
Part 7 Child Care

Part Cross-References

Authorization to levy tax and establish fund for establishment and maintenance of day-care facilities, 7-16-4114.

Preschool pupil immunization requirements, Title 20, ch. 5, part 4.

Part Administrative Rules

Title 37, chapter 80, ARM Child care assistance.

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-701. Short title. This part may be cited as the "Montana Child Care Act".

History: En. Sec. 1, Ch. 692, L. 1989.

Compiler's Comments

Effective Date: Section 17, Ch. 692, L. 1989, provided that this section is effective May 19, 1989.

52-2-702. Purpose — findings. (1) The purpose of this part is to assure that children requiring day care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) (a) The legislature finds that the number of children living in homes where both parents work or in homes with a single parent who works has increased dramatically over the last decade.

(b) The legislature finds that the availability of quality child care is critical to the self-sufficiency and independence of Montana families, including the growing number of mothers who have young children and who work out of economic necessity.

(c) The legislature further finds that the number of quality child-care arrangements falls far short of the number required for children in need of child-care services.

(d) It is the intent of the legislature that the state promote day care for the purposes of:

(i) improving the quality of, and coordination among, child-care programs and providing additional resources for child-care services;

(ii) promoting the availability and diversity of quality child-care services for all children and families that need such services;

(iii) providing assistance to families whose financial resources are not sufficient to enable them to pay the full costs of necessary child-care services;

(iv) ensuring that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child-care facility; and

(v) assisting people in finding and maintaining employment by lessening the stress related to the lack of adequate child care.

History: (1)En. Sec. 1, Ch. 606, L. 1981; amd. Sec. 92, Ch. 609, L. 1987; amd. Sec. 8, Ch. 692, L. 1989; Sec. 53-4-501(1), MCA 1987; redes. 52-2-702(1) by Code Commissioner, 1989; (2)En. Sec. 2, Ch. 692, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "day care" for "supplemental parental care".

Effective Date: Section 17, Ch. 692, L. 1989, provided that subsection (2) is effective May 19, 1989.

1981 Amendment: Inserted (1) explaining the purpose of part 5; in definition of day-care facility substituted "provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home" for "receives for care during the day or part of the day three or more children of separate families and continues this type of care for 5 or more consecutive weeks"; substituted definition of day-care center for "'Day-care center' means a day-care facility that receives seven or more children for care for 5 or more hours of the day for 5 or more consecutive weeks. It may include facilities known as child-care centers, nursery schools, day nurseries, and centers for the mentally

retarded"; and inserted definitions of day care, supplemental parental child care, regular basis, family day-care home, group day-care home, registration, registrant, registration certificate, license, and licensee.

Administrative Rules

Title 37, chapter 75, ARM Child and adult care food program.

Title 37, chapter 80, ARM Child care assistance.

52-2-703. Definitions. In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular or irregular basis, as applicable, for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours.

(3) (a) "Day-care center" means an out-of-home place in which day care is provided to 16 or more children on a regular or irregular basis.

(b) The term does not include a place where day care is provided if a parent of a child for whom day care is provided remains on the premises.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis, as provided for in subsection (3)(a), or for children suffering from illness. The term includes a family day-care home, a day-care center, a group day-care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Family day-care home" means a private residence in which day care is provided to three to eight children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 9 to 15 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Professional training" means training for early childhood or school-age care providers that is recognized as professional development by a national education or certification organization or by a higher education institution.

(11) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(12) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

(13) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(14) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(15) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (15)(a) in a step or adoptive relationship.

(16) "School age" means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.

(17) "School-age care" means an adult-supervised program that is provided for school-age children during nonschool hours.

History: En. Sec. 1, Ch. 247, L. 1965; amd. Sec. 2, Ch. 121, L. 1974; R.C.M. 1947, 10-801; amd. Sec. 7, Ch. 38, L. 1979; amd. Sec. 2, Ch. 606, L. 1981; amd. Sec. 92, Ch. 609, L. 1987; amd. Sec. 8, Ch. 692, L. 1989; Sec. 53-4-501(2), MCA 1987; redes. 52-2-703 by Code Commissioner, 1989; amd. Sec. 1, Ch. 404, L. 1991; amd. Sec. 1, Ch. 304, L. 1993; amd. Sec. 348, Ch. 546, L. 1995; amd. Sec. 1, Ch. 318, L. 1997; amd. Sec. 1, Ch. 505, L. 2001; amd. Sec. 2, Ch. 421, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 421 in definition of day-care center in (a) substituted "16 or more children" for "13 or more children"; in definition of family day-care home near end substituted "three to eight children" for "three to six children"; in definition of group day-care home near end substituted "9 to 15 children" for "7 to 12 children". Amendment effective October 1, 2021.

2001 Amendment: Chapter 505 in definition of day care near middle substituted "on a regular or irregular basis, as applicable" for "on a regular basis"; in definition of day-care center at end of (a) substituted "on a regular or irregular basis" for "on a regular basis" and inserted (b) excluding day-care center where a parent of a child remains on premises; in definition of day-care facility near end of first sentence inserted reference to subsection (3)(a); and made minor changes in style. Amendment effective July 1, 2002.

Applicability: Section 5, Ch. 505, L. 2001, provided: "[This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002." The reference to 52-2-703(3)(a)(ii) originally referred to care provided to children on an irregular basis.

1997 Amendment: Chapter 318 in definition of child, at end, inserted "or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age"; inserted definitions of professional training, school age, and school-age care; and made minor changes in style. Amendment effective April 21, 1997.

Preamble: The preamble attached to Ch. 318, L. 1997, provided: "WHEREAS, the "traditional" American family with the father working and the mother at home to care for the children now constitutes only 25% of all American families; and

WHEREAS, an estimated 40,000 of 70,000 Montana children under 6 years of age need child care, while only about 25,000 licensed or registered child-care slots are available; and

WHEREAS, a shortage of before- and after-school programs for school-age children places children at risk for delinquency and teen pregnancy; and

WHEREAS, the availability of day care is critical to the success of welfare-to-work programs; and

WHEREAS, high-quality care is essential to the healthy development of Montana's children, and professional training for child-care providers is the single most effective way to ensure quality care; and

WHEREAS, funding limitations prevent many child-care providers from starting day-care or school-age care businesses and from obtaining professional training."

