



Legislation Text

File #: Int 0291-1998-B, Version: *

Int. No. 291-B

By Council Members Eldridge, the Speaker (Council Member Vallone), Clarke, Marshall, Lopez, Quinn, Reed, the Public Advocate (Mr. Green), Boyland, Abel and Oddo; also Council Members Foster, Harrison, Leffler, Linares, Michels, Spigner and Eisland.

A Local Law to amend the administrative code of the city of New York, in relation to certain subsidized child care services.

Be it enacted by the Council as follows:

Section 1. Title 21 of the administrative code of the city of New York is amended by adding thereto a new section 21-120.1 to read as follows:

§21-120.1 Family child care and group family child care.

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

1. “Family child care provider” shall mean an individual who is registered pursuant to section three hundred ninety of the social services law.

2. “Group family child care provider” shall mean an individual who is licensed pursuant to section three hundred ninety of the social services law.

3. “Administration” shall mean the administration for children’s services.

4. “Child care provider” or “provider” shall mean a family child care provider or a group family child care provider.

5. “Authorized family child care service” shall mean an individual, association, corporation, partnership, institution, organization, or other entity that has been designated by the administration, or other appropriate agencies of the city and in consultation with the administration, as qualified to inspect the home of a family child care provider or group family child care provider seeking eligibility to provide subsidized child

care, assist in bringing such provider into full compliance with all applicable laws, regulations and rules in order for such family child care provider or group family child care provider to be designated as eligible to provide subsidized child care and/or monitor the performance of a child care provider that is providing subsidized child care.

6. "Subsidized child care" shall mean all child care services provided by a child care provider paid for wholly or partially with public funds, where payment is made by or pursuant to grants or contracts with a child care provider or authorized family child care service or by issuance of a child care certificate to a parent.

7. "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.

8. "Parent" shall mean a custodial parent, legal guardian or other person having legal custody of a child.

b. The administration shall perform the tasks and provide the services described in this subdivision with respect to providers of subsidized child care provided, however, that such tasks and services may be delegated to an authorized family child care service to the extent permitted by law:

1. monitoring the care provided to each child and ensuring that each child's individual needs are being met, identifying children in need of further evaluation and making appropriate referrals for individual or family-related services;

2. inspecting a child care provider's home within thirty days of the placement of the first child receiving subsidized child care with that child care provider for the purpose of determining that such child care provider meets the requirements of section three hundred ninety of the social services law, the regulations promulgated thereunder, and any plan approved pursuant to section three hundred ninety of the social services law, 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. When the inspection is to be

conducted by an authorized family child care service, the child care provider shall furnish to such authorized family child care service a true copy of the provider's completed application form and all other supporting documents and related materials in the provider's possession. However, this paragraph shall not apply to those providers of subsidized child care who were providing such care prior to the effective date of this section and received payment for such care exclusively through child care certificates;

3. arranging for a visit to a child care provider's home by a parent prior to the placement of such parent's child receiving subsidized child care with that child care provider for the purpose of determining that such child care provider is capable of providing safe and suitable care which is supportive of that child's physical, intellectual, emotional and social well-being;

4. inspecting the operation of every home where subsidized child care is provided no less than five times each year, which shall be in addition to and separate and distinct from any visits performed pursuant to paragraph (3) of this subdivision or mandated by the United States department of agriculture pursuant to the child and adult care food program, for the purpose of ensuring that child care is provided in accordance with the requirements of all applicable laws, regulations and rules, provided, however, that twenty percent of those providers of subsidized child care who are providing such child care on the effective date of this section and receive payment for such child care exclusively through child care certificates shall be inspected each month following approval of the provisions of this paragraph by the New York state office of children and family services, so that each such provider shall be inspected within five months subsequent to such approval, and all such providers shall be inspected four additional times during the first year following such approval;

5. inspecting the operation of every home where subsidized child care is provided no less than two times during the first six months in which a child care provider is providing subsidized child care and at least one additional time during the next six months, which shall be in addition to and separate and distinct from any visits and inspections required by paragraphs (2), (3) and (4) of this subdivision, except that this paragraph shall not apply to a provider who is participating in the child and adult care food program of the United States

department of agriculture and those providers of subsidized child care who were providing such child care prior to the effective date of this section and received payment for such child care exclusively through child care certificates;

