

# STATE OF NEW YORK

1614

2025-2026 Regular Sessions

## IN SENATE

January 13, 2025

Introduced by Sens. BRISPORT, CLEARE, RAMOS, ROLISON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to defining critical violations by child care providers; establishing a portal for child care providers to self-report critical violations; clarifying certain sanctions, penalties, and other disciplinary actions taken by the office of children and family services against child care providers for critical violations; and specifying procedures for child care providers to appeal such sanctions, penalties, and disciplinary actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 390 of the social services law is  
2 amended by adding four new paragraphs (h), (i), (j) and (k) to read as  
3 follows:

4 (h) (i) "Critical violation" shall mean:

5 (A) a fatality, near fatality, or serious physical or emotional injury  
6 of a child who is in the custody of or receiving services from a child  
7 care provider licensed or registered by the office of children and fami-  
8 ly services; or

9 (B) circumstances which result in a reasonable belief that a child  
10 care provider licensed or registered by the office of children and fami-  
11 ly services failed in its duty to protect a child and, as a result, the  
12 child was at imminent risk of, or suffered serious physical or emotional  
13 injury or death.

14 (ii) Examples of critical violations may include the failure to  
15 provide proper supervision of children or comply with health and safety  
16 regulations, inadequate staffing levels, and child abuse and maltreat-  
17 ment.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (i) "Serious physical or emotional injury" shall mean an injury which  
2 causes or creates a substantial risk of death, extreme physical pain,  
3 serious or protracted disfigurement, protracted impairment of physical  
4 or emotional health, or protracted loss or impairment of the function of  
5 any bodily member, organ, or mental faculty.

6 (j) "Abused child" shall mean a child, less than eighteen years of  
7 age, whose parent or other person legally responsible for such child's  
8 care:

9 (i) inflicts or allows to be inflicted upon such child serious phys-  
10 ical or emotional injury by other than accidental means;

11 (ii) creates or allows to be created a substantial risk of serious  
12 physical or emotional injury to such child by other than accidental  
13 means;

14 (iii) commits, or allows to be committed, a sex offense, as defined in  
15 article one hundred thirty of the penal law, against such child;

16 (iv) permits or encourages such child to engage in any act described  
17 in article two hundred thirty of the penal law;

18 (v) commits any of the acts described in section 255.25 of the penal  
19 law; or

20 (vi) allows such child to engage in acts or conduct described in arti-  
21 cle two hundred sixty-three of the penal law; provided, however, that  
22 the corroboration requirements contained in the penal law and the age  
23 requirement for the application of article two hundred sixty-three of  
24 the penal law shall not apply to proceedings under article ten of the  
25 family court act.

26 (k) "Maltreated child" shall mean a child, less than eighteen years of  
27 age:

28 (i) whose physical, mental, or emotional condition has been impaired  
29 or is in imminent danger of becoming impaired as a result of the failure  
30 of such child's parent or other person legally responsible for such  
31 child's care to exercise a minimum degree of care in:

32 (A) supplying such child with adequate food, clothing, shelter, or  
33 education pursuant to part one of article sixty-five of the education  
34 law; or medical, dental, optometrical, or surgical care, if such parent  
35 or other person legally responsible for such child's care is financially  
36 able to do so or offered financial or other reasonable means to do so;  
37 or

38 (B) providing such child with proper supervision or guardianship, by  
39 unreasonably inflicting or allowing to be inflicted harm, or a substan-  
40 tial risk thereof, including the infliction of excessive corporal  
41 punishment; misusing a drug or drugs; misusing alcoholic beverages to  
42 the extent that such parent or other person legally responsible for such  
43 child's care loses self-control of their actions; or any other acts of a  
44 similarly serious nature requiring the aid of the court; provided,  
45 however, that where such parent or other person legally responsible for  
46 such child's care is voluntarily and regularly participating in a reha-  
47 bitative program, evidence that such parent or other person legally  
48 responsible has repeatedly misused a drug or drugs or alcoholic beverag-  
49 es to the extent that such parent or other person legally responsible  
50 loses self-control of their actions shall not alone establish that the  
51 child is a neglected or maltreated child in the absence of evidence  
52 establishing that such child's physical, mental, or emotional condition  
53 has been impaired or is in imminent danger of becoming impaired pursuant  
54 to this subparagraph;

55 (ii) who has been abandoned by such child's parent or other person  
56 legally responsible for such child's care; or

1 (iii) who has had serious physical or emotional injury inflicted upon  
 2 such child by other than accidental means.