1997 Statement of Intent: The statement of intent attached to Ch. 318, L. 1997, provided: "A statement of intent is required for this bill because 52-2-711, as amended, directs the department of public health and human services to adopt rules to administer the grant program. It is the intent of the legislature that grant awards be consistent with the legislative priorities set forth in this bill and that additional grants be consistent with the state child-care plan as developed by the child-care advisory council. The department is encouraged to also adopt rules that will formally provide for an advisory task force as previously used to advise the department on grant awards."

Saving Clause: Section 3, Ch. 318, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 304 in definition of day care, after "means", deleted "less than 24-hour out-of-home" and after "care for children" inserted "provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours"; in definition of day-care center, after "means", inserted "out-of-home"; in first sentence of definition of day-care facility, after "regular basis", inserted "or a place licensed or registered to provide day care on an irregular basis for children suffering from illness", at end of second sentence inserted "or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713", and at end of (a) inserted "unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713"; in definition of family day-care home, after "children", deleted "from separate families"; in definition of group day-care home, after "residence", inserted "or other structure"; and made minor changes in style.

1991 Amendment: In definition of child increased age from 12 years to 13 years; at end of definition of day-care facility, at end of (b), inserted "that limits its services to children who are 3 years of age or older"; and inserted definition of related by blood or marriage. Amendment effective July 1, 1991.

1989 Amendment: In definitions of day-care facility, day-care center, regular basis, family day-care home, and group day-care home substituted "day care" for "supplemental parental care"; in definition of day care inserted child-care as a defined term and substituted "less-than-24-hour out-of-home care for children, whether that care is for daytime or nighttime hours" for "supplemental parental child care"; deleted definition of supplemental parental child care; and made minor changes in grammar and form.

1987 Amendment: In (2)(d) substituted definition of Department of Family Services for definition of Department of Social and Rehabilitation Services and corrected internal reference.

1981 Amendment: Inserted (1) explaining the purpose of part 5; in definition of day-care facility substituted "provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home" for "receives for care during the day or part of the day three or more children of separate families and continues this type of care for 5 or more consecutive weeks"; substituted definition of day-care center for "'Day-care center' means a day-care facility that receives seven or more children for care for 5 or more hours of the day for 5 or more consecutive weeks. It may include facilities known as child-care centers, nursery schools, day nurseries, and centers for the mentally retarded"; and inserted definitions of day care, supplemental parental child care, regular basis, family day-care home, group day-care home, registration, registrant, registration certificate, license, and licensee.

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

(2) The department shall:

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

(3) The department may:

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

History: (1), (2)(a) thru (2)(c), (3)En. Sec. 3, Ch. 692, L. 1989; (2)(d) thru (2)(g)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 4, Ch. 606, L. 1981; Sec. 53-4-503, MCA 1987; redes. 52-2-702(2)(d) thru (2)(g) by Code Commissioner, 1989; amd. Sec. 4, Ch. 91, L. 1993; amd. Sec. 149, Ch. 418, L. 1995; amd. Sec. 349, Ch. 546, L. 1995; amd. Sec. 12, Ch. 171, L. 1997; amd. Sec. 2, Ch. 505, L. 2001.

Compiler's Comments

2023 Amendment of Administrative Rule: Section 1, Ch. 379, L. 2023, directed the Department of Public Health and Human Services to amend Rule 37.95.623, Administrative Rules of Montana. See 2023 Session Law for text of preamble and amendments made by sec. 1, Ch. 379, L. 2023. Effective October 1, 2023.

2001 Amendment: Chapter 505 inserted (2)(g) requiring adoption of rules for day-care centers providing care on irregular basis, including exceptions for immunization records and staffing ratios; inserted (3)(d) allowing issuance of license to receive children on an irregular basis if license applied for; and made minor changes in style. Amendment effective July 1, 2002.

Applicability: Section 5, Ch. 505, L. 2001, provided: "[This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002." The reference to 52-2-703(3)(a)(ii) originally referred to care provided to children on an irregular basis.

1997 Amendment: Chapter 171 in (2)(b), at end, deleted "after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments — Composite Section: Chapter 418 in (2)(c) substituted "public health" for "health and environmental sciences". Amendment effective July 1, 1995. The amendment by Ch. 546 rendered the amendment by Ch. 418 void.

Chapter 546 in (1), near beginning, substituted "department is responsible for planning" for "department is designated as the lead agency for the purposes of planning"; and in (2)(c), at end, substituted "administered by all state agencies" for "administered by the department and the departments of social and rehabilitation services, health and environmental sciences, and labor and industry". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 91 in (2)(b), after "local", substituted "family" for "youth". Amendment effective July 1, 1993.

Effective Date: Section 17, Ch. 692, L. 1989, provided that subsections (1), (2)(a) through (2)(c), and (3) are effective May 19, 1989.

1981 Amendment: Substituted (1) requiring license issuance to persons to receive children in a day-care center on a regular basis for "issue licenses to persons to receive into a day-care facility children for care during the day or part of a day"; in (2) inserted "and publish minimum standards" and "and registration certificates"; substituted (3) providing rulemaking authority for "adopt rules for the conduct of the facilities which are consistent with the welfare of the children received"; inserted (4) requiring registration certificate issuance to persons to receive children into a family or group day-care home on a regular basis; and made a minor change in phraseology.

Statement of Intent: See Part Compiler's Comments, this part.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 37, chapter 75, ARM Child and adult care food program.

Title 37, chapter 80, ARM Child care assistance.

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-705. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 4, Ch. 692, L. 1989.

52-2-706 through 52-2-709 reserved.

