally retarded, emotionally disturbed, socially maladjusted, or~~
20 ~~otherwise mentally or physically handicapped.~~

21 ~~(10)~~**(12)** "School", as referred to in R.S. 46:1415, means any institution or
22 facility which provides for education of children in grades one or above. Any
23 kindergarten or prekindergarten attached thereto shall be considered part of that
24 school.

25 **(13) "Specialized provider" means a child-placing agency, maternity**
26 **home, or residential home.**

27 **(14) "Type I license" means the license held by a privately owned child**
28 **day care center that either receives no state or federal funds from any source,**
29 **whether directly or indirectly, or whose only source of state or federal funds is**

1 **the federal food and nutrition program.**

2 **(15) "Type II license" means the license held by any publicly- or**
3 **privately-owned specialized provider.**

4 **(16) "Type III license" means the license held by any publicly- or**
5 **privately-owned child day care center which receives state or federal funds,**
6 **directly or indirectly, from any source other than the federal food and nutrition**
7 **program. Type III child day care centers must meet the performance and**
8 **academic standards of the Early Childhood Care and Education Network**
9 **regarding kindergarten readiness, as determined by the State Board of**
10 **Elementary and Secondary Education.**

11 ~~(11)~~**(17)** "Youth" means a person not less than sixteen years of age nor older
12 than twenty-one years of age.

13 B. For purposes of this Chapter "child care facility" shall include ~~community~~
14 ~~homes, maternity homes, group homes,~~ **child** day care centers, and residential homes
15 as defined in this Section.

16 * * *

17 §1404. Requirement of licensure

18 A. All child **day** care facilities **centers** and ~~child-placing agencies~~
19 **specialized providers**, including facilities owned or operated by any governmental,
20 profit, nonprofit, private, or church agency, shall be licensed **or possess an**
21 **authorization certificate pursuant to this Chapter.** Child care licenses shall be of
22 two **three** types: ~~Class A and Class B. All child-placing agency licenses shall be~~
23 ~~Class A only.~~ **Type I, Type II, and Type III.**

24 * * *

25 §1405. Transitional provisions

26 ~~All child care facilities which were licensed on September 1, 1985, shall~~
27 ~~automatically be issued Class A licenses. All child care facilities which were~~
28 ~~registered on September 1, 1985, shall automatically be issued Class B licenses~~
29 ~~without the necessity of making an application for licensure.~~ **A.(1) All child day**

1 care centers that meet the definition for a Type I license pursuant to this
2 Chapter shall be automatically issued a Type I license.

3 (2) Any child day care center possessing a Class A license on July 31,
4 2013, that meets the definition of a Type I license pursuant to this Chapter, shall
5 automatically be issued a Type I license on the effective date of this Act.

6 B.(1) All existing child placing agencies, maternity homes, and residential
7 homes that meet the definition for a Type II license pursuant to this Chapter
8 shall automatically be issued a Type II license as provided by rule.

9 (2) Any child day care center, maternity home, residential home, or
10 child-placing agency possessing a Class A license on July 31, 2013, that meets
11 the definition of a Type II license pursuant to this Chapter, shall automatically
12 be issued a Type II license on the effective date of this Act.

13 C. All existing child day care centers that meet the definition for a Type
14 III license pursuant to this Chapter shall be automatically issued a Type III
15 license in accordance with applicable regulations.

16 D. All existing child day care centers or residential homes possessing a
17 Class B license on July 31, 2013, shall automatically be issued an authorization
18 certificate as provided by rule.

19 E. Any child care center requesting to change their license type or
20 authorization certificate for the following year shall apply to the department no
21 later than December first of the preceding year. This Subsection shall not apply
22 to child day care centers changing location or ownership that are required to
23 apply for a new licence or authorization certificate pursuant to Subsection
24 1406(D) of this Chapter.

25 §1406. Licenses and authorization certificates; application; temporary or
26 provisional; fees

27 A. Application for licensure of a new child day care center or specialized
28 provider shall be made by the child day care center or specialized provider to
29 the department upon forms furnished by the department. Upon receipt of the

1 application for a license and verification that minimum requirements for such
2 license as established by rule are satisfied, and that the facility or agency is in
3 compliance with all other state and local laws and regulations, the department
4 shall issue a Type I, Type II, or Type III license for the appropriate license
5 category for such period as may be provided for by rule.

