

1 AN ACT relating to child-care centers and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 199.896 is amended to read as follows:

- 4 (1) ~~A[No]~~ person, association, or organization shall **not** conduct, operate, maintain, or
5 advertise any child-care center without obtaining a license as provided in KRS
6 199.892 to 199.896.
- 7 (2) The cabinet may promulgate administrative regulations **in accordance**
8 **with**~~[pursuant to]~~ KRS Chapter 13A relating to license fees and may, in the
9 administrative regulations, establish standards of care and service for a child-care
10 center, criteria for the denial of a license if criminal records indicate convictions
11 that may impact the safety and security of children in care, and procedures for
12 enforcement of penalties which are not in contravention of this section.
- 13 (3) Each initial application for a license shall be made to the cabinet and shall be
14 accompanied by a fee that shall not exceed administrative costs of the program to
15 the cabinet and shall be renewable annually upon expiration and reapplication when
16 accompanied by a renewal fee that shall not exceed administrative costs of the
17 program to the cabinet. Regular licenses and renewals thereof shall expire one (1)
18 year from their effective date.
- 19 (4) ~~A[No]~~ child-care center shall **not** be refused a license or have its license revoked for
20 failure to meet standards set by the secretary until after the expiration of a period
21 not to exceed six (6) months from the date of the first official notice that the
22 standards have not been met. If, however, the cabinet has probable cause to believe
23 that an immediate threat to the public health, safety, or welfare exists, the cabinet
24 may take emergency action pursuant to KRS 13B.125. All administrative hearings
25 conducted under authority of KRS 199.892 to 199.896 shall be conducted in
26 accordance with KRS Chapter 13B.
- 27 (5) If, upon inspection or investigation, the inspector general finds that a child-care

- 1 center licensed under this section has violated the administrative regulations
2 *promulgated in accordance with KRS Chapter 13A by*~~[- standards, or requirements~~
3 ~~of]~~ the cabinet, the inspector general shall issue a statement of deficiency to the
4 center containing:
- 5 (a) A statement of fact;
 - 6 (b) A statement of how an administrative regulation~~[- standard, or requirement of~~
7 ~~the cabinet]~~ was violated; and
 - 8 (c) The timeframe, negotiated with the child-care center, within which a violation
9 is to be corrected, except that a violation that poses an immediate threat to the
10 health, safety, or welfare of children in the center shall be corrected in no
11 event later than five (5) working days from the date of the statement of
12 deficiency.
- 13 (6) The Cabinet for Health and Family Services, in consultation with the Office of the
14 Inspector General, shall establish by administrative regulations promulgated in
15 accordance with KRS Chapter 13A an informal dispute resolution process through
16 which a child-care provider may dispute licensure deficiencies that have an adverse
17 effect on the child-care provider's license.
- 18 (7) A child-care center shall have the right to appeal to the Cabinet for Health and
19 Family Services under KRS Chapter 13B any action adverse to its license or the
20 assessment of a civil penalty issued by the inspector general as the result of a
21 violation contained in a statement of deficiency within twenty (20) days of the
22 issuance of the action or assessment of the civil penalty. An appeal shall not act to
23 stay the correction of a violation.
- 24 (8) In assessing the civil penalty to be levied against a child-care center for a violation
25 contained in a statement of deficiency issued under this section, the inspector
26 general or the inspector general's designee shall take into consideration the
27 following factors:

- 1 (a) The gravity of the threat to the health, safety, or welfare of children posed by
2 the violation;
- 3 (b) The number and type of previous violations of the child-care center;
- 4 (c) The reasonable diligence exercised by the child-care center and efforts to
5 correct the violation; and
- 6 (d) The amount of assessment necessary to assure immediate and continued
7 compliance.
- 8 (9) Upon a child-care center's failure to take action to correct a violation ~~of the~~
9 ~~administrative regulations, standards, or requirements of the cabinet~~ contained in a
10 statement of deficiency, or at any time when the operation of a child-care center
11 poses an immediate threat to the health, safety, or welfare of children in the center,
12 and the child-care center continues to operate after the cabinet has taken emergency
13 action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee
14 shall take at least one (1) of the following actions against the center:
- 15 (a) Institute proceedings to obtain an order compelling compliance with the
16 administrative regulations *promulgated by the cabinet in accordance with*
17 *KRS Chapter 13A* ~~standards, and requirements of the cabinet~~;
- 18 (b) Institute injunctive proceedings in Circuit Court to terminate the operation of
19 the center;
- 20 (c) Institute action to discontinue payment of child-care subsidies; or
- 21 (d) Suspend or revoke the license or impose other penalties provided by law.
- 22 (10) Upon request of any person, the cabinet shall provide information regarding the
23 denial, revocation, suspension, or violation of any type of child-care center license
24 of the operator. Identifying information regarding children and their families shall
25 remain confidential.
- 26 (11) The cabinet shall provide, upon request, public information regarding the
27 inspections of and the plans of correction for the child-care center within the past

1 year. All information distributed by the cabinet under this subsection shall include a
2 statement indicating that the reports as provided under this subsection from the past
3 five (5) years are available from the child-care center upon the parent's, custodian's,
4 guardian's, or other interested person's request.

