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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 244 Session of  
2017

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INTRODUCED BY TALLMAN, IRVIN, METZGAR, SAYLOR, READSHAW,  
ZIMMERMAN, WARD, B. MILLER, PICKETT, GILLEN, RADER, EVERETT,  
BAKER, KAUFFMAN, DOWLING AND RYAN, FEBRUARY 1, 2017

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REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, FEBRUARY 1, 2017

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AN ACT

1 Regulating religious child-care facilities; providing for the  
2 powers and duties of the Department of Human Services; and  
3 imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Religious  
8 Child-Care Facilities Act.

9 Section 2. Declaration and findings.

10 The General Assembly finds and declares as follows:

11 (1) A significant number of parents choose to obtain  
12 child care from religious child-care facilities where  
13 training, values and guidance that are consistent with the  
14 religious views and beliefs of the parents will be imparted  
15 to the child.

16 (2) It is the policy of the Commonwealth to preserve the  
17 primary right of parents to choose the education, training  
18 and care of their children.

1 (3) Nonprofit religious child-care facilities believe  
2 the provision of child care at a reasonable cost to parents  
3 to be part of their religious mission to assist parents in  
4 the care and upbringing of their children.

5 (4) Because of the religious nature of such facilities,  
6 it is the policy of the Commonwealth to refrain from  
7 subjecting them to unnecessary regulation and undue  
8 governmental intrusion, particularly in religiously sensitive  
9 areas relating to the selection of employees, program content  
10 and guidance.

11 (5) At the same time, the Commonwealth has a duty to  
12 protect the health and safety of children whose parents  
13 choose to utilize religious child-care services by assuring  
14 that religious child-care providers comply with minimum  
15 health and safety requirements.

16 (6) It is the intent of the General Assembly to balance  
17 these interests in protecting parental choice, religious  
18 freedom and child safety at religious child-care facilities  
19 by enacting the following provisions to govern the operation  
20 of religious child-care facilities.

21 Section 3. Definitions.

22 The following words and phrases when used in this act shall  
23 have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Aide." An individual who:

26 (1) assists in the provision of care for children at a  
27 facility;

28 (2) is at least 16 years of age;

29 (3) has had at least 12 hours of child-care orientation  
30 on facility procedures;

1 (4) has completed general first aid and fire safety  
2 training; and

3 (5) is directly supervised by a primary caregiver or  
4 director.

5 "Caregiver." An individual who provides child-care services  
6 to children at a facility.

7 "Child care." Care in lieu of parental care given for part  
8 of the 24-hour day to children under 16 years of age away from  
9 their own homes.

10 "Department." The Department of Human Services of the  
11 Commonwealth.

12 "Direct supervision." Oversight of an individual by a  
13 supervisor who:

14 (1) is onsite;

15 (2) knows the whereabouts of the supervised individual;  
16 and

17 (3) is responsible for the proper execution of the  
18 supervised individual's duties, regardless of whether the  
19 supervisor is physically present with the supervised  
20 individual at all times.

21 "Director." An individual who:

22 (1) is in charge of a facility;

23 (2) is at least 21 years of age;

24 (3) has completed a program of instruction in general  
25 first aid training, including instruction in childhood injury  
26 prevention and infectious diseases; and

27 (4) has had fire safety training and at least 1,040  
28 hours of experience in teaching or working with children.

29 "Filing religious child-care facility." A religious child-  
30 care facility other than a nonfiling religious child-care

1 facility.

2 "Nonfiling religious child-care facility." A religious  
3 child-care facility which provides child care:

4 (1) for children who are two years seven months of age  
5 and older and who are enrolled in a school which is a  
6 nonpublic nonlicensed school that has elected to file an  
7 affidavit as described in section 1327(b) of the act of March  
8 10, 1949 (P.L.30, No.14), known as the Public School Code of  
9 1949;

10 (2) for children who are two years seven months of age  
11 and older who are enrolled in before-school or after-school  
12 programs or summer school programs offered by nonpublic  
13 nonlicensed schools which have elected to file an affidavit  
14 as described in section 1327(b) of the Public School Code of  
15 1949;

16 (3) to fewer than four children;

17 (4) to children while their parents are on the premises  
18 during religious instruction or during other youth activities  
19 sponsored by religious entities; or

20 (5) free of charge.

21 "Primary caregiver." An individual who:

22 (1) is responsible for the daily care of children at a  
23 facility;

24 (2) is at least 18 years of age;

25 (3) has had general first aid and fire safety training;  
26 and

27 (4) has had at least 520 hours of experience in teaching  
28 or working with children.