6 B. Application for a new authorization certificate as a child day care
7 center shall be made by the child day care center to the department upon forms
8 furnished by the department. Upon receipt of the application for authorization
9 and upon verification that minimum requirements for such authorization as
10 established by rule are met, and that the child day care center is in compliance
11 with all other state and local laws and regulations, the department shall issue
12 an authorization certificate for such period as may be provided for by rule.

13 C. The department may provide through the promulgation of rules for
14 the issuance of temporary, provisional, or extended licenses or authorization
15 certificates for each license category and type if a disapproval has not been
16 received from any other state or local agency regulated by any other laws or
17 rules to inspect such facilities or agencies.

18 D. A license or authorization certificate of any type or category shall
19 apply only to the location stated on the application, and such license or
20 authorization certificate, once issued, shall not be transferable from one person
21 to another or from one location to another. If the location or ownership of the
22 facility is changed, then the license or authorization certificate shall be
23 automatically revoked. A new application form shall be completed prior to all
24 license or authorization certificate renewals.

25 E. All licensed or authorized facilities shall display the license or
26 authorization certificate in a prominent place at the facility, except that a
27 facility operated by a church or religious organization may be exempt from
28 such requirement provided the license or authorization certificate is available
29 upon request.

1 **F. There shall be an annual license and authorization certificate fee for**
2 **each type of child day care center and specialized provider in an amount equal**
3 **to the annual license fee in full force and effect for all Class A and Class B child**
4 **care facilities and child-placing agencies possessing such certificate on July 31,**
5 **2013, without an increase in the amount of such fees.**

6 **G. There shall be an annual license and authorization certificate fee of**
7 **twenty-five dollars for any license or authorization certificate issued to a child**
8 **day care center providing care for fifteen or fewer children; one hundred**
9 **dollars for any license or authorization certificate issued to a child day care**
10 **center providing care for at least sixteen but no more than fifty children; one**
11 **hundred seventy-five dollars for any license or authorization certificate issued**
12 **to a child day care center providing care for at least fifty-one but no more than**
13 **one hundred children; and two hundred fifty dollars for any license or**
14 **authorization certificate issued to a child day care center providing care for**
15 **more than one hundred children.**

16 **H. There shall be an annual license fee of one hundred dollars for any**
17 **license issued to a residential home providing care for six or less children; two**
18 **hundred dollars for any license issued to a residential facility providing care for**
19 **at least seven but no more than fifteen children; and three hundred dollars for**
20 **any license issued to a residential facility providing care for sixteen or more**
21 **children.**

22 **I. There shall be an annual license fee of fifty dollars for any license**
23 **issued to a child-placing agency or maternity home.**

24 **J. The fees provided for in this Section shall not apply to any authorized**
25 **child day care center owned or operated by a church or religious organization.**

26 **K. Annual fees for an authorization and any type or category of license**
27 **shall not be increased unless expressly authorized by statute as provided in**
28 **Article VII, § 2.1 of the Louisiana Constitution.**

29 **§1407. Rules, regulations and standards for licenses and authorization**

1 certificates

2 A. The department shall promulgate regulations for authorization
3 certificates and each category and type of license to carry out the provisions of
4 this Chapter in accordance with the provisions of the Administrative Procedure
5 Act.

6 B.(1) The regulations developed by the department, at a minimum, shall:

7 (a) Promote the health, safety, and welfare of children attending any
8 facility.

9 (b) Promote safe, comfortable, and proper physical facilities.

10 (c) Insure adequate supervision of those attending facilities by capable,
11 qualified, and healthy personnel.

12 (d) Insure adequate and healthy food service in facilities where food is
13 offered.

14 (e) Prohibit discrimination by child day care centers and specialized
15 providers on the basis of race, color, creed, sex, national origin, handicapping
16 condition, ancestry, or whether the child is being breast-fed. However, this shall
17 not restrict the hiring or admission policies of a licensed day care center owned
18 by a church or religious organization, which may give preference in hiring or
19 admission to members of the church or denomination. Nor shall it affect the
20 rights of religious sectarian child-placing agencies to consider creed in any
21 decision or action relating to foster care or adoption.

22 (f) Require providers to have a written description of admission policies
23 and criteria which expresses the needs, problems, situations, or patterns best
24 addressed by its program. These policies shall be available to the person legally
25 responsible for any child referred for placement.

26 (g) Include procedures by which parents and guardians are given an
27 opportunity for consultation and information about the educational and
28 therapeutic programs for the individual in attendance.