6. in addition to and separate and distinct from those visits and inspections required by paragraphs (3) and (4) of this subdivision, inspecting the operation of every home where subsidized child care is provided no less than two times during the first six months after the provider has had eligibility to provide subsidized child care restored subsequent to the effective date of this paragraph or has been adjudicated to have violated any provision of any applicable law, regulation or rule unless it is determined at the time the violation is adjudicated that the violation (a) did not adversely affect public health, (b) did not relate to on-site sanitation, fire hazards or safety hazards, (c) did not relate to staff qualifications or program requirements and (d) did not relate to the discipline, supervision or nutrition of any child in the provider's care. The administration shall also perform such additional inspections as it determines are necessary for it to establish that a provider whose eligibility to provide subsidized child care has been restored is capable of providing safe and suitable care to children which is supportive of their physical, intellectual, emotional and social well-being and to establish that any violations of the type described in this paragraph have been corrected.

7. assisting in the collection and review of medical and immunization information which is required to be maintained for all children for which the provider is providing subsidized child care and the monitoring of those medical and immunization requirements;

8. providing instruction and training to child care providers, as needed, in order to comply with all applicable laws, regulations and rules;

9. assisting in the establishment and maintenance of all files necessary for the administration and any city agency acting on behalf of the state of New York to oversee the activities of the provider and to assist the provider in complying with all applicable laws, regulations and rules including the maintenance of attendance records;

10. assisting applicants and providers in properly preparing applications for licensing and registration and for the renewal of a license or registration;

11. assisting every child care provider in creating and maintaining a file containing fingerprint records of such provider and fingerprint records of every employee of such child care provider, any volunteer acting on behalf of such child care provider and any member of the household of such child care provider who is sixteen years of age and older, and overseeing the activities of each such provider to assure that fingerprint records are maintained for each person in a category described herein;

12. monitoring the files required to be maintained by every child care provider containing medical records of such provider and medical records of every employee of such child care provider, any volunteer acting on behalf of such child care provider and any member of the household of such child care provider and overseeing the activities of each such provider to assure that medical records containing the most up-to-date information are maintained for each person in a category described herein;

13. making determinations as to whether an individual who has submitted an application to be registered or licensed as a child care provider or a registered or licensed child care provider will be able to provide family child care or group family child care in accordance with all applicable laws, regulations, rules, and any plan approved pursuant to section three hundred ninety of the social services law and, where appropriate, designating such provider as eligible to provide subsidized child care. In making such a determination, 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, every employee of such child care provider, volunteer acting on behalf of such child care provider and for any person eighteen years of age or older who resides in the home of such applicant or child care provider;

(ii) whether the applicant or child care provider, every employee of such child care provider, volunteer acting on behalf of such child care provider or any person residing in the applicant's or child care

provider's household who is sixteen years of age or older has a record of criminal conviction, to the extent such information is available;

(iii) that the applicant or child care provider and every employee of such child care provider, volunteer acting on behalf of such child care provider and all other members of the household have had a health examination and been examined for tuberculosis within the previous twelve months;

(iv) that the child care provider maintains a register, or an approved equivalent, in a form to be provided by the New York state office of children and family services or provided for such purpose by another city or state office showing for each child for whom child care is provided:

(a) the name and date of birth of such child;

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

(c) such other information as may be required by the state office of children and family services or other appropriate agency or office;

(v) that the child care provider has received or shall receive not less than the training required by section three hundred ninety-a of the social services law and any regulations promulgated pursuant thereto or the plan approved pursuant to paragraph f of subdivision three of section three hundred ninety of the social services law where such plan establishes different training requirements;

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

(vii) that the child care provider has a daily program that meets all applicable requirements set forth in parts 416 and 417 of title eighteen of the official compilation of the codes, rules and regulations of the state of New York, or any superseding regulations;

14. providing technical assistance to a child care provider in order to assure compliance with all

applicable laws, regulations and rules and other services to ensure safe and suitable care to children which is supportive of their physical, intellectual, emotional and social well-being;

15. assisting parents in choosing an appropriate child care provider from among the child care providers eligible to provide subsidized child care;

16. providing detailed written information about the child and adult care food program operated by or on behalf of the United States department of agriculture to every provider of subsidized child care who is not enrolled in such program and to every applicant seeking to become a provider of subsidized child care at the time such application is submitted; and

17. encouraging providers and applicants to enroll in the child and adult care food program and assisting such persons in enrolling and 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.