29 "Religious child-care facility." A premises:

30 (1) that is operated or controlled or supervised by a

1 bona fide church, association of churches or other religious  
2 body that is exempt from taxation under section 501(c)(3) of  
3 the Internal Revenue Code of 1986 (Public Law 99-514, 26  
4 U.S.C. § 1 et seq.); and

5 (2) in which child care is provided as part of the  
6 religious mission of the church, association of churches or  
7 other religious body.

8 "Staff person." An individual who may be counted for  
9 purposes of compliance with the staff-to-child ratios required  
10 by this act. The term includes a director, primary caregiver or  
11 aide and may also include an individual who meets those  
12 qualifications but does not receive pay for the individual's  
13 services.

14 Section 4. Duties of filing religious child-care facilities.

15 (a) Fire safety requirements.--

16 (1) A filing religious child-care facility shall comply  
17 with applicable State and local fire safety requirements,  
18 shall adopt a written plan for emergency evacuation, conduct  
19 a fire drill at least every 60 days and keep a written record  
20 thereof on file at the facility.

21 (2) The filing religious child-care facility shall  
22 ensure that children are able to evacuate the entire building  
23 into a public thoroughfare or to a fire-safe area within two  
24 and one-half minutes, unless a fire safety expert has  
25 specified in writing that a longer evacuation time is safe.

26 (b) Compliance with other laws.--A filing religious child-  
27 care facility shall comply with applicable State laws relating  
28 to health and safety promulgated by the Department of  
29 Agriculture, the Department of Environmental Protection, the  
30 Department of Health, the Department of Labor and Industry and

1 the Department of Transportation and shall maintain an approved  
2 first aid kit for emergency treatment that is readily available  
3 to staff.

4 (c) Parental right of access.--A filing religious child-care  
5 facility shall allow a parent or guardian of a child for whom it  
6 provides care to have access, without prior notice, to the  
7 facility during normal hours of operation or whenever the child  
8 is in the care of a provider unless a court of competent  
9 jurisdiction has limited the parental right of access to the  
10 child and a copy of the court order is on file at the facility.

11 (d) Child Protective Services Law.--A filing religious  
12 child-care facility shall comply with applicable provisions of  
13 23 Pa.C.S. Ch. 63 (relating to child protective services),  
14 including requirements for obtaining criminal background and  
15 child abuse checks for employees and for reporting child abuse.

16 (e) Staffing.--

17 (1) When children are in care at a filing religious  
18 child-care facility, the facility shall have one or more  
19 persons who hold a current certificate of completion of  
20 pediatric first aid training. The pediatric first aid  
21 training must include choke-saving and rescue breathing  
22 techniques.

23 (2) When a physician of a child in care at a filing  
24 religious child-care facility has determined that the child  
25 is at increased risk of needing cardiopulmonary resuscitation  
26 (CPR), at least one person at the facility must hold a  
27 current certificate of completion of training in infant and  
28 child CPR.

29 (3) A filing religious child-care facility shall provide  
30 one staff person for every four children who are from birth

1 to one year of age; one staff person for every five children  
2 who are between one and two years of age; and one staff  
3 person for every six children between two and three years of  
4 age. All children shall be directly supervised by a staff  
5 person.

6 (4) (i) When children are swimming or wading, the  
7 filing religious child-care facility shall provide one  
8 staff person for every child from birth to one year of  
9 age; one staff person for every two children who are  
10 between one and three years of age; one staff person for  
11 every five children between three and six years of age;  
12 and one staff person for every eight school-age children.

13 (ii) If children are in mixed age groups with no  
14 children younger than three years of age in care, the  
15 staff ratio applicable for the majority of children in  
16 care shall apply.

17 (iii) Parents and adult volunteers may be counted as  
18 staff for purposes of determining water safety ratios.

19 (f) Staff medical examinations.--

20 (1) A filing religious child-care facility shall require  
21 that all prospective staff persons, prior to employment,  
22 obtain a medical examination and health statement from a  
23 licensed physician, certified registered nurse practitioner  
24 or licensed physician's assistant. The examination shall  
25 include tests to determine whether the individual is free of  
26 serious communicable disease that may be spread through  
27 casual contact and the health statement shall indicate  
28 whether the individual has any such disease.

29 (2) A staff person who is not free of such disease may  
30 not be employed or utilized by a filing religious child-care

1 facility unless the health statement indicates that the  
2 individual will not pose a serious threat to the health of  
3 children in care.

4 (3) The health statement shall be maintained on file at  
5 the filing religious child-care facility.