29 (h) Include regulations and standards for nighttime care.

1 **(i) Include procedures for the receipt, recordation, and disposition of**
2 **complaints.**

3 **(j) Include procedures for the child's return to the parents.**
4 **Arrangements for the child's return to the parent shall not include third parties**
5 **or other child care agencies unless written agreement between the child care**
6 **agency and the parent is on file with the child care agency.**

7 **(k) Include procedures that allow a child day care center to remedy**
8 **certain deficiencies immediately upon identification by the department in an**
9 **onsite inspection, provided that any deficiency that may be remedied in such**
10 **manner does not constitute a critical violation of licensing standards as**
11 **determined by the department.**

12 **(2) Any entity approved by the department shall also require the**
13 **following:**

14 **(a) Approval from the office of the state fire marshal, code enforcement**
15 **and building safety.**

16 **(b) Approval from the office of public health.**

17 **(c) Adherence to the performance and academic standards of the Early**
18 **Childhood Care and Education Network regarding kindergarten readiness as**
19 **determined by the State Board of Elementary and Secondary Education. The**
20 **Department of Education shall base its approval upon the uniform**
21 **accountability system.**

22 **(3) No facility holding a Type I license or authorization certificate shall**
23 **receive any state or federal funds, from any source, whether directly or**
24 **indirectly, other than those received solely for food and nutrition. If a facility**
25 **holding a Type I license or authorization certificate receives any state or federal**
26 **funds, whether directly or indirectly, other than those received solely for food**
27 **and nutrition, its license or authorization certificate shall be automatically**
28 **revoked.**

29 **C. The department shall prepare standard forms for applications and for**

1 inspection reports.

2 D. A comprehensive review of all standards, rules, and regulations for
3 all licenses and authorizations shall be made at least every three years by the
4 department.

5 E. The secretary of the department, in specific instances, may waive
6 compliance with a minimum standard upon determination that the economic
7 impact is sufficiently great to make compliance impractical, as long as the
8 health and well-being of the staff or children is not imperiled. If it is determined
9 that the facility or agency is meeting or exceeding the intent of a standard or
10 regulation, the standard or regulation may be deemed to be met.

11 F. The department shall not regulate or attempt to regulate or control
12 the religious or spiritual content of the curriculum of a school or facility
13 sponsored by a church or religious organization as long as the civil or human
14 rights of the children are not violated.

15 G. Nothing in the rules, regulations, and standards adopted pursuant to
16 this Section shall authorize or require medical examination, immunization, or
17 treatment of any child whose parents object to such examination, immunization,
18 or treatment on religious grounds.

19 H. Every facility shall have a written discipline policy, which shall be
20 made available to parents and to authorized inspection personnel upon request.

21 * * *

22 §1414.1. Disclosure requirements; penalties

23 A. Any owner, operator, current or prospective employee, or volunteer of a
24 child care facility licensed **or authorized** by the Department of Children and Family
25 Services shall report annually and at any time upon the request of the department on
26 the state central registry disclosure form promulgated by the department whether or
27 not his name is currently recorded on the state central registry for a justified finding
28 of abuse or neglect and he is the named perpetrator.

29 B. Any such current or prospective employee or volunteer of a child care

1 facility licensed **or authorized** by the department shall submit the state central
 2 registry disclosure form to the owner or operator of the facility, who shall maintain
 3 the documents in accordance with current department licensing **and authorization**
 4 requirements. Any state central registry disclosure form that is maintained in a child
 5 care facility licensing **and authorization** file shall be confidential and subject to the
 6 confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse
 7 and neglect.

8 C. Any owner, operator, current or prospective employee, or volunteer of a
 9 child care facility licensed **or authorized** by the department who knowingly falsifies
 10 the information on the state central registry disclosure form shall be guilty of a
 11 misdemeanor offense and shall be fined not more than five hundred dollars, or
 12 imprisoned for not more than six months, or both.

13 D. Any owner, operator, current or prospective employee, or volunteer of a
 14 child care facility licensed **or authorized** by the department who discloses that he
 15 is currently recorded on the state central registry for a justified finding of abuse or
 16 neglect shall be entitled to a risk assessment evaluation provided by the department
 17 to determine that the individual does not pose a risk to children. Any such individual
 18 who is determined to pose a risk to children shall have the right to file an appeal in
 19 accordance with R.S. 49:992 of the Administrative Procedure Act. Any such
 20 determination by the risk evaluation panel shall be kept on file at all times by the
 21 department.

