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Int. No. 291-A

By Council Members Eldridge, Clarke, Marshall, Lopez, Quinn and Reed and the Public Advocate (Mr. Green);

also Council Members Foster, Harrison, Leffler, Linares, Michels and Cruz

A Local Law to amend the administrative code of the city of New York and local law number forty-five for the year 1992, in relation to family child care services.

Be it enacted by the Council as follows:

Section 1. Section three of local law number forty-five for the year 1992, as last amended by local law number twelve for the year 1999, is amended to read as follows:

§3. This local law shall take effect immediately [and shall expire on June 30, 1999].

§2. Section 21-120.1 of the administrative code of the city of New York, as enacted by local law number forty-five for the year 1992, is amended to read as follows:

§21-120.1 Family [day care] child care and group family child care.

a. Definitions. For the purposes of this section, the following definitions shall apply:

1. “Family [day care home] child care provider” shall [be defined as a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. A family day care home may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session, in accordance with the regulations of the state department of social services and if such department inspects such home to determine whether the provider can care adequately for seven or eight children] mean an individual who is registered pursuant to section three hundred ninety of the social services law and who provides child care services for fewer than twenty-four hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of twenty-four hours is due to the nature of the parent(s)' work, but shall not include providers of informal child care as defined in section 415.1 of title eighteen of the official compilation of the codes, rules and regulations of the state of New York.

2. “Group family child care provider” shall mean an individual who is licensed pursuant to section

three hundred ninety of the social services law and who provides child care services for fewer than twenty-four hours per day per child in a private residence other than the child's residence, unless care in excess of twenty-four hours is due to the nature of the parent(s)' work, but shall not include providers of informal child care as defined in section 415.1 of title eighteen of the official compilation of the codes, rules and regulations of the state of New York.

[2] 3. The “[department of social services] administration” shall mean the [department of social services of the city of New York] administration for children’s services.

[3. “Authorized agency” shall be as defined in section 371 of the state social services law.]

4. [“Child day care” shall mean care for a child on a regular basis provided away from the child’s residence for less than twenty-four hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child. Child day care shall not refer to care provided in:

(i) a day camp, as defined in the state sanitary code;

(ii) an after-school program operated for the purpose of religious education, sports or recreation;

(iii) a facility:

(a) providing day care services under an operating certificate issued by the department;

(b) providing day treatment under an operating certificate issued by the office of mental health or office of mental retardation and developmental disabilities; or

(iv) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after-school program is located on the premises or campus where the elementary or secondary education is provided.] “Child care provider” shall mean a family child care provider or a group family child care provider.

5. [“Community-based organization” shall be defined as any agency, association, corporation, institution, society or other organization organized pursuant to the not-for-profit corporations law which has the ability to provide community-based support services and training to family day care providers and parents of the children in their care, and which has its principal office in the city of New York.] “Authorized family child care service” shall mean an individual, association, corporation, partnership, institution, organization, or other entity that has been designated by the administration as qualified to inspect the home of a family child care provider or group family child care provider and performs inspections of child care providers applying to provide subsidized child care, assists in bringing such provider into full compliance with all applicable laws, rules and regulations in order for such family child care provider or group family child care provider to be certified as eligible to provide subsidized child care and monitors the performance of a child care provider that is providing subsidized child care.

6. [“Subsidized family day care” means family day care provided for children under any provision of the New York social services law and publicly funded in whole or part pursuant to 42 U.S.C. sections 620, 1397 and 9858, or the state low income day care program, but does not include day care reimbursed through payments to family day care providers through certificates issued on or after October 1, 1992 pursuant to the Child Care and Development Block Grant, 42 U.S.C. section 9858] ”Subsidized child care” shall mean all child care services provided by a family child care provider or group family child care provider paid for wholly or partially with public funds, through grants or contracts with a family child care provider, group family child care provider or authorized family child care service or by issuance of a child care certificate to a parent.

7. “Certified family child care” shall mean child care provided in the home of a family child care provider or a group family child care provider that has been inspected and which, after inspection, has been determined by the administration to be in full compliance with all applicable laws, rules and regulations, and is certified as eligible to provide subsidized child care.

8. “Child care certificate” shall mean a certificate or voucher that is issued directly to a parent who may

use such certificate or voucher only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider.