c. In the event that an authorized family child care service obtains information that a provider of subsidized child care cannot provide or is not providing child care in accordance with the requirements of all applicable laws, rules and regulations, the authorized family child care service shall immediately provide the administration with such information. If the administration concludes that safe and suitable care to children which is supportive of their physical, intellectual, emotional, and social well-being cannot be or is not being provided, such child care provider shall not be eligible to provide subsidized child care in such home. The administration shall not continue to subsidize through any mechanism the child care of children in such home until such time as the administration has determined that such child care provider can provide such safe and suitable care.

d. 1. Not later than sixty days following the effective date of this section, the administration shall submit in accordance with section three hundred ninety of the social services law a plan or all amendments to any existing plan necessary to make such plan consistent with the provisions of this section, together with an explanation justifying the need to impose additional requirements upon providers of subsidized child care and a

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

2. The plan submitted by the administration shall request authority for the administration to provide the training mandated by section 390-a of the social services law or the plan or delegate the provision of such training to an authorized family child care service. The administration shall include in this request an application for the release of such funds as may be available for such training within the city of New York. The authority of the administration to provide training under such a plan shall be contingent upon granting of the authority and the release of funds from the state.

3. The plan submitted by the administration shall also include provisions imposing upon every provider of subsidized child care the following requirements:

(i) such child care provider's home shall be made available for inspection by the administration or an authorized family child care service for the purpose of determining that such child care provider meets the requirements of section three hundred ninety of the social services law, the regulations promulgated thereunder and any plan approved pursuant to section three hundred ninety of the social services law 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. When the inspection is to be conducted by an authorized family child care service, the child care provider shall furnish to such authorized family child care service a true copy of the provider's completed application form and all other supporting documents and related materials in the provider's possession;

(ii) when it is determined that the home of a child care provider who desires to provide subsidized child care is not in full compliance with all applicable laws, regulations and rules, the child care provider shall bring such home into full compliance with all applicable laws, regulations and rules;

(iii) a child care provider shall be eligible to provide subsidized child care only if such provider will:

(a) personally provide the child care in the provider's own home;

(b) be the only provider of child care in that home; and

(c) 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;

(iv) ensure that each caregiver and any assistant caregiver has received or will receive not less than fifteen hours of training within the first year of their registration or licensure, and each biennial period thereafter, which training shall begin prior to or within the first three months after the placement with such child care provider of the first child whose child care is subsidized through attending or completing programs that upon completion provide six hours of training. Such training shall include, but shall not be limited to, the following topics:

- (a) principles of early childhood development;
- (b) nutrition and health needs of infants and children;
- (c) child care program development;
- (d) safety and security procedures;
- (e) business record maintenance and management;
- (f) child abuse and maltreatment identification and prevention;
- (g) all laws, regulations and rules pertaining to child care and child abuse and maltreatment.

e. Within sixty days of receipt of written approval of the plan or amendments to any existing plan submitted pursuant to subdivision d of this section, the administration shall take all steps necessary to implement such plan or amended plan and monitor compliance by child care providers and any authorized family child care service.

f. In drafting a plan or amendments to any existing plan as required by subdivision d of this section, the administration shall include such other provisions as are necessary to implement the requirements of this section.

g. In the event that any portion of the plan or any of the proposed amendments to an existing plan

submitted pursuant to subdivision d of this section is not approved, that disapproval shall not affect any other provision of such plan or amendment and each provision shall be implemented and enforced to the extent approved by the state.

h. Nothing in the plan submitted pursuant to subdivision d of this section 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, nor shall be it be construed as affecting any provision of section three hundred ninety of the social services law and any regulations promulgated thereunder authorizing any enforcement activity against a child care provider including, but not limited to, a proceeding to suspend, revoke, limit or terminate a license or registration to provide child care. If any provision is so construed by a court of law or if a written determination or other notice is issued by a state or federal agency or office that there will be a significant loss of funding as a result of any provision, such provision shall be null and void.

§2. 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.

§3. This local law shall take effect on the first day of July 2000, provided, however, that the New York city administration for children's services shall take such steps as are necessary, including the promulgation of rules, for the implementation of this local law prior to such effective date and the administration for children's services may prior to such effective date submit to the New York state office of children and family services or other appropriate agency or office a plan or all amendments to any existing plan pursuant to section 390 of the social services law necessary to make such plan consistent with the provisions of this law.

JH
5/11/00 10:00 am
H:/ints/childcare4-29-00.doc