6 (g) Child medical examination and immunization.--

7 (1) A filing religious child-care facility shall require  
8 that each child who enrolls in the filing religious child-  
9 care facility has obtained a medical examination from a  
10 licensed physician, certified registered nurse practitioner  
11 or licensed physician's assistant within the 12 months  
12 preceding enrollment and has obtained age-appropriate  
13 immunizations.

14 (2) A record of the medical examination and immunization  
15 shall be maintained on file at the filing religious child-  
16 care facility no later than 60 days following enrollment  
17 unless the child is exempt from immunization pursuant to 28  
18 Pa. Code § 23.84 (relating to exemption from immunization)  
19 and the filing religious child-care facility has written  
20 documentation of the exemption.

21 (h) Renewal of caregiver training.--A filing religious  
22 child-care facility shall require that caregivers renew their  
23 required training on or before expiration of any certification  
24 for the training, if applicable, or every three years.

25 (i) Affidavit from facility.--

26 (1) A filing religious child-care facility shall file an  
27 affidavit with the department which states the following:

28 (i) The name, address and telephone number of the  
29 facility.

30 (ii) The name and address of the religious entity or

1 entities that control, operate or supervise the facility.

2 (iii) The name of the director or chief  
3 administrator of the facility.

4 (iv) That the facility is in compliance with  
5 applicable Federal and State civil rights statutes.

6 (2) A filing religious child-care facility shall file an  
7 amended affidavit with the department within 30 days of a  
8 change in any information contained in the previously  
9 submitted affidavit.

10 (j) Facility plan.--

11 (1) A filing religious child-care facility shall develop  
12 a written plan outlining its own:

13 (i) Procedures for handling medical emergencies,  
14 including maintenance of emergency contact information  
15 for each child in care.

16 (ii) Program of typical daily activities.

17 (iii) Health and safety procedures, including drop-  
18 off and pick-up procedures and procedures for dispensing  
19 medications.

20 (iv) Procedures for food handling.

21 (v) Procedures for maintaining sanitary conditions.

22 (vi) Fee schedules.

23 (vii) Staff qualifications.

24 (2) The plan shall be provided to parents and guardians  
25 prior to enrollment of their children in the facility.

26 (k) General health and safety maintained.--

27 (1) A filing religious child-care facility shall  
28 maintain ventilation, temperature, lighting and heat sources  
29 so as not to endanger the health or safety of children in  
30 care.

1           (2) No child may be exposed to hazardous materials and  
2 conditions such as toxins and poisons, unprotected electrical  
3 outlets and firearms.

4           (1) Insurance.--A filing religious child-care facility shall  
5 maintain comprehensive general liability insurance to cover  
6 persons who are on the premises. A current copy of the insurance  
7 policy shall be on file at the facility.

8 Section 5. Time for filing and compliance with qualifications.

9           (a) Time for filing.--

10           (1) A religious child-care facility which operates on  
11 the effective date of this section and does not qualify as a  
12 nonfiling religious child-care facility shall file with the  
13 department the affidavit required by section 4(i) within 90  
14 days.

15           (2) Any other religious child-care facility which is  
16 required to file under this act must do so at least 14 days  
17 before commencement of operations.

18           (b) Existing personnel.--The existing director and child  
19 caregivers of a religious child-care facility which is required  
20 by this act to file and has been in operation prior to the  
21 effective date of this section shall be permitted to continue to  
22 provide child care at the facility under this act, provided that  
23 these individuals satisfy the requirements for their respective  
24 duties and obtain required medical examinations and health  
25 statements within one year of the effective date of this  
26 section.

27 Section 6. Powers and duties of department.

28           (a) Inspections.--

29           (1) The department shall conduct at least one annual  
30 unannounced visit and inspection of each filing religious

1 child-care facility in which care is provided to seven or  
2 more children. The inspection shall be conducted during  
3 normal operating hours or at other times when children are  
4 being cared for at the facility to determine whether the  
5 facility is in compliance with the requirements of this act.

6 (2) The department shall visit and inspect filing  
7 religious child-care facilities in which care is provided to  
8 fewer than seven children as deemed appropriate by the  
9 department.

10 (3) The department shall conduct additional inspections  
11 of a filing religious child-care facility if it has  
12 reasonable cause to believe that the inspections are  
13 necessary to protect the health and safety of children in  
14 care at the facility.

15 (4) (i) The department shall conduct an onsite  
16 unannounced inspection, within 24 hours, excluding days  
17 that the department has determined a filing religious  
18 child-care facility is not in operation, upon receipt of  
19 a complaint alleging an immediate and serious risk to the  
20 health or safety of a child in care at a filing facility.