9. “Parent” shall mean a custodial parent, legal guardian or other person having legal custody of a child.

b. [The department of social services shall draft a plan providing that family day care homes applying to provide subsidized family day care shall obtain a certificate of registration from the state department of social services pursuant to the registration process provided under section 390 of the social services law, and regulations promulgated thereunder, and shall operate in accordance with the terms of such registration. Not later than thirty days following the effective date of this section, pursuant to section 390 of the social services law, the department shall submit such draft plan to the state department of social services, together with an explanation justifying the need to impose additional requirements on child day care providers and a plan to monitor compliance with such additional requirements. Upon receipt of written approval of the state department of social services, the department shall promulgate such a plan and shall implement such plan to monitor compliance.] A family child care provider may provide child care for no more than the authorized number of children shown on the registration issued to such provider pursuant to section three hundred ninety of the social services law. Such authorized number shall include the provider’s own children, foster children or relatives who are not attending school at the kindergarten or higher grade level if such children are present in the home.

1. A family child care provider may provide care only for children six weeks through twelve years of age, for children under court supervision or for children who are thirteen years of age or older who are incapable of caring for themselves when such inability is documented by a physician, psychiatrist or psychologist.

2. No child under six weeks of age shall be cared for in a family child care home.

3. A family child care provider may provide care for:

(i) up to five children between the ages of six weeks and six years, or
(ii) up to six children between the ages of two years and six years, and
(iii) an additional two children who attend kindergarten or a higher grade level, provided that they are receiving child care primarily during the hours or days that school is not in session. The registration authorizing the care of the additional children shall be issued only if the department of health acting on behalf of the state office of children and family services, or an authorized family child care service, has inspected the home and the department has determined that the provider can care adequately for the additional school-age children.

(4) Under no circumstances shall a family child care provider simultaneously care for more than two children under the age of two.

c. [In drafting a plan as provided in subdivision b hereof, the department of social services shall request authority to provide, or contract for services with community-based organizations to provide the training mandated by section 390-a(3)(b) of the social services law. The department of social services shall include in this request a request for the release of such funds as may be available for such training within the city of New York. The authority of the department of social services to provide training under such a plan shall be contingent upon granting of the authority and the release of funds therefor from the state department of social services] 1. A group family child care provider may provide child care for no more than the authorized number of children shown on the license issued to such provider pursuant to section three hundred ninety of the social services law. Such authorized number shall include the provider's own children, foster children, or relatives who are not attending school at the kindergarten or higher grade level if such children are present in the home.

2. A group family child care provider may provide care only for children six weeks through twelve years of age, for older children under court supervision or for children who are thirteen years of age or older who are incapable of caring for themselves when such inability is documented by a physician, psychiatrist or psychologist.

3. No child under six weeks of age shall be cared for in a group family child care home.

4. There shall be at least one caregiver for every two children under the age of two for whom child care is provided. A caregiver who is not a licensed group family child care provider or a registered family child care provider must meet the minimum qualifications of an assistant pursuant to section three hundred ninety of the social services law and the regulations promulgated thereunder.

5. Unless a second caregiver is present, a group family child care provider may care for no more than the maximum number of children authorized for a family child care provider.

6. When at least one other caregiver is present, a group family child care provider may provide care for:

(i) up to ten children between the ages of six weeks and six years, or

(ii) up to twelve children between the ages of two years and six years, and

(iii) an additional two children who attend kindergarten or a higher grade level, provided that they are receiving care primarily during the hours or days that school is not in session.

d. Either an eligible parent or a child care provider selected by the parent may apply to the administration or to an authorized family child care service and request that such provider's home be inspected and, if the provider is found qualified, be certified for the purpose of providing subsidized child care.

e. 1. The administration shall draft an amendment to an existing plan mandating that the home of a child care provider who applies to provide subsidized child care shall first be inspected and brought into full compliance with all applicable laws, rules and regulations, and also providing that the providers' homes shall be monitored thereafter on a regular basis to ensure that child care is provided in accordance with all such applicable laws, rules and regulations.

2. Not later than sixty days following the effective date of the local law that amended this section, the administration shall submit an amendment to an existing plan to the state office of children and family services in accordance with section three hundred ninety of the social services law and consistent with the provisions of subdivision f of this section, together with an explanation justifying the need to impose additional requirements upon family child care providers of subsidized child care and group family child care providers of subsidized

child care, and describing a plan to monitor compliance with such additional requirements and all applicable laws, rules and regulations.

[d.] f. The plan [provided in subdivision b hereof] required by subdivision e of this section shall provide that:

1. With the exception of a child care provider that has been certified in accordance with this section, prior to [the department's placement of] a child receiving subsidized [family day care in] child care from a family [day care home] child care provider or a group family child care provider, such child care provider's home shall be visited by the administration or an authorized [agency or community-based organization] family child care service for the purpose of [ensuring that] determining that such [home] child care provider meets the requirements of section [390;] three hundred ninety of the state social services law and regulations promulgated thereunder and that the child care provider is capable of providing safe and suitable care to children which is supportive of their physical, intellectual, emotional and social well-being.

