

CHAPTER 1669

CHILDREN'S HOMES

§8101. Definitions

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings. [PL 1981, c. 260, §4 (RPR).]

1. Children's home. "Children's home" means any residence maintained exclusively or in part for the board and care of one or more children under the age of 18. "Children's home" does not include:

A. A facility established primarily to provide medical care; [PL 1981, c. 260, §4 (NEW).]

B. A youth camp licensed under section 2495; or [PL 2009, c. 211, Pt. B, §19 (AMD).]

C. A school established solely for educational purposes except as provided in subsection 4. [PL 1981, c. 260, §4 (NEW).]
[PL 2009, c. 557, §5 (AMD).]

2. Emergency children's shelter. "Emergency children's shelter" means a facility that operates to receive children 24 hours a day and that limits placement to 90 consecutive days or less. For purposes of this section, the definition of "children" includes a person under 21 years of age. "Emergency children's shelter" does not mean a family foster home or specialized children's home. If emergency shelter is a service provided by a children's residential care facility, the service is restricted to a designated physical area of the facility.
[PL 2021, c. 98, §1 (AMD).]

3. Family foster home. "Family foster home" means a children's home, other than an Indian foster family home, that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis. The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. "Family foster home" includes the home of a resource family whether the family provides foster care, kinship care, adoption or permanency guardianship services, as long as the home meets the requirements and standards for adoption of children in foster care. Family foster homes licensed by the Department of Health and Human Services or relatives' homes approved by the Department of Health and Human Services as meeting licensing standards are eligible for insurance pursuant to Title 5, section 1728-A. In any action for damages against a family foster home provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claim for and award of those damages, including costs and interest, may not exceed \$300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maximum liability limit must be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be deemed to make the operation of a family foster home a state activity nor may it expand in any way the liability of the State or foster parent.
[PL 2011, c. 187, §1 (AMD).]

3-A. Indian foster family home. "Indian foster family home" means a foster home licensed, approved or specified by the Indian child's tribe where substitute parental care is provided for an Indian child as defined in the federal Indian Child Welfare Act of 1978, 25 United States Code, Section 1901, et seq. or the Maine Indian Child Welfare Act, section 3943, subsection 8.
[PL 2023, c. 359, §9 (AMD).]

4. Children's residential care facility. "Children's residential care facility" means a children's facility that provides board and care for one or more children on a regular, 24-hour a day, residential basis. For purposes of this section, the definition of "children" includes a person under 21 years of age. A children's residential care facility does not mean a family foster home, a specialized children's home or an emergency children's shelter. The term includes, but is not limited to:

A. [PL 2007, c. 324, §13 (RP).]

B. An approved treatment facility under Title 5, section 20003, subsection 3; [PL 2007, c. 324, §13 (AMD).]

C. A drug treatment center under section 8001; [PL 2013, c. 179, §7 (AMD).]

D. [PL 2007, c. 324, §13 (RP).]

E. A residential facility under Title 34-B, section 1431; and [PL 2013, c. 179, §7 (AMD).]

F. A children's residential treatment facility with secure capacity. [PL 2013, c. 179, §7 (NEW).]
[PL 2013, c. 179, §7 (AMD).]

4-A. Shelter for homeless children. "Shelter for homeless children" means a facility designed to provide for the overnight lodging and supervision of children 10 years of age or older for no more than 90 consecutive overnights. For purposes of this section, the definition of "children" includes a person under 21 years of age.

[PL 2021, c. 98, §2 (AMD).]

4-B. Children's residential treatment facility with secure capacity. "Children's residential treatment facility with secure capacity" means a children's residential care facility that provides a mental health intensive treatment program to a child whose diagnostic assessment indicates that the persistent pattern of the child's mental health presents a likely threat of harm to self or others and requires treatment in a setting that prevents the child from leaving the program. For purposes of this section, the definition of "children" includes a person under 21 years of age.

[PL 2013, c. 179, §7 (AMD).]

5. Specialized children's home. "Specialized children's home" means a children's home where care is provided to no more than 4 children who are moderately to severely disabled by a caretaker who is specifically educated and trained to provide for the particular needs of each child placed. The total number of children in a specialized children's home may not exceed 4, including the caretaker's legal children under 16 years of age, with no more than 2 children under the age of 2.

