

MCA 52-2-701

52-2-701. Short title

This part may be cited as the "Montana Child Care Act".

MCA 52-2-702

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.

MCA 52-2-703

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.

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(3)(a) "Day-care center" means an out-of-home place in which day care is provided to 13 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.

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(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 six children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 7 to 12 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.

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(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.

#### MCA 52-2-704

#### 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.

**MCA 52-2-705**

**52-2-705. Repealed by Laws 1997, ch. 171, § 16**

**MCA 52-2-710**

**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.

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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 financial 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.

**MCA 52-2-711**

**52-2-711. Resource and referral and day-care improvement grant program**

Statutes are current through the 2013 Session, and the 2012 general election.

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(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

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(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.

**MCA 52-2-712**

**52-2-712. Repealed by Laws 1991, ch. 618, § 1**

**MCA 52-2-713**

**52-2-713. Payments for eligible children**

The department shall pay a rate established by the department and appropriated by the legislature 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.

**MCA 52-2-721**

**52-2-721. License required--registration required--term of license or registration certificate--no fee charged**

(1) 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.

**MCA 52-2-722**

**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.

**MCA 52-2-723**

**52-2-723. Requirements for licensure**

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(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.

**MCA 52-2-724**

**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.

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MCA 52-2-725

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.

MCA 52-2-726

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.

MCA 52-2-731

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.

#### MCA 52-2-732

#### 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.

#### MCA 52-2-733

#### 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

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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.

**MCA 52-2-734**

**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.

**MCA 52-2-735**

**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.

MCA 52-2-736

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

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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.

**MCA 52-2-741**

**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.