5 (12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and
6 certification applications shall be paid into the State Treasury and credited to a
7 special fund for the purpose of administering KRS 199.892 to 199.896 including the
8 payment of expenses of and to the participants in child-care workshops. The funds
9 collected are hereby appropriated for the use of the cabinet. The balance of the
10 special fund shall lapse to the general fund at the end of each biennium.

11 (13) Any advertisement for child-care services shall include the address of where the
12 service is being provided.

13 (14) All inspections of licensed and unlicensed child-care centers by the Cabinet for
14 Health and Family Services shall be unannounced.

15 (15) All employees and owners of a child-care center who provide care to children shall
16 demonstrate within the first three (3) months of employment completion of at least
17 a total of six (6) hours of orientation in the following areas:

- 18 (a) Basic health, safety, and sanitation;
- 19 (b) Recognizing and reporting child abuse; and
- 20 (c) Developmentally appropriate child-care practice.

21 (16) All employees and owners of a child-care center who provide care to children shall
22 annually demonstrate to the department completion of at least six (6) hours of
23 training in child development. These hours shall include but are not limited to one
24 and one-half (1.5) hours one (1) time every five (5) years of continuing education in
25 the recognition and prevention of pediatric abusive head trauma, as defined in KRS
26 620.020. Training in recognizing pediatric abusive head trauma may be designed in
27 collaboration with organizations and agencies that specialize in the prevention and

1 recognition of pediatric head trauma approved by the secretary of the Cabinet for
2 Health and Family Services. The one and one-half (1.5) hours required under this
3 section shall be included in the current number of required continuing education
4 hours.

5 (17) The Cabinet for Health and Family Services shall make available either through the
6 development or approval of a model training curriculum and training materials,
7 including video instructional materials, to cover the areas specified in subsection
8 (15) of this section. The cabinet shall develop or approve the model training
9 curriculum and training materials to cover the areas specified in subsection (15) of
10 this section.

11 (18) Child-care centers licensed pursuant to this section and family child-care homes
12 certified pursuant to KRS 199.8982 shall not use corporal physical discipline,
13 including the use of spanking, shaking, or paddling, as a means of punishment,
14 discipline, behavior modification, or for any other reason. For the purposes of this
15 section, "corporal physical discipline" means the deliberate infliction of physical
16 pain and does not include spontaneous physical contact that is intended to protect a
17 child from immediate danger.

18 (19) Child-care centers that provide instructional and educational programs for
19 preschool-aged children that operate for a maximum of twenty (20) hours per week
20 and that a child attends for no more than fifteen (15) hours per week shall:

- 21 (a) Notify the cabinet in writing that the center is operating;
- 22 (b) Meet all child-care center licensure requirements and administrative
23 regulations related to employee background checks;
- 24 (c) Meet all child-care center licensure requirements and administrative
25 regulations related to tuberculosis screenings; and
- 26 (d) Be exempt from all other child-care center licensure requirements and
27 administrative regulations.

- 1 (20) Child-care centers that provide instructional and educational programs for
2 preschool-aged children that operate for a maximum of twenty (20) hours per week
3 and that a child attends for no more than ten (10) hours per week shall be exempt
4 from all child-care licensure requirements and administrative regulations.
- 5 (21) Instructional programs for school-age children that offer, whether free or for a fee,
6 recreational, educational, sports training, or vacation programs that include but are
7 not limited to martial arts and dance programs to children under eighteen (18) years
8 of age, that a child attends outside the presence of his or her parent or legal
9 guardian, shall be exempt from all child-care licensure administrative regulations if
10 the following criteria are met:
- 11 (a) The program provides primary instruction in a skill, talent, ability, expertise,
12 or proficiency;
- 13 (b) The program operates outside the time period when school is in session,
14 including before or after school hours, holidays, school breaks, teaching
15 planning days, or summer vacation;
- 16 (c) The program does not advertise or otherwise represent that the program is a
17 licensed child-care center or that the program offers child-care services;
- 18 (d) The program informs the parent or guardian:
- 19 1. That the program is not licensed by the cabinet; and
20 2. About the physical risks a child may face while participating in the
21 program; and
- 22 (e) The program conducts the following background checks for all program
23 employees and volunteers who work with children:
- 24 1. Check of the child abuse and neglect records maintained by the cabinet;
25 and
26 2. In-state criminal background information check from the Justice and
27 Public Safety Cabinet or Administrative Office of the Courts.