[PL 2021, c. 348, §32 (AMD).]

6. Transitional living program. "Transitional living program" means a children's home that provides board and care for up to 10 children and may provide one or more services described in section 4099-E. For the purposes of this subsection, "children" means persons under 21 years of age.

[PL 2023, c. 39, §2 (NEW).]

SECTION HISTORY

PL 1975, c. 719, §6 (NEW). PL 1981, c. 260, §4 (RPR). PL 1983, c. 629, §1 (AMD). PL 1987, c. 778, §2 (AMD). PL 1989, c. 270, §15 (AMD). PL 1995, c. 301, §1 (AMD). PL 1999, c. 392, §§4,5 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 324, §§12-15 (AMD). PL 2009, c. 211, Pt. B, §19 (AMD). PL 2009, c. 557, §5 (AMD). PL 2011, c. 186, Pt. A, §1 (AMD). PL 2011, c. 187, §1 (AMD). PL 2013, c. 179, §7 (AMD). PL 2021, c. 98, §§1, 2 (AMD). PL 2021, c. 348, §32 (AMD). PL 2023, c. 39, §2 (AMD). PL 2023, c. 359, §9 (AMD).

§8102. Rules

1. Rules. The department shall adopt rules for the various levels of children's residential care facilities, including, but not limited to, facilities that are private nonmedical institutions, in conformity

with the Maine Administrative Procedure Act, Title 5, chapter 375. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must be designed to protect the health, safety, well-being and development of children and must include, but are not limited to:

- A. The number and qualifications of staff; [PL 1981, c. 260, §4 (RPR).]
 - B. Rights and responsibilities of parents, children and staff; [PL 1981, c. 260, §4 (RPR).]
 - C. The nature, provision, documentation and management of programs of care or treatment; and [PL 1981, c. 260, §4 (RPR).]
 - D. The physical environment. [PL 1981, c. 260, §4 (RPR).]
- [PL 2013, c. 179, §8 (AMD).]

2. Different classes.

[PL 1981, c. 260, §4 (RP).]

3. Public hearing.

[PL 1977, c. 694, §379 (RP).]

SECTION HISTORY

PL 1975, c. 719, §6 (NEW). PL 1977, c. 497, §6 (AMD). PL 1977, c. 694, §379 (AMD). PL 1981, c. 260, §4 (RPR). PL 2003, c. 673, §V3 (AMD). PL 2003, c. 673, §V29 (AFF). PL 2013, c. 179, §8 (AMD).

§8103. Fire safety; inspections for children's homes

1. Procedures.

[PL 2003, c. 599, §10 (RP).]

1-A. Inspection required. Except as provided in subsection 2-A, the department may not issue a license to operate to a children's home until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392 to make fire safety inspections. This statement must indicate that the children's home has complied with applicable fire safety provisions referred to in Title 25, section 2452.

[PL 2019, c. 444, §1 (AMD).]

2. Temporary license.

[PL 2019, c. 444, §2 (RP).]

2-A. Family foster homes. Family foster homes are exempt from the inspection requirement in subsection 1-A. The department shall inspect a family foster home prior to placing a foster child in the home. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing the fire and safety inspection of family foster homes.

[PL 2019, c. 444, §3 (NEW).]

3. Fees. The department shall establish and pay reasonable fees to the Commissioner of Public Safety for each inspection required pursuant to subsection 1-A.

[PL 2003, c. 411, §1 (NEW).]

4. Requirements for facilities with 17 or more beds. A children's home that has a capacity of 17 or more beds must comply with the Life Safety Code of the National Fire Protection Association, Residential Board and Care Occupancies sections for large facilities as adopted by the Commissioner of Public Safety.

[PL 2003, c. 411, §1 (NEW).]

5. Requirements for children's home with more than 3 but fewer than 17 beds. A children's home that has a capacity of more than 3 but fewer than 17 beds must comply with the Life Safety Code

of the National Fire Protection Association, Residential Board and Care Occupancies sections for small facilities as adopted by the Commissioner of Public Safety. In addition, automatic emergency lights must be provided in the number and location required by the Commissioner of Public Safety. [PL 2003, c. 411, §1 (NEW).]