2. [after registration of a family day care home by the state department of social services, each such home providing day care to a child receiving subsidized family day care shall be visited no less than eight times each year, including the visits mandated by the United States department of agriculture, by an authorized agency or community-based organization for the purpose of ensuring that family day care is provided in accordance with the requirements of sections 390 and 390-a of the social services law and such regulations as may be promulgated thereunder; including, but not limited to, registration pursuant to section 390 of the social services law which indicates:] Before the initial inspection of such child care provider's home, when the inspection is to be conducted by an authorized family child care service, the department of health shall provide such authorized family child care service with a true copy of the provider's completed application form and all other supporting documents on which the department of health based its determination to register or license such provider, except for any documents or information subject to a statute prohibiting such distribution.

3. A family child care provider or group family child care provider shall be certified as eligible to

provide subsidized child care only if such provider will:

- (i) personally provide the child care in such provider's own home,
- (ii) be the only operator of a family child care home or group family child care home in such provider's home,
- (iii) provide group family child care to no more than four children under the age of two and no more than six children under the age of three, with at least two assistant caregivers present,
- (iv) provide family child care to no more than three children under the age of three, and
- (v) provide assistant caregivers in a group family child care home with any and all employment benefits as may be required by state and federal law, including paying such caregivers at least the minimum wage set forth in article nineteen of the labor law.

4. The administration shall determine whether an individual who has submitted an application to be registered or licensed as a child care provider or an already registered or licensed child care provider is capable of providing family child care or group family child care in accordance with all applicable laws, rules and regulations and may designate such provider as a certified child care provider. In making such designation, the administration shall consider, but is not limited to considering, the following:

- (i) that clearance with the State Central Register of Child Abuse and Maltreatment has been completed for the applicant or child care provider and for any person eighteen years of age or older who resides in the home of the applicant or such child care provider; and
- (ii) whether the applicant or child care provider, or any person residing in the applicant's or child care provider's household has a record of criminal conviction; and
- (iii) that the applicant or child care provider has had an annual physical examination including an examination for tuberculosis and that all other members of the household have been examined for tuberculosis; and
- (iv) that the [family day care home facility] child care provider maintains a register, or an approved

equivalent, in a form to be provided by the state [department of social services] office of children and family services showing for each child for whom [day care] child care is provided:

[A.] (a) the name and date of birth of such child;

[B.] (b) the names and addresses of his or her parents [or guardian], including designated emergency contact persons and their telephone numbers; and

[C.] (c) such other information as may be required by the rules and regulations of the state [department of social services.] office of children and family services; and

(v) that the [family day care] applicant or child care provider has received or shall receive not less than fifteen hours of training during the first year after being registered and that [they have] the applicant or child care provider has received or shall receive not less than fifteen hours of training every second year thereafter. Such training is required to include, but not limited to, the following topics:

[A.] (a) principles of early childhood development;

[B.] (b) nutrition and health needs of infants and children;

[C.] (c.) child care program development;

[D.] (d) safety and security procedures;

[E.] (e) business record maintenance and management;

[F.] (f) child abuse and maltreatment identification and prevention; and,

[G.] (g) statutes and regulations [pertaining to] regarding [child day care] child care and child abuse and maltreatment[.]; and

(vi) that children in [family day care homes] child care have received or will receive instruction, consistent with their age, needs and circumstances as well as the needs and circumstances of the [family day care] child care provider, in techniques and procedures which will enable such children to protect themselves from abuse and maltreatment[.]; and

(vii) that the [family day care home] child care provider has a daily program [as provided by the

regulations promulgated by the state department of social services in 718 N. Y. C. R. R. section 417.11] that meets the requirements set forth in parts 416 and 417, respectively, of title eighteen of the official compilation of the codes, rules and regulations of the state of New York, as such regulations may from time to time be amended, or any successor thereto.

5. An application by a parent of a child for whom subsidized child care is sought shall not be denied solely by reason of the time of day or days for which child care is required, provided that an available child care provider can accommodate such hours and days of care in accordance with all applicable laws, rules and regulations. The administration and authorized family child care services shall encourage child care providers to offer child care during times of day or days that enhance the capacity of parents to seek out and avail themselves of employment and educational opportunities.

6. If a family child care provider or a group family child care provider is not in compliance with all applicable laws, rules and regulations, the administration or authorized family child care service will provide technical assistance on how to comply.