52-2-710. At-home infant care program — definition. (1) There is an at-home infant care program for low-income families in which a parent provides full-time child care for the family's infant under 2 years of age that will be funded if a specific appropriation is added to the general appropriations act or by budget amendment if funds become available from federal or private sources. Subject to subsection (2), the family may receive a payment in lieu of child-care assistance if the family meets the following eligibility requirements:

(a) The family is not receiving cash assistance under Title 53, chapter 4, parts 2 and 6.

(b) The family has not previously received a total of 24 months of at-home infant care assistance under this section.

(c) The family is at or below 150% of the federal poverty level.

(d) The family has fulfilled the following work requirements for 1 out of the 3 months prior to entering the program:

(i) 120 hours a month for two-parent families, which may be the contribution of one or both parents;

(ii) 60 hours a month for single-parent families;

(iii) 40 hours a month for single-parent families who are attending postsecondary education or training.

(e) A parent must be 18 years of age or older or, if under 18 years of age, have attained an equivalency of completion of secondary education, as provided in 20-7-131, or a high school diploma.

(f) A parent must meet any additional requirements as provided in administrative rules.

(2) A parent who is under 18 years of age and attending high school or a program for equivalency of completion of secondary education, as provided in 20-7-131, may receive benefits for months outside of the regular school year.

(3) For the purposes of this section, "parent" means a birth parent, a stepparent, a foster parent, or a guardian who is acting in loco parentis.

(4) The maximum rate of assistance allowed is equal to the amount of child-care assistance for infant family care for the appropriate district, as adopted by the department by rule. The family may not receive subsidies for child care for other children in the family.

(5) A participating family shall report income and other family changes as specified by rule. State agencies shall treat income received under this program as earned income.

(6) Family members may participate in education and work activities as long as one or both parents provide care full time for the infant.

History: En. Sec. 1, Ch. 394, L. 2003; amd. Sec. 4, Ch. 41, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 41 in (1)(a) substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

Effective Date: Section 3, Ch. 394, L. 2003, provided: "[This act] is effective July 1, 2003."

52-2-711. Resource and referral and day-care improvement grant program. (1) (a) There is a grant program established within the department for the allocation of grant money to local child-care resource and referral programs and for improving the availability of quality child care and school-age day care.

(b) Program funds may include money from the following sources:

(i) funds specifically appropriated by the legislature for use under this section;

(ii) private gifts, grants, and donations;

(iii) federal or foundation grants awarded to the state for the purposes of this section; and

(iv) any other money made available for the purposes of this section.

(2) (a) The department may award grants to private, nonprofit organizations and public organizations that demonstrate the ability to provide child-care resource and referral services.

(b) To be eligible for a grant from the department as a resource and referral agency for a local area, an organization:

(i) shall maintain a database of child-care services in the community, including day-care facilities and preschools, which the organization continually updates;

(ii) shall include on the staff of the organization at least one individual who has expertise in child development;

(iii) must have the capability to provide resource and referral services in the local area;

(iv) must be able to respond to requests for information or assistance in a timely fashion;

(v) must be committed to providing services to all segments of the general public;

(vi) must be able to provide parents with a checklist to identify quality child-care services;

(vii) must be able to provide information on the availability of child-care subsidies;

(viii) shall maintain and make available to the public the number of all referrals made by the resource and referral agency; and

(ix) shall otherwise satisfy regulations promulgated by the department pursuant to this part.

(3) (a) The department may award grants for improving the availability of quality child care and school-age day care and for consumer education.

(b) The following grant applications must be given priority:

(i) grant applications for professional training for day-care or school-age care providers;

(ii) grant applications for the startup of school-age care programs or facilities when a community need has been demonstrated;

(iii) grant applications for consumer education; and

(iv) grant applications for preservation or expansion of existing care programs that fill a demonstrated need.

(4) The department shall adopt rules to administer the provisions of this section.

History: En. Sec. 5, Ch. 692, L. 1989; amd. Sec. 2, Ch. 318, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 318 in (1)(a), at end, inserted "and for improving the availability of quality child care and school-age day care"; inserted (1)(b) stating that program funds may be from legislative appropriations; private gifts, grants, and donations; federal or foundation grants; and any other source; inserted (3) allowing Department grants to increase availability of quality child care and school-age day care and for consumer education and establishing a priority for grant awards; inserted (4) requiring Department rules; and made minor changes in style. Amendment effective April 21, 1997.

Preamble: The preamble attached to Ch. 318, L. 1997, provided: "WHEREAS, the "traditional" American family with the father working and the mother at home to care for the children now constitutes only 25% of all American families; and

WHEREAS, an estimated 40,000 of 70,000 Montana children under 6 years of age need child care, while only about 25,000 licensed or registered child-care slots are available; and

WHEREAS, a shortage of before- and after-school programs for school-age children places children at risk for delinquency and teen pregnancy; and

WHEREAS, the availability of day care is critical to the success of welfare-to-work programs; and

WHEREAS, high-quality care is essential to the healthy development of Montana's children, and professional training for child-care providers is the single most effective way to ensure quality care; and

WHEREAS, funding limitations prevent many child-care providers from starting day-care or school-age care businesses and from obtaining professional training."

1997 Statement of Intent: The statement of intent attached to Ch. 318, L. 1997, provided: "A statement of intent is required for this bill because 52-2-711, as amended, directs the department of public health and human services to adopt rules to administer the grant program. It is the intent of the legislature that grant awards be consistent with the legislative priorities set forth in this bill and that additional grants be consistent with the state child-care plan as developed by the child-care advisory council. The department is encouraged to also adopt rules that will formally provide for an advisory task force as previously used to advise the department on grant awards."

Saving Clause: Section 3, Ch. 318, L. 1997, was a saving clause.

Repeal of Termination: Section 18, Ch. 692, L. 1989, which terminated this section June 30, 1991, was repealed by sec. 1, Ch. 618, L. 1991.

Effective Date: Section 17, Ch. 692, L. 1989, provided that this section is effective May 19, 1989.

52-2-712. Repealed. Sec. 1, Ch. 618, L. 1991.