6. Requirements for children's home with 6 or fewer beds. Notwithstanding subsection 5, the department may consider a children's home that has 6 or fewer residents, all of whom can evacuate the home without the assistance of another person in 3 minutes or less, to be in compliance with the one-family and 2-family dwelling requirements of the Life Safety Code of the National Fire Protection Association as adopted by the Commissioner of Public Safety. Facilities having 3 or fewer residents must meet the requirements of the one-family and 2-family dwelling chapter of the Life Safety Code of the National Fire Protection Association as adopted by the Commissioner of Public Safety. [PL 2003, c. 411, §1 (NEW).]

7. Local regulations. Nothing in this section prevents a locality from imposing requirements for children's homes more stringent than those required in this section. [PL 2003, c. 411, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 719, §6 (NEW). PL 1985, c. 706, §9 (RPR). PL 1989, c. 502, §A85 (AMD). PL 1997, c. 728, §12 (AMD). PL 2001, c. 515, §1 (AMD). PL 2001, c. 596, §B19 (AMD). PL 2001, c. 596, §B25 (AFF). PL 2003, c. 411, §1 (AMD). PL 2003, c. 510, §A18 (AMD). PL 2003, c. 599, §10 (AMD). PL 2019, c. 444, §§1-3 (AMD).

§8104. Interagency licensing

1. Interagency licensing method. The Commissioner of Education and the Commissioner of Health and Human Services, or their designees, shall jointly establish a method for interagency licensing of residential child care facilities subject wholly or partly to licensing by both of the departments. The method must provide for the following:

- A. Development of common licensing rules; [PL 1981, c. 260, §5 (NEW).]
- B. Periodic review of licensing rules; [PL 1981, c. 260, §5 (NEW).]
- C. Delegation of departmental responsibilities; and [PL 1981, c. 260, §5 (NEW).]
- D. Determination of licensing fees. [PL 1981, c. 260, §5 (NEW).]

[PL 2005, c. 397, Pt. A, §28 (AMD).]

2. Licensing authority. For the purposes of this section, the Department of Health and Human Services shall have licensing authority for residential child care facilities. This authority shall not relieve any agency of responsibility for the proper and efficient management or evaluation of programs funded by that agency.

[PL 1981, c. 260, §5 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

3. Common licensing rules. Common licensing rules developed under this section shall eliminate varying, duplicative and conflicting rules and procedures. Common licensing rules shall also assure, as far as practicable, that:

- A. Licensing is accomplished expeditiously; [PL 1981, c. 260, §5 (NEW).]
- B. Applicants have to deal with as few agency representatives as possible; [PL 1981, c. 260, §5 (NEW).]
- C. Consideration is given to special circumstances made known by an applicant which make the timing of licensing investigation unreasonable; [PL 1981, c. 260, §5 (NEW).]

D. Applicants are promptly informed of licensing decisions and of the cause for any delay or denial; [PL 1981, c. 260, §5 (NEW).]

E. Applicants do not have to obtain information from another agency if the licensing agency can obtain the information more conveniently; and [PL 1981, c. 260, §5 (NEW).]

F. Rules are applied uniformly. [PL 1981, c. 260, §5 (NEW).]
[PL 1981, c. 260, §5 (NEW).]

4. Authority to change daily rate for unlicensed foster care providers. Notwithstanding any other provision of law, the department may change the daily rates for foster board and care paid to unlicensed homes and may provide the opportunity for those unlicensed homes, if they choose to apply, to pursue licensure that could result in a higher rate of payment.
[PL 2005, c. 12, Pt. RR, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 260, §5 (NEW). PL 1981, c. 493, §2 (AMD). PL 1989, c. 700, §A95 (AMD). PL 1991, c. 824, §A49 (AMD). RR 1995, c. 2, §46 (COR). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 12, §RR1 (AMD). PL 2005, c. 397, §A28 (AMD).

§8105. Transitional provision

1. Rules. Any rule in effect immediately prior to the effective date of this section shall remain in effect until it is amended.
[PL 1981, c. 260, §5 (NEW).]

2. Licenses. Any license in effect immediately prior to the effective date of this section shall remain in effect unless it is revoked, suspended or made conditional, or until it expires, or until a new license is issued.
[PL 1981, c. 260, §5 (NEW).]

SECTION HISTORY

PL 1981, c. 260, §5 (NEW).

§8106. Report

(REPEALED)

SECTION HISTORY

PL 1981, c. 260, §6 (NEW). PL 1993, c. 685, §B4 (RP).