3 § 2. Clause (C) of subparagraph (ii) of paragraph (d) of subdivision 2  
 4 of section 390 of the social services law, as amended by chapter 416 of  
 5 the laws of 2000, is amended to read as follows:

6 (C) Where the office of children and family services has determined  
 7 that a registration should not be continued because the requirements of  
 8 clause (B) of this subparagraph have not been satisfied, the office of  
 9 children and family services may terminate the registration. [~~If the~~  
 10 ~~office of children and family services does not terminate the registra-~~  
 11 ~~tion, the] The office of children and family services shall inspect the  
 12 home or program before terminating the registration or acknowledging any  
 13 subsequent registration. Where the home or program has failed to meet  
 14 the requirements of this section, the office of children and family  
 15 services may reject any subsequent registration of a provider. Nothing  
 16 herein shall prohibit the office of children and family services from  
 17 terminating or suspending registration pursuant to subdivision ten of  
 18 this section where the office of children and family services determines  
 19 that termination or suspension is necessary.~~

20 § 3. Paragraph (b) of subdivision 3 of section 390 of the social  
 21 services law, as amended by section 5 of part H of chapter 56 of the  
 22 laws of 2019, is amended to read as follows:

23 (b) (i) Where inspections have been made and violations of applicable  
 24 statutes or regulations have been found, the office of children and  
 25 family services or its designee shall, within ten days, advise the child  
 26 day care provider or enrolled legally-exempt provider in writing of the  
 27 violations and require the provider to correct such violations as speci-  
 28 fied in a corrective action plan. [~~The office of children and family~~  
 29 ~~services may also act pursuant to subdivisions ten and eleven of this~~  
 30 ~~section.~~]

31 (ii) The corrective action plan shall:

32 (A) include a statement of observations of the violations;

33 (B) indicate which statutes or regulations the holder of a license or  
 34 child care provider has violated;

35 (C) prescribe the method or methods of compliance with the statutes or  
 36 regulations; and

37 (D) prescribe a reasonable time period for correction of the  
 38 violations, depending on the nature of such violations and the time  
 39 required for correction.

40 (iii) Where inspections have been made and critical violations of  
 41 applicable statutes or regulations have been found, the office of chil-  
 42 dren and family services or its designee [~~shall, within ten days, advise~~  
 43 ~~the enrolled legally-exempt provider]~~ may, in [~~writing~~] a notice of  
 44 sanction, impose one or more sanctions, which may include but shall not  
 45 be limited to:

46 (A) ceasing the enrollment of new children;

47 (B) reducing the [~~violations~~] number of children that a program or  
 48 component of a program is licensed to serve;

49 (C) hiring one or more consultants to provide technical assistance  
 50 and/or training;

51 (D) hiring additional staff on a temporary or permanent basis;

52 (E) hiring a monitor selected by and [~~require~~] accountable to the  
 53 [~~provider~~] office of children and family services; and

54 (F) restricting an administrator and/or staff person's access to  
 55 [~~correct such violations~~] children.

1 § 4. Section 390 of the social services law is amended by adding a new  
2 subdivision 3-a to read as follows:

3 3-a. (a) (i) Child care providers licensed or registered pursuant to  
4 subdivision two of this section shall notify the office of children and  
5 family services within forty-eight hours upon learning of an incident  
6 involving a critical violation.

7 (ii) The office of children and family services shall develop an  
8 online portal for licensed or registered child care providers to self-  
9 report critical violations and receive information regarding next steps  
10 in the licensing, registration, investigation, or disciplinary process,  
11 including but not limited to:

12 (A) a list of violations of applicable statutes or regulations that  
13 constitute critical violations;

14 (B) possible sanctions or other actions that may be taken by the  
15 office of children and family services in response to reports of crit-  
16 ical violations; and

17 (C) appropriate corrective actions that may be taken by the child care  
18 provider to come into compliance with applicable statutes or regulations  
19 and avoid further violations.

20 (b) Child care providers licensed or registered pursuant to subdivi-  
21 sion two of this section shall notify the parent or guardian as soon as  
22 possible upon learning of the following events involving a child which  
23 occurred while such child was under the care of such child care provider  
24 at the program or facility or was being transported by such program:

25 (i) death;

26 (ii) serious incident;

27 (iii) serious injury;

28 (iv) serious condition;

29 (v) communicable disease;

30 (vi) transportation to a hospital; or

31 (vii) any other incident involving a critical violation.

32 § 5. Subdivision 10 of section 390 of the social services law, as  
33 amended by chapter 416 of the laws of 2000, is amended to read as  
34 follows:

35 10. (a) Any home or facility providing child day care shall be oper-  
36 ated in accordance with applicable statutes and regulations. Any crit-  
37 ical violation of applicable statutes or regulations shall be a basis to  
38 deny, limit, suspend, revoke, or terminate a license or registration.