22 * * *

23 §1415. Facilities and agencies subject to regulation; exemptions

24 All child **day** care facilities **centers** and ~~child-placing agencies~~ **specialized**
 25 **providers** shall be subject to the provisions of this Chapter. However, private or
 26 public day schools serving children in grades one and above ~~or operating,~~ **including**
 27 **any** kindergartens or prekindergarten programs **attached thereto**, as well as
 28 ~~Montessori schools~~, camps, and all care given without charge, shall be exempt from
 29 such provisions.

* * *

§1419. Revocation or refusal to renew license; written notice

The department shall have the power to deny, revoke, or refuse to renew a license **or authorization certificate** for a ~~child-care facility~~ **child day care center** or ~~child-placing agency~~ **specialized provider** if an applicant has failed to comply with the provisions of this Chapter or any applicable, published rule or regulation of the department relating to ~~child-care facilities~~ **child day care centers** and ~~child-placing agencies~~ **specialized providers**. If a license **or authorization certificate** is denied, revoked, or withdrawn, the action shall be effective when made and the department shall notify the applicant, ~~or licensee,~~ **or authorized center or specialized provider** of such action in writing immediately and of the reason for the denial, revocation, or withdrawal of the license **or authorization certificate**.

§1420. Refusal or revocation of license; appeal procedure

A. Upon the refusal of the department to grant a license or **authorization certificate** upon the revocation of a license, the agency, institution, society, corporation, person or persons, or other group having been refused a license **or authorization certificate** or having had a license **or authorization certificate** revoked shall have the right to appeal such action by submitting a written request to the secretary of the department within thirty days after receipt of the notification of the refusal of the license **or authorization certificate** or, in the case of revocation, within fifteen calendar days after receipt of the notification of the revocation. The appeal hearings shall be held no later than thirty days after the request therefor, except as provided in the Administrative Procedure Act, and shall be conducted in accordance with applicable regulations of the department and the provisions of R.S. 46:107. This provision shall in no way preclude the right of the party to seek relief through mandamus suit against the department, as provided by law.

B. Notwithstanding any law, rule, regulation, or provision to the contrary, including but not limited to R.S. 49:964(A)(2), the Department of Children and Family Services shall be entitled to seek judicial review from any

1 **final decision or order rendered by the division of administrative law in any**
2 **appeal hearing arising under this Chapter.**

3 §1421. Operating without or in violation of license; penalty

4 Whoever operates any child **day** care facility **center** or ~~child-placing agency~~
5 **specialized provider**, as defined in R.S. 46:1403, without a valid license **or**
6 **authorization certificate** issued by the department shall be fined not less than one
7 thousand dollars for each day of such offense.

8 §1422. Operating without or in violation of license; injunctive relief

9 If any child **day** care facility **center** or ~~child-placing agency~~ **specialized**
10 **provider** operates without a valid license **or authorization certificate** issued by the
11 department, the department may file suit in the district court in the parish in which
12 the facility is located for injunctive relief, including a temporary restraining order,
13 to restrain the institution, society, agency, corporation, person or persons, or any
14 other group operating the facility or agency from continuing the violation. The state
15 health officer shall have exclusive authority over all matters involving the prevention
16 or spread of communicable diseases within a child **day** care facility **center** or ~~child-~~
17 ~~placing agency~~ **specialized provider**.

18 * * *

19 §1425. Adoption services; requirements for advertising; injunctive relief; exceptions;
20 penalties

21 A. It shall be unlawful for any person other than a **licensed** child-placing
22 agency ~~possessing a Class A or Class B license~~ or a Louisiana-based crisis
23 pregnancy center to advertise through print or electronic media that it will adopt
24 children or assist in the adoption of children.

25 B. If any person advertises in violation of this Section, the attorney general,
26 the Department of Children and Family Services, the appropriate district attorney,
27 or any licensed ~~Class A or Class B~~ child-placing agency or a Louisiana-based crisis
28 pregnancy center may file suit in district court according to the general rules of
29 venue to obtain injunctive relief to restrain the person from continuing the violation.

* * *

§1426. Disclosure of information

A. The department shall make available, upon request of a parent or guardian of any child who has applied for placement in a day care center licensed **or authorized** by the department, the following information relative to such day care center:

* * *

C.(1) Licensed **or authorized** day care centers and other state agencies shall cooperate with the secretary of the department to make such requested information available.

