

STATE OF NEW YORK

76

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. HEVESI, CLARK, LAVINE, LUNSFORD -- read once and referred 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.

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

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

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

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

(B) possible sanctions or other actions that may be taken by the office of children and family services in response to reports of critical violations; and

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

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

(i) death;

(ii) serious incident;

(iii) serious injury;

(iv) serious condition;

(v) communicable disease;

(vi) transportation to a hospital; or

(vii) any other incident involving a critical violation.

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

10. (a) Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any critical violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration.

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

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

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

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

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

(v) refused to admit, at a reasonable time, any employee of the office of children and family services authorized by the commissioner of such office to investigate or inspect a program or facility pursuant to paragraph (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 regis-
13 tration.

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-

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

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

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

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

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

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

(iv) The hearing shall be held by the commissioner of the office of children and family services or the commissioner's designee. The burden of proof at such hearing shall be on the office of children and family services to show that the charges are supported by a preponderance of the evidence. The commissioner of the office of children and family services or the commissioner's designee, in ~~his or her~~ their discretion, may allow the child day care center operator or provider to attempt to prove by a preponderance of the evidence any matter not included in the answer. Where the child day care provider satisfactorily 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.