39 (b) Additional bases to deny, limit, suspend, revoke, or terminate a  
40 license or registration shall include a finding that the holder of such  
41 license or registration:

42 (i) failed to comply with any applicable statute or regulation, or any  
43 corrective action plan, notice of sanction, suspension, or terms of  
44 probation;

45 (ii) failed to pay a fine after either failing to appeal the assess-  
46 ment of a fine within the prescribed time or a hearing where assessment  
47 of a fine was upheld;

48 (iii) submitted any misleading or false statement or report required  
49 under applicable statutes or regulations;

50 (iv) refused to submit any report or make available any records  
51 required under applicable statutes or regulations;

52 (v) refused to admit, at a reasonable time, any employee of the office  
53 of children and family services authorized by the commissioner of such  
54 office to investigate or inspect a program or facility pursuant to para-  
55 graph (a) of subdivision three of this section; or

1 (vi) failed to obtain a license prior to opening a program or facility  
2 or changing the location of a program or facility.

3 (c) Consistent with articles twenty-three and twenty-three-A of the  
4 correction law, and guidelines referenced in subdivision two of section  
5 four hundred twenty-five of this article, if the office of children and  
6 family services is made aware of the existence of a criminal conviction  
7 or pending criminal charge concerning an operator of a family day care  
8 home, group family day care home, school-age child care program, or  
9 child day care center or concerning any assistant, employee or volunteer  
10 in such homes, programs or centers, or any persons age eighteen or over  
11 who reside in such homes, such conviction or charge may be a basis to  
12 deny, limit, suspend, revoke, reject, or terminate a license or registra-  
13 tion.

14 (d) Before any license [~~issued~~] or registration is denied, limited,  
15 suspended, revoked, rejected, or terminated pursuant to [~~the provisions~~]  
16 paragraph (a), (b) or (c) of this [~~section is suspended or revoked,~~  
17 ~~before registration pursuant to this section is suspended or terminated~~]  
18 subdivision, the office of children and family services shall conduct an  
19 investigation of any critical violations, including an inspection of the  
20 program or facility pursuant to paragraph (a) of subdivision three of  
21 this section.

22 (e) (i) Before any license or registration is denied, limited,  
23 suspended, revoked, rejected, or terminated pursuant to paragraph (a),  
24 (b) or (c) of this subdivision, or when an application for such license  
25 is denied or registration rejected, the applicant for or holder of such  
26 registration or license is entitled, pursuant to section twenty-two of  
27 this chapter and the regulations of the office of children and family  
28 services, to a hearing before the office of children and family  
29 services. However, a license or registration shall be temporarily  
30 suspended or limited without a hearing upon written notice to the opera-  
31 tor of the facility following a finding that the public health, or an  
32 individual's safety or welfare, are in imminent danger. Such written  
33 notice shall be hand delivered, mailed to such holder of a registration  
34 or license via first class mail, certified or registered, return receipt  
35 requested, or delivered by courier requiring a signed receipt.

36 (ii) Upon temporary suspension or limitation of a license or registra-  
37 tion pursuant to subparagraph (i) of this paragraph, the holder of such  
38 license or registrant shall immediately return such license or registra-  
39 tion to the office of children and family services and cease providing  
40 services. The licensee or registrant shall notify the parents or guardi-  
41 ans of all children enrolled in the program or facility of any such  
42 suspension or limitation within two business days of receipt of written  
43 notice from the office of children and family services.

44 (iii) (A) The holder of a license or registrant is entitled to a hear-  
45 ing before the office of children and family services to contest the  
46 temporary suspension or limitation. If the holder of a license or regis-  
47 trant requests a hearing to contest the temporary suspension or limita-  
48 tion, such hearing must be scheduled to commence as soon as possible but  
49 in no event later than thirty days after the receipt of the request by  
50 the office of children and family services. [~~Suspension~~] The suspension  
51 or limitation shall continue until the condition requiring suspension or  
52 limitation is corrected or until a hearing decision has been issued.

53 (B) The sole issue at a hearing held pursuant to clause (A) of this  
54 subparagraph shall be whether the office of children and family services  
55 has reason to believe that the licensee's or registrant's failure to  
56 comply with any applicable statutes or regulations resulted in an emer-

1 gency situation in which the public health, or an individual's safety or  
2 welfare, was in imminent danger. A finding that any abuse or neglect  
3 occurred at the program or facility shall be prima facie evidence that  
4 such emergency situation exists.