(2) Day care centers shall make available to parents or legal guardians information on how to view or obtain copies of child care licensing **or authorizing** surveys from the department. Day care centers shall post information which explains that the licensing **or authorizing** surveys are available online and list the web address where such information may be obtained and information which explains that licensing **or authorizing** surveys may be obtained by sending a request in writing to the department. The department shall develop a form suitable for display which shall be posted at each licensed **or authorized** day care center in compliance with this Subsection.

* * *

§1427. Parent-child relationship

The Department of ~~Social~~ **Children and Family** Services shall not interfere with the parent-child relationship regarding the religious training of a child, where all of the following conditions are met:

* * *

§1428. Immunization information; influenza

A. Each licensed **or authorized** child care facility, ~~whether licensed as a Class A or Class B facility,~~ before November first of each year, shall make available to each child's parent or legal guardian information relative to the risks associated

1 with influenza and the availability, effectiveness, known contraindications and
 2 possible side effects of the influenza immunization. Such information shall include
 3 the causes and symptoms of influenza, the means by which influenza is spread, and
 4 the places where a parent or legal guardian may obtain additional information and
 5 where a child may be immunized against influenza. Such information shall be
 6 updated annually if new information on such disease is available.

7 * * *

8 §1430. Operating in violation of regulations; penalties and fines

9 A.(1) For violations related to supervision, criminal history record checks,
 10 the state central registry disclosure process, staff-to-child ratios, motor vehicle
 11 checks, or failure to report critical incidents, the Department of Children and Family
 12 Services may issue a written warning that includes a corrective action plan, in lieu
 13 of revocation, upon any person or entity violating these requirements if such
 14 condition or occurrence does not pose an imminent threat to the health, safety, rights,
 15 or welfare of a child. Failure to implement a corrective action plan issued pursuant
 16 to this Section may result in either the assessment of a civil fine or license **or**
 17 **authorization certificate** revocation or may result in both actions being taken by the
 18 department. Such civil fine shall not exceed two hundred fifty dollars per day for
 19 each assessment; however, the aggregate fines assessed for violations determined in
 20 any consecutive twelve-month period shall not exceed two thousand dollars.

21 * * *

22 Section 2. R.S. 46:1408, 1409, 1412, 1413, and 1424 are hereby repealed.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alan Miller.

DIGEST

Present law provides for licensing of child-placing agencies, community homes, day care centers, group homes, maternity homes, and residential homes with Class A and Class B licenses.

Proposed law provides for licensing and authorization certification of camps, child-placing agencies, community homes, child day care centers, group homes, maternity homes, and residential homes with Type I, II and III licenses, and authorization certificates.

Present law requires that all licenses issued to child care facilities and child-placing facilities to specify that the facility shall not enter into any contract or engage in any activities in conflict with its duties to the mothers, fathers, and children that it is licensed to serve.

Proposed law expands present law to include both licenses and authorization certificates.

Proposed law defines an "authorization certificate" as a certificate issued to a child day care center or residential home that is owned or operated by a church or religious organization that does not wish to be licensed as a Type I or Type II center, and a child day care center or residential home holding a Class B license prior to the effective date of proposed law.

Proposed law defines a "specialized provider" as a child-placing agency, maternity home, or residential home.

Proposed law defines a "Type I license" as a license held by a privately owned child day care center that either receives no state or federal funds from any source, whether directly or indirectly, or whose only source of state or federal funds is the federal food and nutrition program.

Proposed law defines a "Type II license" as a license held by any publicly- or privately-owned specialized provider.

Proposed law defines a "Type III license" as a license held by any publicly- or privately-owned child day care center which receives state or federal funds, directly or indirectly, from any source other than the federal food and nutrition program. Type III child day care centers must meet the performance and academic standards of the Early Childhood Care and Education Network regarding kindergarten readiness, as determined by the State Board of Elementary and Secondary Education.

Proposed law provides that all child day care centers that meet the definition for a Type I license shall be automatically issued a Type I license, and that any child day care center possessing a Class A license on 7/31/13, that meets the definition of a Type I license shall automatically be issued a Type I license.

Proposed law required that all day care centers and specialized providers to be either licensed or possess an authorization certificate in order to provide services.

Proposed law provides that all existing child day care centers that meet the definition for a Type I license, or possess a Class A license on 7/31/13, to automatically be issued a Type I license.

