
HOUSE BILL 1611

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Short, Orwall, McCune, Walsh, and Rolfes

Read first time 01/26/11. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to clarifying the department of early learning's
2 authority with respect to licensed child care facilities; amending RCW
3 43.215.290 and 43.215.300; and adding a new section to chapter 43.215
4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 43.215.290 and 2006 c 265 s 310 are each amended to
7 read as follows:

8 (1) The department may issue a probationary license to a licensee
9 who has had a license but is temporarily unable to comply with a rule
10 or has been the subject of multiple complaints or concerns about
11 noncompliance if:

12 (a) The noncompliance does not present an immediate threat to the
13 health and well-being of the children but would be likely to do so if
14 allowed to continue; (~~and~~)

15 (b) The licensee has a plan approved by the department to correct
16 the area of noncompliance within the probationary period; and

17 (c) The department has offered, in writing, to enter into an
18 informal dispute resolution process with the licensee, to be convened

1 by the office of the family and children's ombudsman, and any one of
2 the following conditions have been met:

3 (i) The licensee has refused, in writing, to participate in the
4 informal dispute resolution process within fifteen working days after
5 the date the department sent its written offer;

6 (ii) The licensee has failed to respond, in writing, to the
7 department's offer within fifteen working days after the date the
8 department sent its written offer;

9 (iii) The licensee agrees, in writing, to the department's offer
10 within fifteen working days after the date the department sent its
11 written offer and the office of the family and children's ombudsman
12 certifies in writing that:

13 (A) Both the department and the licensee participated in the
14 informal dispute resolution process; and

15 (B) The department and the licensee were not able to informally
16 resolve their dispute.

17 (2) A probationary license may be issued for up to six months, and
18 at the discretion of the department it may be extended for an
19 additional six months. The department shall immediately terminate the
20 probationary license, if at any time the noncompliance for which the
21 probationary license was issued presents an immediate threat to the
22 health or well-being of the children.

23 (3) The department may, at any time, issue a probationary license
24 for due cause that states the conditions of probation.

25 (4) An existing license is invalidated when a probationary license
26 is issued.

27 (5) At the expiration of the probationary license, the department
28 shall reinstate the original license for the remainder of its term,
29 issue a new license, or revoke the original license.

30 (6) A right to an adjudicative proceeding shall not accrue to the
31 licensee whose license has been placed on probationary status unless
32 the licensee does not agree with the placement on probationary status
33 and the department then suspends, revokes, or modifies the license.

34 **Sec. 2.** RCW 43.215.300 and 2007 c 17 s 2 are each amended to read
35 as follows:

36 (1) An agency may be denied a license, or any license issued
37 pursuant to this chapter may be suspended, revoked, modified, or not

1 renewed by the director upon proof (a) that the agency has failed or
2 refused to comply with the provisions of this chapter or the
3 requirements adopted pursuant to this chapter; or (b) that the
4 conditions required for the issuance of a license under this chapter
5 have ceased to exist with respect to such licenses. RCW 43.215.305
6 governs notice of a license denial, revocation, suspension, or
7 modification and provides the right to an adjudicative proceeding.

8 (2) In any adjudicative proceeding regarding the denial,
9 modification, suspension, or revocation of any license under this
10 chapter, the department's decision shall be upheld if it is supported
11 by (~~a preponderance of the~~) clear and convincing evidence.

12 (3) The department may assess civil monetary penalties upon proof
13 that an agency has failed or refused to comply with the rules adopted
14 under this chapter or that an agency subject to licensing under this
15 chapter is operating without a license except that civil monetary
16 penalties shall not be levied against a licensed foster home. Monetary
17 penalties levied against unlicensed agencies that submit an application
18 for licensure within thirty days of notification and subsequently
19 become licensed will be forgiven. These penalties may be assessed in
20 addition to or in lieu of other disciplinary actions. Civil monetary
21 penalties, if imposed, may be assessed and collected, with interest,
22 for each day an agency is or was out of compliance. Civil monetary
23 penalties shall not exceed seventy-five dollars per violation for a
24 family day care home and two hundred fifty dollars per violation for
25 child day care centers. Each day upon which the same or substantially
26 similar action occurs is a separate violation subject to the assessment
27 of a separate penalty. The department shall provide a notification
28 period before a monetary penalty is effective and may forgive the
29 penalty levied if the agency comes into compliance during this period.
30 The department may suspend, revoke, or not renew a license for failure
31 to pay a civil monetary penalty it has assessed pursuant to this
32 chapter within ten days after such assessment becomes final. RCW
33 43.215.307 governs notice of a civil monetary penalty and provides the
34 right to an adjudicative proceeding. The preponderance of evidence
35 standard shall apply in adjudicative proceedings related to assessment
36 of civil monetary penalties.

37 (4)(a) In addition to or in lieu of an enforcement action being
38 taken, the department may place a child day care center or family day

1 care provider on nonreferral status if the center or provider has
2 failed or refused to comply with this chapter or rules adopted under
3 this chapter or an enforcement action has been taken. The nonreferral
4 status may continue until the department determines that: (i) No
5 enforcement action is appropriate; or (ii) a corrective action plan has
6 been successfully concluded.

7 (b) Whenever a child day care center or family day care provider is
8 placed on nonreferral status, the department shall provide written
9 notification to the child day care center or family day care provider.

10 (5) The department shall notify appropriate public and private
11 child care resource and referral agencies of the department's decision
12 to: (a) Take an enforcement action against a child day care center or
13 family day care provider; or (b) place or remove a child day care
14 center or family day care provider on nonreferral status.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.215 RCW
16 to read as follows:

17 The department shall develop and make available to child care
18 centers a quality improvement consultation program using the following
19 principles:

20 (1) The quality improvement consultation program must be a separate
21 process from the facility licensing compliance agreement process and
22 must be offered to child care centers on a voluntary basis. Based on
23 requests for the services of the quality improvement consultation
24 program, the department may establish a process for prioritizing
25 service availability.

26 (2) Child care centers should be supported in their efforts to
27 improve quality and address problems, as identified by the licensee,
28 initially through consultation and technical assistance. At a minimum,
29 the department may, within available funding, at the request of the
30 child care center, conduct on-site visits and telephone consultations.

31 (3) To facilitate collaboration and trust between the child care
32 centers and the department's quality improvement consultation program
33 staff, the consultation program staff may not simultaneously serve as
34 department licensors, complaint investigators, or participate in any
35 enforcement-related decisions, within the region in which they perform
36 consultation activities; except such staff may investigate on an
37 emergency basis, complaints anywhere in the state when the complaint

1 indicates high risk to child health or safety. Any records or
2 information gained as a result of their work under the quality
3 improvement consultation program may not be disclosed to or shared with
4 nonmanagerial department licensing or complaint investigation staff,
5 unless necessary to carry out duties described under chapter 26.44 RCW.
6 The emphasis should be on problem prevention. Nothing in this section
7 limits or interferes with the consultant's mandated reporting duties
8 under chapter 26.44 RCW.

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