5 (C) If the office of children and family services determines after a  
6 hearing held pursuant to clause (A) of this subparagraph that the tempo-  
7 rary suspension or limitation was proper, such suspension or limitation  
8 shall be extended until the condition requiring suspension or limitation  
9 has been corrected or until the license or registration has been  
10 revoked.

11 (iv) Any party aggrieved by a final decision of the office of children  
12 and family services in any adjudicatory proceeding under this paragraph  
13 may petition for judicial review pursuant to section twenty-two of this  
14 chapter.

15 § 6. Subparagraphs (i), (iii) and (iv) of paragraph (a) of subdivision  
16 11 of section 390 of the social services law, as amended by chapter 416  
17 of the laws of 2000, are amended to read as follows:

18 (i) The office of children and family services shall adopt regulations  
19 establishing civil penalties of no more than five hundred dollars per  
20 day to be assessed against child day care centers, school age child care  
21 programs, group family day care homes or family day care homes for crit-  
22 ical violations of this section, sections three hundred ninety-a and  
23 three hundred ninety-b of this title and any regulations promulgated  
24 thereunder. The regulations establishing civil penalties shall specify  
25 the violations subject to penalty.

26 (iii) In addition to any other civil or criminal penalty provided by  
27 law, the office of children and family services shall have the power to  
28 assess civil penalties in accordance with its regulations adopted pursu-  
29 ant to this subdivision after a hearing conducted in accordance with  
30 procedures established by regulations of the office of children and  
31 family services. Such procedures shall require that notice of the time  
32 and place of the hearing, together with a statement of charges of  
33 violations, shall be served in person or by certified mail addressed to  
34 the school age child care program, group family day care home, family  
35 day care home, or child day care center at least thirty days prior to  
36 the date of the hearing. The statement of charges shall set forth the  
37 existence of the critical violation or violations, the amount of penalty  
38 for which the program may become liable, the steps which must be taken  
39 to rectify [~~the~~] such violation or violations, and where applicable, a  
40 statement that a penalty may be imposed regardless of rectification. A  
41 written answer to the charges of critical violations shall be filed with  
42 the office of children and family services not less than ten days prior  
43 to the date of hearing with respect to each of the charges and shall  
44 include all material and relevant matters which, if not disclosed in the  
45 answer, would not likely be known to the office of children and family  
46 services.

47 (iv) The hearing shall be held by the commissioner of the office of  
48 children and family services or the commissioner's designee. The burden  
49 of proof at such hearing shall be on the office of children and family  
50 services to show that the charges are supported by a preponderance of  
51 the evidence. The commissioner of the office of children and family  
52 services or the commissioner's designee, in [~~his or her~~] their  
53 discretion, may allow the child day care center operator or provider to  
54 attempt to prove by a preponderance of the evidence any matter not  
55 included in the answer. Where the child day care provider satisfactorily  
56 demonstrates that it has rectified the critical violations in accordance

1 with the requirements of paragraph (c) of this subdivision, no penalty  
2 shall be imposed except as provided in paragraph (c) of this subdivi-  
3 sion.

4 § 7. Subparagraph (i) of paragraph (b) of subdivision 11 of section  
5 390 of the social services law, as amended by chapter 416 of the laws of  
6 2000, is amended to read as follows:

7 (i) In assessing penalties pursuant to this subdivision, the office of  
8 children and family services may consider the completeness of any recti-  
9 fication of critical violations made and the specific circumstances of  
10 such critical violations as mitigating factors.

11 § 8. Subparagraph (i) of paragraph (c) of subdivision 11 of section  
12 390 of the social services law, as amended by chapter 117 of the laws of  
13 2010, is amended to read as follows:

14 (i) Except as provided for in this paragraph, a child day care provid-  
15 er shall avoid payment of a penalty imposed pursuant to this subdivision  
16 where the provider has rectified the condition which resulted in the  
17 imposition of the penalty within thirty days of notification of the  
18 existence of the critical violation of statute or regulation.