§8107. Exceptions

The following exceptions to placement, as defined in section 8101, shall apply. [PL 1983, c. 629, §2 (NEW).]

1. Number; placement in children's homes. The limitations on the number of children in children's homes do not prohibit the placement of more than the allowed number if the purpose of the placement is to keep siblings together.
[PL 2017, c. 372, §1 (AMD).]

1-A. Number; placement in family foster home. The limitation on the number of children in a family foster home does not prohibit the placement of more than the allowed number in an individual case involving unusual circumstances if the department determines that placement to be appropriate.
[PL 2017, c. 372, §2 (NEW).]

2. Disabled child; placement. The definitions used do not preclude the department from placing a child who is moderately to severely disabled in any appropriate child care facility at the department's

discretion, subject to the limitations on the number of children specified in section 8101, subsections 1 and 3.

[PL 2021, c. 348, §33 (AMD).]

3. Residents 18 years of age or older. A resident in a children's home may remain in that home after attaining the age of 18 years without the home being required to be licensed as a boarding care facility under chapter 1663 if the department determines that it is in the best interest of the resident.

[PL 1989, c. 355, §3 (NEW).]

4. Parents of children receiving services. Adult parents may reside with their children in a children's residential care facility in order to facilitate the care of the child when the department has determined it to be in the best interest of the child.

[PL 2013, c. 179, §9 (AMD).]

The department may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 320, §2 (NEW).]

SECTION HISTORY

PL 1983, c. 629, §2 (NEW). PL 1985, c. 706, §10 (AMD). PL 1989, c. 355, §3 (AMD). PL 2007, c. 320, §§1, 2 (AMD). PL 2013, c. 179, §9 (AMD). PL 2017, c. 372, §§1, 2 (AMD). PL 2021, c. 348, §33 (AMD).

§8108. Search of property

An administrator or other staff designated by an administrator of a children's home or children's residential care facility may search a resident's backpack or travel bag upon the resident's return to the home or facility if there are reasonable grounds for suspecting that the backpack or travel bag contains misappropriated articles or items that would endanger the health or safety of the resident or other residents. A search of a resident's backpack or travel bag conducted under this section must be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the resident and the nature of the suspected misappropriated or harmful items. Following a search of a resident's backpack or travel bag authorized under this section, the administrator or designated staff may confiscate any items found in the resident's possession that are misappropriated or that pose a health or safety risk to the resident or other residents. [PL 2015, c. 240, §1 (NEW).]

REVISOR'S NOTE: §8108. Fees and terms for licenses (As enacted by PL 2015, c. 267, Pt. RR, §3 is REALLOCATED TO TITLE 22, SECTION 8109)

SECTION HISTORY

RR 2015, c. 1, §23 (RAL). PL 2015, c. 240, §1 (NEW). PL 2015, c. 267, Pt. RR, §3 (NEW).

§8109. Fees and terms for licenses

(REALLOCATED FROM TITLE 22, SECTION 8108)

License fees and terms for children's residential care facilities are governed by this section. [RR 2015, c. 1, §23 (RAL).]

1. Provisional license. The application fee for a provisional license for a children's residential care facility may not be less than \$100 nor more than \$280. The term of a provisional license is for one year.

[RR 2015, c. 1, §23 (RAL).]

2. Full license. The application fee for a full license for a children's residential care facility may not be less than \$100 nor more than \$280. The term of a full license is for 2 years.

[RR 2015, c. 1, §23 (RAL).]

3. Fee for biennial renewal of a full license. The fee for the biennial renewal of a full license for a children's residential care facility may not be less than \$70 nor more than \$170.

[RR 2015, c. 1, §23 (RAL).]

4. Fee to add a service site to a license. The processing fee to add a service site to an issued license for a children's residential care facility may not be less than \$35 nor more than \$70.

[RR 2015, c. 1, §23 (RAL).]

5. Fee to add a service to a license. The processing fee to add a service to an issued license for a children's residential care facility may not be less than \$70 nor more than \$140.

[RR 2015, c. 1, §23 (RAL).]

6. Fee to replace a license. A licensee under this section shall maintain a valid license. An issued license is not valid when the information on the license is no longer accurate. A processing fee not to exceed \$10 must be paid to the department to secure a reissued license with accurate information. The fee applies to each license replaced. The reissued license must have the same expiration date as the replaced license.