History: En. Sec. 6, Ch. 692, L. 1989.

52-2-713. Payments for eligible children. The department shall pay a rate established by the department and appropriated by the legislature based on a child's authorized enrollment slot to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services.

History: En. 10-812 by Sec. 1, Ch. 167, L. 1975; R.C.M. 1947, 10-812; amd. Sec. 1, Ch. 662, L. 1979; amd. Sec. 15, Ch. 606, L. 1981; Sec. 53-4-514, MCA 1987; redes. 52-2-713 by Code Commissioner, 1989; amd. Sec. 1, Ch. 126, L. 2007; amd. Sec. 4, Ch. 773, L. 2023.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 773, L. 2023. Amendment effective July 1, 2023.

2007 Amendment: Chapter 126 near beginning after "pay a" deleted "daily". Amendment effective April 5, 2007.

1981 Amendment: Substituted language establishing a daily payment rate for eligible children as provided by legislative appropriation for "The department shall pay to a licensed day-care facility for each child eligible to receive public financial support not less than \$4.50 until December 31, 1980, and \$5 thereafter for each day the child attends the facility. For those day-care facilities which meet federal requirements, the department shall pay an additional \$1 per day for each eligible child."

52-2-714. Best beginnings child care scholarship program. 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.

History: En. Sec. 1, Ch. 773, L. 2023.

Compiler's Comments

Effective Date: Section 7, Ch. 773, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-715. Family income eligibility requirements. In determining income eligibility for the best beginnings child care scholarship program, the department shall:

(1) set a qualifying income threshold at no less than 185% of the federal poverty level for each family size; and

(2) set a maximum qualifying income level that is no higher than that allowed by the federal child care and development block grant.

History: En. Sec. 2, Ch. 773, L. 2023.

Compiler's Comments

Effective Date: Section 7, Ch. 773, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-716. Copayment requirements. Each eligible family shall participate in the cost of child care by making a copayment based on a sliding fee scale not to exceed 9% of an eligible family's monthly income.

History: En. Sec. 3, Ch. 773, L. 2023.

Compiler's Comments

Effective Date: Section 7, Ch. 773, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-717 through 52-2-720 reserved.

52-2-721. License required — registration required — term of license or registration certificate — no fee charged. (1) Except as provided in subsection (7), a person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children, in which day care is provided on a regular basis, unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

(6) The department may issue a license to a day-care center in which day care is provided on an irregular basis if the person operating the center chooses to apply for licensure.

(7) A person who provides day care in a private residence for six or fewer children is not required to obtain a family day-care registration certificate and is exempt from the requirements of this part if that person does not receive payments as provided in 52-2-713.

(8) The department shall recognize the status of and may not require a state license for a facility that is licensed as a family child care provider or child care facility by a branch of the United States armed forces, including the United States coast guard.

History: En. Sec. 2, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-802; amd. Sec. 3, Ch. 606, L. 1981; amd. Sec. 9, Ch. 692, L. 1989; Sec. 53-4-502, MCA 1987; redes. 52-2-721 by Code Commissioner, 1989; amd. Sec. 1, Ch. 135, L. 1999; amd. Sec. 3, Ch. 505, L. 2001; amd. Sec. 1, Ch. 189, L. 2023; amd. Sec. 1, Ch. 511, L. 2023.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 189, L. 2023, inserted (8) concerning a facility licensed by a branch of the United States armed forces. Amendment effective October 1, 2023.

Section 1, Ch. 511, L. 2023, in (1) at beginning inserted exception clause; inserted (7) concerning a person who provides day care in a private residence; and made minor changes in style. Amendment effective October 1, 2023.

2001 Amendment: Chapter 505 near middle of (1)(a) inserted reference to day care provided on regular basis; inserted (6) allowing issuance of license to day-care center providing care on an irregular basis if license applied for; and made minor changes in style. Amendment effective July 1, 2002.

Applicability: Section 5, Ch. 505, L. 2001, provided: "[This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002." The reference to 52-2-703(3)(a)(ii) originally referred to care provided to children on an irregular basis.

1999 Amendment: Chapter 135 in (4) deleted first sentence that read: "Licenses or registration certificates shall be issued for periods not to exceed 1 year"; inserted (4)(a) allowing issuance of licenses for up to 3 years; inserted (5) limiting 3-year licenses to providers without deficiencies; and made minor changes in style. Amendment effective October 1, 1999.

1989 Amendment: In (1) substituted "day care" for "supplemental parental care"; and made minor change in grammar.

1981 Amendment: Substituted language requiring licensure and registration and limiting certificate issuance to 1 year for "No person, group of persons, or corporation shall establish and maintain a day-care facility for children unless licensed to do so by the department. The license shall be valid for 1 year. There shall be no fee for the license."

Cross-References

One-step licensing — inspection by other Department, Title 50, ch. 8.

Case Notes

Previous Admission of Abuse and Neglect Allegations — No Evidentiary Hearing on Denial of Day-Care License Required: Dowell's license to work as a day-care provider was denied after it was learned that Dowell's parental rights had previously been terminated based on a substantiated record of child abuse and neglect. Dowell contended that her due process rights were violated through the state's failure to provide notice and an opportunity for a hearing before substantiating the child abuse and by failing to notify Dowell that substantiation of abuse would result in employment restrictions. The Supreme Court disagreed. Due process does not require development of facts through an evidentiary hearing when there are no material facts in dispute. Because Dowell had previously admitted to the facts underlying the substantiation determination in the previous child abuse case, no further evidentiary hearing was necessary on the day care issue, so no due process violation occurred. *Dowell v. Dept. of Public Health and Human Services*, 2006 MT 55, 331 M 305, 132 P3d 520 (2006).

52-2-722. Application for a license or registration certificate. (1) Application for a license or registration certificate shall be made to the department in the county in which the applicant lives on forms prescribed by the department.

(2) Applications for a license or registration certificate by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the department investigate to determine whether a license or registration certificate should be granted.