- 1 (22) Directors and employees of child-care centers in a position that involves
2 supervisory or disciplinary power over a minor, or direct contact with a minor, shall
3 submit to a criminal record check in accordance with KRS 199.8965.
- 4 (23) A director or employee of a child-care center may be employed on a probationary
5 status pending receipt of the criminal background check. Application for the
6 criminal record of a probationary employee shall be made no later than the date
7 probationary employment begins.
- 8 (24) In determining whether to issue a plan of correction, directed plan of correction,
9 or suspension or revocation of a child-care center license in response to any
10 alleged violation of an administrative regulation by a child-care center, in
11 addition to any other required considerations under this section the cabinet shall
12 consider the following factors:
- 13 (a) If the child-care center self-reported the incident in question and if the
14 child-care center had a history of self-reporting incidents;
- 15 (b) If the incident was the result of the child-care center failing in any way
16 related to policy, training, enforcement, or supervision;
- 17 (c) If the incident was the result of an independent act of failure to follow
18 administrative regulations or center policy on the part of a child-care center
19 applicant for licensure, a child-care center director, or any staff person;
- 20 (d) Actions taken by the child-care center in addition to those required by
21 administrative regulation, including but not limited to installing cameras,
22 providing extra training for staff, implementing facility improvements,
23 enacting safety policies stricter than those required by administrative
24 regulation, and improving staff-to-child ratios; and
- 25 (e) If the child-care center appropriately responded to the violation by holding
26 the party responsible accountable for the violation and correcting or
27 initiating correction of any condition that contributed to the violation.

1 (25) A violation of a directed plan of correction shall not result in a suspension or
2 revocation of a child-care center's license unless the violation is solely
3 determined by the cabinet to be serious enough to justify the suspension or
4 revocation.

5 (26) A child-care center shall be permitted to provide requested documentation to the
6 cabinet up to five (5) business days following a request when any routine review
7 or audit related to an alleged violation of administrative regulation occurs.

8 (27) (a) A child-care center that has been granted a preliminary license with a six
9 (6) month probationary period by the cabinet shall receive a minimum of
10 two (2) weekly support contacts a week by the cabinet, with at least one (1)
11 contact being in person for each week of a six (6) month probationary
12 period in order to assist the center owner, supervisors, and staff in
13 understanding, implementing, and practicing administrative regulations
14 properly.

15 (b) During the six (6) month probationary period, the cabinet shall not issue a
16 violation against a child-care center unless the cabinet determines that a
17 violation was knowingly committed after the cabinet had provided clear
18 instructions, or the violation created an immediate threat to the health,
19 safety, or welfare of the children in the child-care center.

20 (28) The cabinet may allow but shall not require the inspector general, the inspector
21 general's designee, or other cabinet representative to:

22 (a) Take emergency action in accordance with subsection (4) of this section by
23 issuing an emergency order that suspends a child-care center's license;

24 (b) Revoke a child-care center's license if an emergency order has been issued
25 and the:

26 1. Child-care center has not requested a hearing within the timeframes
27 required in subsection (7) of this section; or

1 2. Condition that resulted in the emergency order is not corrected within
2 thirty (30) calendar days of service of an emergency order;

3 (c) Revoke a child-care center's license if:

4 1. A representative of the child-care center interferes with a cabinet
5 or other agency representative's ability to perform an official
6 duty;

7 2. A cabinet representative, a representative from another agency
8 with regulatory authority, or a parent is denied access during
9 operating hours to a child, the child-care center, or child-care
10 center staff;

11 3. The child-care center is discontinued or disqualified from
12 participation in Kentucky's child-care subsidy program or
13 another governmental assistance program as a result of fraud,
14 abuse, or criminal conviction related to the center;

15 4. The child-care center fails to meet a condition of, or violates a
16 requirement of, a directed plan of correction;

17 5. The child-care center applicant or licensee knowingly
18 misrepresents or submits false information on a form required by
19 the cabinet;

20 6. The child-care center is the subject of more than two (2) directed
21 plans of correction during a three (3) year period; or

22 7. The child-care center has failed to comply with required payment
23 provisions; and

24 (d) Suspend a child-care center's license if:

25 1. A violation of an administrative regulation is found to pose an
26 immediate threat to the health, safety, and welfare of the
27 children in care, as permitted in subsection (4) of this section; or

1 2. The child-care center fails to comply with the approved plan of
2 correction.

3 (29) The cabinet shall promulgate administrative regulations in accordance with KRS
4 Chapter 13A to identify emergency care providers who provide essential child-care
5 services during an identified state of emergency.†

6 ~~(25) Notwithstanding any state law, administrative regulation, executive order, or~~
7 ~~executive directive to the contrary, during the 2020 or 2021 state of emergency~~
8 ~~declared by the Governor in response to COVID-19, including but not limited to~~
9 ~~any mutated strain of the COVID-19 virus, the cabinet shall not establish any~~
10 ~~restrictions on capacity for class or group size or the ability to combine classes and~~
11 ~~groups for capacity limits in the morning or afternoon that is below the number that~~
12 ~~was in effect on February 1, 2020.]~~

13 ➔Section 2. The provisions of this Act shall apply:

14 (1) To any pending and not yet final action related to licensed child-care centers
15 that is under consideration by the Cabinet for Health and Family Services on the effective
16 date of this Act; and

17 (2) To any action related to licensed child-care centers that occurs on or after the
18 effective date of this Act.

19 ➔Section 3. Whereas it is essential that the General Assembly promptly provide
20 access to adequate and quality child care in the Commonwealth in order to provide for
21 the health and safety of citizens, an emergency is declared to exist, and this Act takes
22 effect upon its passage and approval by the Governor or upon its otherwise becoming a
23 law.