Proposed law provides that all existing child placing agencies, maternity homes, and residential homes that meet the definition for a Type II license, or possess a Class A license on 7/31/13, to automatically be issued a Type II license.

Proposed law provides that all existing child day care centers that meet the definition for a Type III license, or possess a Class B license on 7/31/13, to automatically be issued a Type III license.

Proposed law provides that all existing child day care centers or residential homes that possess a Class B license on 7/31/13, to automatically be issued an authorization certificate.

Proposed law requires a facility to apply for a new license or authorization certificate if the location or ownership of the facility is changed.

Proposed law provides that all applicable fees provided for in present law remain in effect. Exempts from fees any authorized child day care center owned or operated by a church or religious organization.

Proposed law requires the department to promulgate regulations for authorization certificates and each category and type of license to carry out the provisions of proposed law in accordance with the provisions of the APA.

- (1) The regulations developed by the department, at a minimum, shall:
 - (a) Promote the health, safety, and welfare of children attending any facility.
 - (b) Promote safe, comfortable, and proper physical facilities.
 - (c) Insure adequate supervision of those attending facilities by capable, qualified, and healthy personnel.
 - (d) Insure adequate and healthy food service in facilities where food is offered.
 - (e) Prohibit discrimination by child day care centers and specialized providers on the basis of race, color, creed, sex, national origin, handicapping condition, ancestry, or whether the child is being breast-fed. However, this shall not restrict the hiring or admission policies of a licensed day care center owned by a church or religious organization, which may give preference in hiring or admission to members of the church or denomination. Nor shall it affect the rights of religious sectarian child-placing agencies to consider creed in any decision or action relating to foster care or adoption.
 - (f) Require providers to have a written description of admission policies and criteria which expresses the needs, problems, situations, or patterns best addressed by its program. These policies shall be available to the person legally responsible for any child referred for placement.
 - (g) Include procedures by which parents and guardians are given an opportunity for consultation and information about the educational and therapeutic programs for the individual in attendance.
 - (h) Include regulations and standards for nighttime care.
 - (i) Include procedures for the receipt, recordation, and disposition of complaints.
 - (j) Include procedures for the child's return to the parents. Arrangements for the child's return to the parent shall not include third parties or other child care agencies unless written agreement between the child care agency and the parent is on file with the child care agency.
 - (k) Include procedures that allow a child day care center to remedy certain deficiencies immediately upon identification by the department in an onsite inspection, provided that any deficiency that may be remedied in such manner does not constitute a critical violation of licensing standards as determined by the department.

Proposed law requires any entity approved by the department also do the following:

- (1) Gain approval from the office of state fire marshal.
- (2) Gain approval from the office of public health.
- (3) Adhere to the performance and academic standards of the Early Childhood Care and Education Network regarding kindergarten readiness as determined by BESE. The Department of Education shall base its approval upon the uniform accountability system.

Proposed law requires that no facility holding a Type I license or authorization certificate shall receive any state or federal funds, from any source, whether directly or indirectly, other than those received solely for food and nutrition. If a facility holding a Type I license or authorization certificate receives any state or federal funds, whether directly or indirectly, other than those received solely for food and nutrition, its license or authorization certificate shall be automatically revoked.

Proposed law requires the department to prepare standard forms for applications and for inspection reports.

Proposed law requires a comprehensive review of all standards, rules, and regulations for all licenses and authorizations shall be made at least every three years by the department.

Proposed law allows the department secretary, in specific instances, to waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff or children is not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

Proposed law prohibits the department from regulating or attempting to regulate or control the religious or spiritual content of the curriculum of a school or facility sponsored by a church or religious organization as long as the civil or human rights of the children are not violated.

Proposed law provides that nothing in the rules, regulations, and standards adopted pursuant to proposed law shall authorize or require medical examination, immunization, or treatment of any child whose parents object to such examination, immunization, or treatment on religious grounds.

Proposed law requires that every facility have a written discipline policy, which shall be made available to parents and to authorized inspection personnel upon request.

Effective August 1, 2013.

(Amends R.S. 46:1402.1, 1403, 1404(A), 1405, 1414.1(A), (B), (C), and (D), 1415, 1419 through 1422, 1425(A) and (B), 1426 (intro para) and (C), 1427(intro para), 1428(A) and 1430(A)(1); adds R.S. 46:1406 and 1407; and repeals R.S. 46:1408, 1409, 1412, 1413, and 1424)