(3) Within 30 days of receipt of the application, the department shall determine whether a license or registration certificate should be issued.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 8, Ch. 606, L. 1981; amd. Sec. 10, Ch. 692, L. 1989; Sec. 53-4-507, MCA 1987; redes. 52-2-722 by Code Commissioner, 1989.

Compiler's Comments

1989 Amendment: In (3), after "the department shall", deleted "investigate to".

1981 Amendment: In (1) inserted "or registration certificate" after "license", deleted "of social and rehabilitation services through the county department of public welfare" before "in the county", and deleted "of social and rehabilitation services. Upon receipt of the application, the county welfare department shall within a reasonable time investigate to determine whether a license should be granted" at the end; in (2) inserted "for a license or registration certificate" after "Applications", deleted "of social and rehabilitation services" after "department" in the first sentence, deleted "county welfare" before "department" and "in the county in which the applicant resides" after "department" in the second sentence, inserted "or registration certificate" after "license", and deleted "This investigation shall be made within a reasonable time" as the last sentence; and inserted (3) requiring Department investigation within 30 days of receipt of application.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

52-2-723. Requirements for licensure. (1) The department shall include in the minimum standards for day-care centers the following requirements:

(a) The applicant, the applicant's employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate supervision and care of the children in the facility.

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, the staff, and the facility.

(i) The ages and numbers of children that may be cared for in a day-care facility are specified.

(2) It is the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements.

History: (1)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; Sec. 10-806, R.C.M. 1947; (2)En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-809, R.C.M. 1947; R.C.M. 1947, 10-806(part), 10-809(part); amd. Sec. 9, Ch. 606, L. 1981; Sec. 53-4-508, MCA 1987; redes. 52-2-723 by Code Commissioner, 1989; amd. Sec. 1899, Ch. 56, L. 2009.

Compiler's Comments

2023 Amendment of Administrative Rule: Section 1, Ch. 379, L. 2023, directed the Department of Public Health and Human Services to amend Rule 37.95.623, Administrative Rules of Montana. See 2023 Session Law for text of preamble and amendments made by sec. 1, Ch. 379, L. 2023. Effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: In (1) substituted "shall include in the minimum standards for day-care centers the following" for "must issue licenses to agencies meeting the following minimum"; in (1)(a) deleted "moral" before "character"; in (1)(b) inserted "day-care" before "facility", inserted "as provided by rule" after "number", and substituted "in the facility" for "admitted"; deleted former (1)(e) that read: "Physical facilities are of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards"; inserted (1)(i) requiring that ages and number of children be specified for licensure; and in (2) substituted "is" for "shall be".

Cross-References

Casualty insurance, Title 33, ch. 23.

Property insurance, Title 33, ch. 24.

Duty to report cases of communicable disease, 37-2-301.

Administrative Rules

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-724. Provisional license — provisional registration certificate. (1) The department may issue a provisional license or provisional registration certificate for a period which may not exceed 6 months if it finds that a day-care facility or applicant does not meet all standards established by the department, as long as the facility or applicant is attempting to meet the minimum standards.

(2) The department may not waive the requirement that a day-care center be certified under the provisions of 52-2-734 and 52-2-735.

(3) The department may not waive the requirement that a day-care facility have current and adequate public liability insurance and fire insurance.

History: En. Sec. 7, Ch. 247, L. 1965; amd. Sec. 7, Ch. 121, L. 1974; R.C.M. 1947, 10-807; amd. Sec. 9, Ch. 38, L. 1979; amd. Sec. 10, Ch. 606, L. 1981; Sec. 53-4-509, MCA 1987; redes. 52-2-724 by Code Commissioner, 1989.

Compiler's Comments

1981 Amendment: In (1) deleted "of social and rehabilitation services" after "department", deleted "in its discretion" before "issue", inserted "or provisional registration certificate", substituted "which may not exceed" for "of not more than", deleted "substandard" before "day-care facility", and inserted "or applicant does not meet all standards established by the department, as long as the facility or applicant"; substituted (2) disallowing waiver of certification requirement of fire safety and health protection for "The requirement that a day-care center shall be certified by the state fire marshal of the department of justice and the department of health and environmental sciences may not be waived"; and inserted (3) disallowing waiver of requirement of public liability insurance and fire insurance.

52-2-725. Renewal license — registration certificate. If a licensed or registered day-care facility desires to renew a license or registration certificate, the request for renewal shall be made in writing, on forms prescribed by the department, in the county in which the applicant lives, 30 days prior to the expiration of its license or registration certificate.

History: En. Sec. 8, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-808; amd. Sec. 11, Ch. 606, L. 1981; Sec. 53-4-510, MCA 1987; redes. 52-2-725 by Code Commissioner, 1989.

Compiler's Comments

1981 Amendment: Inserted "or registered" after "licensed"; substituted "renew a license or registration certificate, the" for "apply for a renewal of its license, a"; substituted "on forms prescribed by the department, in the county in which the applicant lives, 30 days" for "to the department 10 days"; and inserted "or registration certificate" at the end.

52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing. (1) The department, after written notice to the applicant, licensee, or registrant, may deny, suspend, cancel, reduce, modify, or revoke a license or registration certificate upon finding that:

(a) any of the applicable conditions set forth in this part as prerequisites for the issuance of a license or registration certificate no longer exist;

(b) the licensee or registrant is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license or registration certificate was issued upon fraudulent or untrue representation.

(2) The applicant, licensee, or registrant by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing shall be conducted according to the department's rules.

History: En. Sec. 10, Ch. 247, L. 1965; amd. Sec. 8, Ch. 121, L. 1974; R.C.M. 1947, 10-810; amd. Sec. 14, Ch. 606, L. 1981; Sec. 53-4-513, MCA 1987; redes. 52-2-726 by Code Commissioner, 1989.