19 § 9. The opening paragraph of subparagraph (i) of paragraph (e) of  
20 subdivision 11 of section 390 of the social services law, as added by  
21 chapter 117 of the laws of 2010, is amended to read as follows:

22 The office of children and family services shall deny a new applica-  
23 tion for licensure or registration made by a day care provider whose  
24 license or registration was previously revoked or terminated based on a  
25 critical violation of statute or regulation for a period of two years  
26 from the date that the revocation or termination of the license or  
27 registration became finally effective, unless such office determines, in  
28 its discretion, that approval of the application will not in any way  
29 jeopardize the health, safety or welfare of children in the center,  
30 program or home. For the purposes of this paragraph, the date that the  
31 revocation or termination became finally effective shall be, as applica-  
32 ble:

33 § 10. Section 390 of the social services law is amended by adding a  
34 new subdivision 11-a to read as follows:

35 11-a. (a) (i) Within seven days of receipt of a corrective action plan  
36 or notice of sanction pursuant to paragraph (b) of subdivision three of  
37 this section, a child care provider licensed or registered pursuant to  
38 subdivision two of this section may file with the commissioner of the  
39 office of children and family services a written request for administra-  
40 tive reconsideration. Such request shall be limited to direct and  
41 specific reasons why such notice of sanction or any item in such correc-  
42 tive action plan or any portion thereof should be rescinded or modified,  
43 and the approximate times requested by such child care provider to take  
44 corrective measure, if any.

45 (ii) Within fifteen business days after receipt of such request for  
46 administrative reconsideration, the commissioner of the office of chil-  
47  dren and family services shall grant, deny, or otherwise act on such  
48 request.

49 (iii) Filing such request for administrative reconsideration shall not  
50 alter the time required for compliance with such notice of sanction or  
51 corrective action plan.

52 (b) (i) An applicant for or a holder of a license or registration  
53 whose license or registration the office of children and family services  
54 intends to deny, limit, refuse to renew, make probationary, suspend,  
55 revoke, or terminate pursuant to subdivision ten of this section, or  
56 whom the office of children and family services intends to fine pursuant

1 to subdivision eleven of this section, may request a hearing pursuant to  
2 section twenty-two of this chapter.

3 (ii) The hearing officer shall enter a recommended decision regarding  
4 the intention of the office of children and family services to deny,  
5 limit, refuse to renew, make probationary, suspend, revoke, or terminate  
6 a license or registration pursuant to subdivision ten of this section or  
7 fine an applicant for or a holder of a license or registration pursuant  
8 to subdivision eleven of this section. A final decision shall be issued  
9 by the commissioner of the office of children and family services.  
10 Hearings shall be held pursuant to regulations to be determined by the  
11 commissioner of the office of children and family services.

12 (iii) Failure of an applicant for or a holder of a license or regis-  
13 tration to request a hearing and file timely answers may be deemed a  
14 waiver of such right and a final decision may be entered without further  
15 notice.

16 (iv) Any party aggrieved by a final decision of the office of children  
17 and family services in any adjudicatory proceeding under this paragraph  
18 may petition for judicial review pursuant to section twenty-two of this  
19 chapter.

20 (c) (i) Upon the expiration of the time periods prescribed in a  
21 corrective action plan or notice of sanction issued pursuant to para-  
22 graph (b) of subdivision three of this section, a duly authorized  
23 employee of the office of children and family services shall determine  
24 compliance with such plan or notice by visiting the facility or program,  
25 reviewing documents, and/or verifying compliance through whatever other  
26 means the office of children and family services deems suitable. If a  
27 determination of non-compliance with such plan or notice is made, the  
28 office of children and family services may issue an additional correc-  
29 tive action plan or take any other action pursuant to subdivisions ten  
30 and eleven of this section.

31 (ii) Following the suspension, revocation, rejection, or termination  
32 of a license or registration pursuant to paragraph (a), (b), or (c) of  
33 subdivision ten of this section, a duly authorized employee of the  
34 office of children and family services shall determine compliance with  
35 applicable statutes or regulations by visiting the facility or program,  
36 reviewing documents, and/or verifying compliance through any other means  
37 the office of children and family services deems suitable.

38 (d) Factors which the office of children and family services shall  
39 consider before imposing any sanction or fine or any other action  
40 authorized pursuant to paragraph (b) of subdivision three and subdivi-  
41 sions ten and eleven of this section shall include, but shall not be  
42 limited to, the following:

43 (i) any violations of applicable statutes or regulations at the facil-  
44 ity or program;

45 (ii) the risk the violations present to the health, safety, and  
46 welfare of children, including whether such violations are critical  
47 violations;

48 (iii) the nature, scope, severity, degree, number, and frequency of  
49 the violations;

50 (iv) the failure of a holder of a license or registrant to correct the  
51 violations;

52 (v) any previous violations; and

53 (vi) any previous enforcement actions.

54 § 11. This act shall take effect on the ninetieth day after it shall  
55 have become a law. Effective immediately, the addition, amendment and/or  
56 repeal of any rule or regulation necessary for the implementation of

1 this act on its effective date are authorized to be made and completed  
2 on or before such effective date.