7. The plan required by this subdivision shall include provisions for delegating to an authorized family child care service authority to provide additional child care services, in lieu of the administration performing such services, contingent upon an increase in the payment rate for such authorized family child care service to cover its costs in providing these services. The additional child care services for which an authorized family child care service shall be funded to carry out shall include, but not be limited to, the following:

(i) except as provided in subparagraph (ii) of this paragraph, visiting each of the homes where certified family child care is provided no less than five times each year in addition to any monitoring visits mandated by the United States department of agriculture, for the purpose of ensuring that child care is provided in accordance with the requirements of sections three hundred ninety and three hundred ninety-a of the social services law and any regulations promulgated thereunder;

(ii) visiting each of the homes where certified family child care is provided no less than nine times, in

addition to any monitoring visits mandated by the United States department of agriculture, during the first twelve months in which a child care provider has been certified or has had a certification restored subsequent to the effective date of this subparagraph or where the provider has been found to have violated any provision of any applicable law, rule or regulation during the prior calendar year unless it is determined at the time the violation is adjudicated that it is not related to the health, safety or welfare of any child in the provider's care;

(iii) interviewing parents of children for whom subsidized child care is sought, compiling documentation needed to make a determination of each applicant's eligibility for subsidized child care, preparing an evaluation of such documentation for the administration, submitting the application with the appropriate documentation to the administration for its determination of the applicant's eligibility, and thereafter assisting the administration in recertifying the eligibility of the parent at required intervals;

(iv) assisting the parent in choosing an appropriate child care provider from among the certified child care providers sponsored by such authorized family child care service;

(v) monitoring the care provided to each child and ensuring that each child's individual needs are being met;

(vi) following up on each child's health care needs, maintaining the child's health record and supplying the child's child care provider with a copy of the health record;

(vii) providing in-service training and technical assistance to the child care providers to enhance their skills as caregivers of young children;

(viii) providing supportive services to the providers and the parents of the children in their care; and

(ix) collecting and checking the children's attendance records, collecting fees, billing the administration and paying the child care providers.

8. The rate of payment for subsidized child care services shall be sufficient to provide payment to the family child care provider or the group family child care provider, respectively, and the costs incurred by the authorized family child care service in carrying out its responsibilities as an authorized family child care

service. Until such increased payment rate takes effect, such authorized family child care service shall be responsible for providing only those child care services originally authorized during the period immediately prior to the effective date of this paragraph.

9. Upon receipt of written approval of the proposed amendments to the plan by the state office of children and family services, the administration shall promulgate an amended plan and shall implement such amended plan to monitor compliance by child care providers and any authorized family child care service. Until such time as the performance of any obligation set forth in this subdivision is delegated to an authorized family child care service the administration shall be required to perform each such obligation or arrange for its performance.

[e.] g. In drafting the amendments to an existing plan as [provided in subdivision b hereof] required by subdivision e of this section, the [department of social services] administration shall include such other provisions as are necessary to implement the requirements of this section. Nothing in this plan is intended to be nor shall it be construed in such a manner as to be inconsistent with any provision of federal law or any regulation promulgated thereunder relating to the opportunity of a parent to choose any manner of child care.

h. In the event that any of the proposed amendments to an existing plan submitted to the state office of children and family services pursuant to subdivision e of this section is not approved, this shall not affect any other provision of such plan or amendment.

[f] i. In the event that an authorized [agency or community-based organization] family child care service obtains information that [such home] a provider of certified family child care [can not] cannot provide or is not providing [family day care] child care in accordance with the requirements of [state law] all applicable laws, rules and regulations, the authorized family child care service shall immediately provide the [department] administration and the [state] department of [social services] health acting on behalf of the state office of children and family services with such information. If the [department] administration concludes that [day care] child care cannot be or is not being provided in accordance with the requirements of [state law] all applicable

laws, rules and regulations, [the department shall remove children, if any, receiving] such child care provider shall not be eligible to provide subsidized [family day care] child care in such home [and] . The administration shall not place children in such home nor may a child care certificate be used for child care provided in such home until such time as the [department determines] administration and the department of health, in consultation with the authorized family child care service, have determined that such [family day care] child care provider is in full compliance with the requirements of all applicable [law] laws, rules and regulations.

§3. If any clause, sentence, item, paragraph or section added by this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, item, paragraph or section thereof directly involved in the controversy in which such judgment shall have been rendered.

§4. Section one of this local law shall take effect immediately upon its enactment into law. Section two of this local law shall take effect at such time as any or all of the amendments to the plan required to be submitted pursuant to subdivisions e and f of section 21-120.1 of the administrative code of the city of New York, as set forth in section two of this local law, are approved and implemented in accordance with such section, except that subdivision a of section 21-120.1 of the administrative code of the city of New York, as amended by section two of this local law, subdivision e of section 21-120.1 of the administrative code of the city of New York, as added by section two of this local law, and subdivision f of section 21-120.1 of the administrative code of the city of New York, as relettered and amended by section two of this local law, shall take effect immediately upon their enactment into law for the limited purpose of authorizing the submission to the State of New York of proposed amendments to the plan previously approved pursuant to local law number forty-five for the year 1992.

JH
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