Compiler's Comments

1981 Amendment: In (1) inserted "written" before "notice", deleted "and opportunity for hearing" after "notice", inserted "or registrant" after "licensee", inserted "cancel, reduce, modify", after "revoke a license" substituted language outlining findings under which the Department may deny, suspend, cancel, reduce, modify, or revoke a license or registration certificate for "in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law"; inserted (2) allowing the opportunity for hearing upon written request; and made minor changes in phraseology.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

Fraud, 28-2-404 through 28-2-406.

Unsworn falsification to authorities, 45-7-203.

52-2-727 through 52-2-730 reserved.

52-2-731. Standards for day care. In developing standards, the department shall seek the advice and assistance of the superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

- (5) adequacy of physical facilities and equipment;
- (6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;
- (7) the ages and numbers of children that may be cared for in a day-care facility.

History: En. Sec. 3, Ch. 247, L. 1965; amd. Sec. 3, Ch. 121, L. 1974; R.C.M. 1947, 10-803; amd. Sec. 5, Ch. 606, L. 1981; Sec. 53-4-504, MCA 1987; redes. 52-2-731 by Code Commissioner, 1989; amd. Sec. 150, Ch. 418, L. 1995; amd. Sec. 350, Ch. 546, L. 1995.

Compiler's Comments

2023 Amendment of Administrative Rule: Section 1, Ch. 379, L. 2023, directed the Department of Public Health and Human Services to amend Rule 37.95.623, Administrative Rules of Montana. See 2023 Session Law for text of preamble and amendments made by sec. 1, Ch. 379, L. 2023. Effective October 1, 2023.

1995 Amendments — Composite Section: Chapter 418 in introductory clause substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 near beginning substituted "superintendent of public instruction" for "department of health and environmental sciences and superintendent of public instruction". Amendment effective July 1, 1995.

Because the amendment in Ch. 418 was a name change and Ch. 546 deleted the function, the Code Commissioner has codified the substantive change in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Preamble: The preamble attached to Ch. 95, L. 1991, provided: "WHEREAS, Rule 16.24.410, Administrative Rules of Montana, requires day-care centers to use only disposable diapers for children unless the parents present medical documentation that nondisposable diapers should be used; and

WHEREAS, Rule 11.14.502, Administrative Rules of Montana, permits the use of nondisposable diapers but requires a child's parent to document the need for nondisposable diapers; and

WHEREAS, the disposal of solid waste is a major problem as landfills reach capacity while the volume of solid waste continues to grow in our present "throw-away" society; and

WHEREAS, 18 billion disposable diapers are thrown away each year in America, accounting by weight for approximately 2% of all municipal solid waste and between 3.5% and 4.5% of all household solid waste; and

WHEREAS, disposable diapers are the third, single-largest manufactured product to be found in landfills and other solid waste disposal sites; and

WHEREAS, disposable diapers in landfills present a threat to the public health and environment because of untreated urine and fecal matter released into the soil and ground water; and

WHEREAS, nondisposable diapers, such as cloth diapers, can be reused many times and their use would reduce the threat to the public health and environment posed by single-use disposable diapers; and

WHEREAS, the use of nondisposable diapers would help alleviate current solid waste problems by reducing the amount of disposable diapers thrown away each year; and

WHEREAS, there is no medical evidence that nondisposable diapers are less sanitary or present a greater threat to the spread of germs than disposable diapers.

THEREFORE, the Legislature finds it appropriate to amend Rules 11.14.502 and 16.24.410, Administrative Rules of Montana, to eliminate current restrictions on the use of nondisposable diapers in day-care facilities in order to allow their use as an alternative to disposable diapers."

1981 Amendment: Deleted first sentence that read: "The department of social and rehabilitation services shall prescribe and publish minimum standards for a license"; in (2) substituted "facilities" for "centers"; in (3) substituted "necessary to ensure the health, safety, safety in transportation" for "essential to the protection of health, safety"; and inserted (7) setting out the standard of ages and numbers of children that may be cared for in a day-care facility.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections.

It shall be the duty of every applicant for a license or for registration and every licensee or registrant to give the right of entrance to and inspection of premises to representatives of the department at reasonable times, to keep and maintain such records as the department may prescribe, to permit inspection of these records, and to report to the department such facts as may be required on forms furnished by the department.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 13, Ch. 606, L. 1981; Sec. 53-4-512, MCA 1987; redes. 52-2-732 by Code Commissioner, 1989.

Compiler's Comments

1981 Amendment: Inserted "for a license or for registration" after "applicant", inserted "or registrant" after "licensee", substituted "forms" for "blanks" near the end, and made minor changes in grammar.

52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) (a) Subject to subsection (4)(b), the department shall make annual unannounced visits to day-care centers that are licensed on an annual basis.

(b) The department may make annual unannounced visits to day-care centers that have been granted 2-year or 3-year licenses under 52-2-721 or that have successfully passed inspections for 10 consecutive years.

(5) Upon request of the department, the state fire prevention and investigation section of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee's or registrant's program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 12, Ch. 606, L. 1981; amd. Sec. 11, Ch. 692, L. 1989; Sec. 53-4-511, MCA 1987; redes. 52-2-733 by Code Commissioner, 1989; amd. Sec. 34, Ch. 706, L. 1991; amd. Sec. 151, Ch. 418, L. 1995; amd. Sec. 351, Ch. 546, L. 1995; amd. Sec. 2, Ch. 126, L. 2007; amd. Sec. 37, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 126 in (4)(a) at beginning inserted "Subject to subsection (4)(b)" and at end inserted "that are licensed on an annual basis"; inserted (4)(b) concerning visits to day-care centers that have 2-year or 3-year licenses or have successfully passed inspections for 10 consecutive years; and made minor changes in style. Amendment effective April 5, 2007.

Chapter 449 in (5) near beginning after "investigation" substituted "section" for "program". Amendment effective June 1, 2007.

1995 Amendments — Composite Section: Chapter 418 in (5) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (5), after "Upon request of the department", deleted "the department of health and environmental sciences or"; and made minor changes in style. Amendment effective July 1, 1995.