21 (ii) Complaints prompting an inspection pursuant to  
22 this paragraph shall include severe injury or death of a  
23 child in care, allegations of child abuse or conditions  
24 or practices that create an immediate and serious risk to  
25 a child.

26 (5) At its first inspection of a filing religious child-  
27 care facility pursuant to this act, the department shall  
28 provide the facility with a copy of this act.

29 (b) Enforcement of substantial compliance.--

30 (1) Whenever, upon visitation and inspection, the

1 department finds that a filing religious child-care facility  
2 is in substantial noncompliance with this act, the department  
3 shall give written notice to the facility concerning the  
4 nature of the alleged noncompliance and shall direct the  
5 director or chief administrator of the filing religious  
6 child-care facility to comply with this act.

7 (2) If substantial compliance does not occur within 30  
8 days of the date of the notice, the department may thereafter  
9 institute appropriate legal proceedings in the court of  
10 common pleas of the county in which the filing religious  
11 child-care facility is located to enforce substantial  
12 compliance.

13 (c) Emergency closure of dangerous facilities.--

14 (1) If the department finds that conditions exist that  
15 pose an immediate and serious risk to the health or safety of  
16 children in care at a filing religious child-care facility,  
17 the department shall take immediate action necessary to  
18 protect the children.

19 (2) The department may also apply to the court of common  
20 pleas of the county in which the filing religious child-care  
21 facility is located for immediate injunctive relief,  
22 including removal of children from the facility or closure of  
23 the facility. In such case, the department shall bear the  
24 burden of proving that conditions exist that pose an  
25 immediate and serious risk to the health or safety of  
26 children in care that necessitate the relief requested.

27 (d) Filing fee prohibited.--The department may not charge  
28 filing religious child-care facilities a fee for filing the  
29 affidavit required under section 4(i).

30 Section 7. Autonomy of religious child-care facilities.

1 (a) Program and selection of personnel and children.--The  
2 department, any other governmental agency, political subdivision  
3 or other governmental entity may not attempt to exercise  
4 authority over the program, curriculum, ministry, teaching or  
5 instruction offered in a religious child-care facility. Nor  
6 shall any such governmental entity attempt to exercise authority  
7 over the selection of children who enroll in a religious child-  
8 care facility.

9 (b) Other laws preempted.--

10 (1) The department shall not have any authority over  
11 religious child-care facilities, except as specifically  
12 provided for in this act.

13 (2) An ordinance, rule, regulation or other requirement  
14 of a political subdivision which purports to regulate a  
15 religious child-care facility is preempted and superseded,  
16 except as provided under section 4(a) or as provided by any  
17 generally applicable building code or zoning ordinance.

18 Section 8. Other provisions.

19 (a) Voluntary compliance.--

20 (1) A nonfiling religious child-care facility may  
21 voluntarily become a filing religious child-care facility by  
22 filing an affidavit with the department pursuant to section  
23 4(i) and complying with the provisions of this act.

24 (2) Nothing in this act shall be construed to prevent a  
25 religious child-care facility from voluntarily obtaining a  
26 certificate of compliance or license from the department in  
27 lieu of filing pursuant to this act and complying with this  
28 act.

29 (b) Public school code affidavits.--A nonfiling religious  
30 child-care facility that provides care for children who are two

1 years seven months and older and are enrolled in a school that  
2 is registered as, or is part of, a nonpublic nonlicensed school  
3 that files an affidavit as described in section 1327(b) of the  
4 act of March 10, 1949 (P.L.30, No.14), known as the Public  
5 School Code of 1949, shall comply with health and safety  
6 requirements imposed upon nonpublic nonlicensed schools and  
7 shall meet the requirements of section 4(g).

8 Section 9. Penalties.

9 A person commits a misdemeanor of the second degree if, with  
10 intent to mislead a public servant in performing an official  
11 function, the person makes a false statement which the person  
12 does not believe to be true in an affidavit required to be filed  
13 by section 4(i).

14 Section 10. Eligibility for governmental assistance.

15 (a) General rule.--A religious child-care facility which  
16 files an affidavit under section 4(i) and is in substantial  
17 compliance with this act, shall be deemed an eligible provider  
18 of child-care services for which Federal, State or local  
19 assistance is available to parents.

20 (b) Limitation on department.--The department may not submit  
21 any State plan to the Federal Government for funding of child-  
22 care services which would limit the ability of filing religious  
23 child-care facilities to accept certificates, vouchers or other  
24 forms of disbursement provided to parents for child-care  
25 services unless the limits are expressly required by Federal  
26 law.

27 Section 11. Effective date.

28 This act shall take effect in 90 days.