[RR 2015, c. 1, §23 (RAL).]

7. Transaction fee for electronic renewal of license. The transaction fee for the electronic renewal of a license for a children's residential care facility may not be less than \$25 nor more than \$50. The transaction fee may not exceed the cost of providing the electronic renewal service.

[RR 2015, c. 1, §23 (RAL).]

8. Rules. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[RR 2015, c. 1, §23 (RAL).]

SECTION HISTORY

RR 2015, c. 1, §23 (RAL).

§8110. Criminal history record checks for employees of children's residential care facilities, emergency children's shelters, shelters for homeless children and transitional living programs

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Federal Bureau of Investigation" means the United States Department of Justice, Federal Bureau of Investigation. [PL 2019, c. 399, §1 (NEW).]

B. "State Police" means the Department of Public Safety, Bureau of State Police. [PL 2019, c. 399, §1 (NEW).]

[PL 2019, c. 399, §1 (NEW).]

2. Criminal history; information about criminal records and data obtained. The department shall obtain, in print or electronic format, criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8, from the Maine Criminal Justice Information System, established pursuant to Title 16, section 631, and the Federal Bureau of Investigation, for any staff member of a children's residential care facility, an emergency children's shelter, a shelter for homeless children or a transitional living program in order to comply with the federal Family First Prevention Services Act. For purposes of this section, "staff member" means an individual who is employed by, or has applied for and may be offered employment at, a children's residential care facility, an emergency children's shelter or a shelter for homeless children or with a transitional living program, including a contract employee or self-employed individual, whether or not the individual has direct contact with children. "Staff member" does not include a contractor performing maintenance or repairs at the children's residential care facility,

emergency children's shelter or shelter for homeless children or for a transitional living program who does not have unsupervised access to children at the facility or shelter or in the transitional living program.

[PL 2023, c. 39, §3 (AMD).]

3. Fingerprint-based criminal history obtained. A staff member shall consent to and have the staff member's fingerprints taken. The State Police shall take or cause to be taken the fingerprints of a staff member who has consented under this subsection and shall forward the fingerprints to the Department of Public Safety so that the Department of Public Safety may conduct a state and national criminal history record check on the person. The Department of Public Safety shall forward the results obtained to the department. The State Police shall assess a fee set annually by the Department of Public Safety to be paid by the children's residential care facility, emergency children's shelter, shelter for homeless children or transitional living program or the staff member for each criminal history record check required to be performed under this section. Except for the portion of the payment that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police under this subsection must be paid to the Treasurer of State, who shall apply the money to the expenses of administration of this section by the Department of Public Safety.

[PL 2023, c. 39, §3 (AMD).]

4. Updates to information. The department may request a subsequent criminal history record check under subsection 3 on a staff member as the department determines appropriate, including continuous notifications of updated criminal history record information if a service providing notifications of updated criminal history record information becomes available.

[PL 2019, c. 399, §1 (NEW).]

5. Confidentiality. Information obtained pursuant to this section is confidential and may not be disseminated for purposes other than as provided in subsections 6 and 7.

[PL 2019, c. 399, §1 (NEW).]

6. Use of information obtained. Criminal history record information obtained pursuant to this section may be used by the department for employment purposes to screen a staff member. The subject of any criminal history record check under subsection 3 may contest any negative decision made by the department based upon the information received pursuant to the criminal history record check.

[PL 2019, c. 399, §1 (NEW).]

7. Person's access to information obtained. A person subject to a criminal history record check pursuant to subsection 3 must be notified each time a criminal history record check is performed on the person. A person subject to a criminal history record check under subsection 3 may inspect and review the criminal history record information pursuant to Title 16, section 709 and obtain federal information obtained pursuant to the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.

[PL 2019, c. 399, §1 (NEW).]

8. Right of subject to remove fingerprints from record. Upon request from a person subject to a criminal history record check pursuant to subsection 3, the Department of Public Safety shall remove the person's fingerprints from the Department of Public Safety's records and provide written confirmation of the removal to the person.

[PL 2019, c. 399, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 399, §1 (NEW). PL 2021, c. 42, §§1-3 (AMD). PL 2023, c. 39, §3 (AMD).

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