Because the amendment in Ch. 418 was a name change and Ch. 546 deleted the function, the Code

Commissioner has codified the substantive change in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (5), near middle, substituted "prevention and investigation program of the department of justice" for "marshal or his designee". Amendment effective April 29, 1991.

1989 Amendment: In (3) increased percentage to 20% from 15%; inserted (4) relating to unannounced visits to day-care centers; and inserted (7) relating to inspections of each day-care facility applying for a registration certificate.

1981 Amendment: In (1) deleted "It shall be the duty of" at the beginning, substituted "shall" for "to" before "make", and substituted "centers" for "facilities"; inserted (2) allowing departmental investigation and inspection of licensees and registrants; inserted (3) requiring annual Department inspection of 15% of registrants in each planning region; inserted (4) requiring inspection by the Department of Health and Environmental Sciences or the State Fire Marshal (now the fire prevention and investigation program of the Department of Justice) upon request; in (5) inserted "Upon request, the department shall", deleted "upon request" after "consultation", inserted "and registrant" after "licensee", and substituted "program" for "facility"; and made minor changes in phraseology.

Cross-References

Department of Public Health and Human Services — sanitary inspections, 50-1-203.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

52-2-734. Fire safety — certification required. (1) The state fire prevention and investigation section of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for any inspections and investigations it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the state fire prevention and investigation section of the department of justice indicating compliance with fire safety rules.

History: En. Sec. 4, Ch. 247, L. 1965; amd. Sec. 4, Ch. 121, L. 1974; R.C.M. 1947, 10-804; amd. Sec. 8, Ch. 38, L. 1979; amd. Sec. 6, Ch. 606, L. 1981; amd. Sec. 11, Ch. 503, L. 1985; Sec. 53-4-505, MCA 1987; redes. 52-2-734 by Code Commissioner, 1989; amd. Sec. 35, Ch. 706, L. 1991; amd. Sec. 38, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near beginning and in (2) near middle after "investigation" substituted "section" for "program"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: In (1), near beginning after "fire", substituted "prevention and investigation program" for "marshal"; and in (2), near middle, substituted "state fire prevention and investigation program" for "marshal" and after "justice" deleted "or his designee". Amendment effective April 29, 1991.

1985 Amendment: In (2) deleted "bureau" after "fire marshal".

1981 Amendment: In (1) substituted "day-care centers" for "care facilities"; in (2) substituted "Before a license can be issued" for "Each applicant for a license", inserted "each applicant" before "shall submit", deleted "of social and rehabilitation services" after "department", inserted "from the fire marshal bureau of the department of justice or its designee", and deleted "before a license can be issued" at the end; and deleted (3) relating to automatic sprinkler systems required in certain homes.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

State fire prevention and investigation program — Advisory Council, 2-15-2005.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

52-2-735. Health protection — certification required. (1) The department shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed \$25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section.

History: En. Sec. 5, Ch. 247, L. 1965; amd. Sec. 5, Ch. 121, L. 1974; R.C.M. 1947, 10-805; amd. Sec. 7, Ch. 606, L. 1981; Sec. 53-4-506, MCA 1987; redes. 52-2-735 by Code Commissioner, 1989; amd. Sec. 3, Ch. 165, L. 1991; amd. Sec. 152, Ch. 418, L. 1995; amd. Sec. 352, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 near beginning of (1) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 at beginning of (1), after "department", deleted "of health and environmental sciences". Amendment effective July 1, 1995.

Pursuant to sec. 569, Ch. 546, the Code Commissioner has codified the amendment in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (1) inserted second sentence regarding rules to be adopted requiring immunization against Haemophilus influenza type "b". Amendment effective March 26, 1991.

Preamble: The preamble attached to Ch. 95, L. 1991, provided: "WHEREAS, Rule 16.24.410, Administrative Rules of Montana, requires day-care centers to use only disposable diapers for children unless the parents present medical documentation that nondisposable diapers should be used; and

WHEREAS, Rule 11.14.502, Administrative Rules of Montana, permits the use of nondisposable diapers but requires a child's parent to document the need for nondisposable diapers; and

WHEREAS, the disposal of solid waste is a major problem as landfills reach capacity while the volume of solid waste continues to grow in our present "throw-away" society; and

WHEREAS, 18 billion disposable diapers are thrown away each year in America, accounting by weight for approximately 2% of all municipal solid waste and between 3.5% and 4.5% of all household solid waste; and

WHEREAS, disposable diapers are the third, single-largest manufactured product to be found in landfills and other solid waste disposal sites; and

WHEREAS, disposable diapers in landfills present a threat to the public health and environment because of untreated urine and fecal matter released into the soil and ground water; and

WHEREAS, nondisposable diapers, such as cloth diapers, can be reused many times and their use would reduce the threat to the public health and environment posed by single-use disposable diapers; and

WHEREAS, the use of nondisposable diapers would help alleviate current solid waste problems by reducing the amount of disposable diapers thrown away each year; and

WHEREAS, there is no medical evidence that nondisposable diapers are less sanitary or present a greater threat to the spread of germs than disposable diapers.

THEREFORE, the Legislature finds it appropriate to amend Rules 11.14.502 and 16.24.410, Administrative Rules of Montana, to eliminate current restrictions on the use of nondisposable diapers in day-care facilities in order to allow their use as an alternative to disposable diapers."

1991 Statement of Intent: The statement of intent attached to Ch. 165, L. 1991, provided: "A statement

of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences [now department of public health and human services] to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405."

Effective Date: Section 4(2), Ch. 165, L. 1991, provided: "[Section 3 [52-3-735] and this section] are effective on passage and approval [approved March 26, 1991], except that rules adopted by the department of health and environmental sciences [now department of public health and human services] may not be implemented prior to July 1, 1991."

1981 Amendment: In (1) deleted "overcrowding" after "hazards of", inserted "inadequate" before "food preparation", inserted "poor nutrition", and deleted "and arrange for any inspections and investigations it considers necessary" at the end; inserted (2) providing for training by local public health authorities and certification upon completion; inserted (3) allowing inspection in lieu of training; in (4), deleted "of social and rehabilitation services" after "department" and substituted "issued pursuant to subsections (2) and (3) before the department will issue a license" for "of approval that the department of health and environmental sciences rules have been met before a license can be issued"; and inserted (5) providing an inspection fee.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-736. Prohibition against administering medicine without authorization — provision for emergency — definitions — penalty. (1) An employee, owner, household member, volunteer, or operator of a day-care facility, as defined in 52-2-703, regardless of whether the facility is licensed or registered, may not purposely or knowingly administer any medicine, as defined in 37-7-101, to a child attending the day-care facility without written authorization. Written authorization must include the child's name, date or dates for which the authorization is applicable, dosage instructions, and signature of the child's parent or guardian.

(2) If an emergency medical condition arises and the parent or guardian of the child is unavailable, an employee, owner, or operator of a day-care facility may administer medicine to a child attending the day-care facility without the written authorization of a parent or guardian as provided in subsection (1) if:

(a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical practitioner's signature; or

(b) a medical practitioner, emergency services provider, or 9-1-1 responder verbally directs the employee, owner, or operator of the day-care facility attending the child to immediately administer a medicine to the child and the child is subsequently transported within a reasonable time by the child's parents, an owner, operator, or employee of the child-care facility, a health care provider, or an emergency services provider to a health care facility or a medical practitioner for followup care.

(3) A medicine administered to a child pursuant to subsection (1) or (2) may not be inappropriately administered.

(4) An employee, owner, or operator of a day-care facility who has administered medicine to a child in accordance with this section may not be prosecuted for causing bodily injury or severe bodily injury to a child.

(5) For the purposes of this section:

(a) "bodily injury" has the meaning provided in 45-2-101;

(b) "emergency medical condition" means circumstances in which a prudent lay person acting reasonably would believe that an emergency medical condition exists;

(c) "emergency services provider" has the meaning provided in 50-16-701;

(d) "health care facility" means a profit or nonprofit, public or private physician's office, hospital, critical access hospital, infirmary, clinic, outpatient center for primary care, outpatient center for surgical services, or medical assistance facility, as any of those terms are defined in 50-5-101;

(e) "inappropriately administered" means to give medicine to a child that is not indicated, as to the medicine's type, dosage, or frequency of use or the container instructions, if any, by the medical symptoms exhibited by the child;

(f) "knowingly" has the meaning provided in 45-2-101;

(g) "medical practitioner" has the meaning provided in 37-2-101;

(h) "9-1-1 responder" means a law enforcement dispatcher or other person answering a 9-1-1 telephone call, a person answering a telephone call made to a poison control center, or an emergency services provider;

(i) "purposely" has the meaning provided in 45-2-101; and

(j) "serious bodily injury" has the meaning provided in 45-2-101.

(4) (a) A person convicted of purposely or knowingly administering medicine without authorization resulting in bodily injury to a child shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both.

(b) A person convicted of purposely or knowingly administering medicine without authorization resulting in serious bodily injury to a child or in the death of a child shall be imprisoned for a term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

History: En. Sec. 1, Ch. 270, L. 2005.

Compiler's Comments

Preamble: The preamble attached to Ch. 270, L. 2005, provided: "WHEREAS, too often the victim is forgotten by the judicial system and society; and

WHEREAS, the motivation for this bill is the tragic death of Dane Jordan Heggem; and

WHEREAS, this bill will be known as "Dane's Law" to remind the judicial system and society of the victims of the crime."

Effective Date: This section is effective October 1, 2005.

52-2-737. Group day-care home — staffing requirement. There must be at least two caregivers caring for the children at all times when there are more than eight children present at a group day-care home.

History: En. Sec. 1, Ch. 421, L. 2021.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

52-2-738 through 52-2-740 reserved.

52-2-741. Penalty — remedies. (1) A person, group of persons, or corporation who establishes or maintains a day-care facility or assists in conducting or maintaining a day-care facility without first obtaining a license or registration certificate from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.

(2) (a) If the department is advised or has reason to believe that a person, group of persons, or corporation is operating a day-care facility without a license or registration certificate, it shall make an investigation to ascertain the facts. If the department finds that the day-care facility is being or has been operated without a license or registration certificate, it may report the results of its investigation to the attorney general or the county attorney of the county where the day-care facility is being operated for prosecution and request that an injunction be issued against the facility until a license or certificate is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney, any county attorney, or the attorney general, initiate an action in the justice's court, city court, municipal court, or district court of the appropriate jurisdiction and be represented by that representative on appeal to the district court and supreme court of Montana, as applicable.

History: (1)En. Sec. 18, Ch. 606, L. 1981; (2)En. Sec. 11, Ch. 247, L. 1965; amd. Sec. 9, Ch. 121, L. 1974; R.C.M. 1947, 10-811; amd. Sec. 16, Ch. 606, L. 1981; amd. Sec. 12, Ch. 692, L. 1989; Sec. 53-4-515, MCA 1987; redes. 52-2-741 by Code Commissioner, 1989; amd. Sec. 1, Ch. 222, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 222 in (1)(c), after "action in the", inserted "justice's court, city court, municipal court, or", after "appropriate" substituted "jurisdiction" for "county", after "appeal to the" inserted "district court, and" and at end inserted "as applicable"; and made minor changes in style.

1989 Amendment: In two places in (1) substituted "day-care facility" for "day-care center" and after "obtaining a license" inserted "or registration certificate".

1981 Amendment: In (2)(a) changed "child-care" to "day-care" in three places, inserted "or registration certificate" after "license" in two places, substituted "the department" for "it" before "finds", inserted "or certificate" before "is issued" at the end; substituted (2)(c) allowing departmental institution of legal actions for "The department may institute action by its own attorney or counsel or may call upon any county attorney to represent it in the district court of the county in which the action is taken or the attorney general to represent it on appeal to the supreme court of Montana or it may associate its own counsel with either in any court"; and made minor changes in grammar and punctuation.

Cross-References

Injunctions, Title 27, ch. 19.