

HOUSE BILL 1271

O4

0lr2427
CF SB 767

By: **Delegates Jones, Benson, Bobo, Dumais, Eckardt, Gutierrez, Guzzone, Haynes, Healey, Kramer, Kullen, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Niemann, Proctor, Rudolph, Taylor, and F. Turner**

Introduced and read first time: February 18, 2010

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Governor's Office for Children – Division of Licensing and Monitoring of**
3 **Residential Child Care Programs**

4 FOR the purpose of requiring a person providing residential services to certain
5 children to have a certain license; providing for a certain scope; establishing the
6 Division of Licensing and Monitoring of Residential Child Care Programs in the
7 Governor's Office for Children; requiring the Division to license and monitor
8 certain programs; authorizing the Division to impose certain sanctions;
9 requiring the Children's Cabinet to have oversight authority over the Division;
10 requiring the Children's Cabinet to adopt certain regulations; requiring a
11 person to be licensed by the Division before the person may operate a
12 residential child care program; requiring an applicant to meet certain
13 qualifications and submit a certain application; requiring the Division to take
14 certain actions on receipt of a complete application; requiring the Division to
15 serve as a single point of entry for an applicant and a certain current provider;
16 requiring the Division to provide certain information and to license and monitor
17 certain programs; establishing certain penalties; prohibiting a person from
18 operating, attempting to operate, or holding one's self out as operating as a
19 residential child care program unless licensed by the Division; requiring a
20 person to be licensed by the Division before a person may operate as a child care
21 home; requiring a person to be licensed by the Division before the person may
22 operate as a child care institution; declaring the intent of the General Assembly
23 that the Governor transfer certain positions and funds in a certain manner;
24 providing that a certain transfer of positions and duties shall be made using
25 existing resources; defining certain terms; altering certain definitions; and
26 generally relating to licensing and monitoring of residential child care
27 programs.

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Family Law
2 Section 5–508, 5–509, 5–509.1, and 5–526
3 Annotated Code of Maryland
4 (2006 Replacement Volume and 2009 Supplement)

5 BY repealing and reenacting, without amendments,
6 Article – Health – General
7 Section 1–101(a) and (c)
8 Annotated Code of Maryland
9 (2009 Replacement Volume)

10 BY repealing and reenacting, with amendments,
11 Article – Health – General
12 Section 7–903(a), 10–501, and 10–514
13 Annotated Code of Maryland
14 (2009 Replacement Volume)

15 BY adding to
16 Article – Human Services
17 Section 8–1101 through 8–1108 to be under the new subtitle “Subtitle 11.
18 Division of Licensing and Monitoring of Residential Child Care
19 Programs”
20 Annotated Code of Maryland
21 (2007 Volume and 2009 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Human Services
24 Section 9–235 and 9–236
25 Annotated Code of Maryland
26 (2007 Volume and 2009 Supplement)

27 Preamble

28 WHEREAS, The Task Force to Study Licensing and Monitoring of
29 Community–Based Homes for Children reported among its findings the uneven
30 application of standards and different interpretations of regulations by the three
31 agencies that license and monitor group homes for children (the Department of
32 Human Resources, the Department of Juvenile Services, and the Department of
33 Health and Mental Hygiene); and

34 WHEREAS, There is no formal, systematic method of interagency
35 communication on issues affecting the licensing of residential child care programs; and

36 WHEREAS, There is no single point for inquiries or for the registration of
37 complaints; now, therefore,

38 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
39 MARYLAND, That the Laws of Maryland read as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Article – Family Law

5–508.

(a) Except as otherwise provided in this section, a person shall be licensed [by the Administration] **UNDER TITLE 8, SUBTITLE 11 OF THE HUMAN SERVICES ARTICLE** as a child care home before the person may exercise care, custody, or control of a minor child.

(b) This section does not apply:

(1) to a parent of the child;

(2) to an individual related to the child by blood or marriage within five degrees of consanguinity or affinity under the civil law rule;

(3) to a guardian of the child;

(4) to a person who exercises temporary care, custody, or control over the child at the request of a parent or guardian of the child and who is not required otherwise to be licensed;

(5) to an individual with whom the child is placed in foster care by:

(i) a child placement agency that is licensed under § 5–507 of this subtitle;

(ii) a local department;

(iii) the Department of Juvenile Services;

(iv) the Secretary of Health and Mental Hygiene; or

(v) a court of competent jurisdiction;

(6) to a person who has the care, custody, or control of the child through placement for adoption by a parent or grandparent of the child, if the requirements of § 5–3B–12 of this title are met;

[(7) to an institution that has a child care institution license under this subtitle or under § 9–236 of the Human Services Article;] or

[(8) (7)] to an institution that is operated by an agency of this State or any political subdivision of this State.

5–509.

1 (a) Except as otherwise provided in this section, a person shall be licensed
2 **[by the Administration] UNDER TITLE 8, SUBTITLE 11 OF THE HUMAN SERVICES**
3 **ARTICLE** as a child care institution before the person may operate an institution for
4 the care, custody, or control of a minor child.

5 (b) This section does not apply:

6 (1) to an institution or facility that is operated by an agency of this
7 State or any political subdivision of this State;

8 (2) to a child care home that has a license under **[this subtitle or under**
9 **§ 9–235] TITLE 8, SUBTITLE 11** of the Human Services Article; or

10 (3) to an institution that accepts only children placed by the
11 Department of Health and Mental Hygiene or the Department of Juvenile Services.

12 5–509.1.

13 (a) Except as otherwise provided in subsection (b) of this section and subject
14 to subsection (c) of this section, on or after January 1, 2000, a person shall be licensed
15 **[by the Administration] UNDER TITLE 8, SUBTITLE 11 OF THE HUMAN SERVICES**
16 **ARTICLE** before the person may operate a residential educational facility.

17 (b) This section does not apply:

18 (1) to a child care home that has a license under **[this subtitle or under**
19 **§ 9–235] TITLE 8, SUBTITLE 11** of the Human Services Article;

20 **[(2) to a child care institution that has a license under this subtitle or**
21 **under § 9–236 of the Human Services Article;]** or

22 **[(3)] (2)** to an institution that accepts only children placed by the
23 Department of Health and Mental Hygiene **[or the Department of Juvenile Services]**.

24 (c) This section does not affect any requirement that a residential
25 educational facility obtain a certificate of approval from the State Board of Education
26 for its educational program.

27 5–526.

28 (a) (1) The Department shall provide for the care, diagnosis, training,
29 education, and rehabilitation of children by placing them in group homes and
30 institutions that are operated by for–profit or nonprofit charitable corporations.

1 (2) Any group home utilized under the provisions of this section shall
 2 comply with the provisions of [§§ 5–507 through 5–509 of this subtitle and § 7–309 of
 3 the Education] **TITLE 8, SUBTITLE 11 OF THE HUMAN SERVICES** Article.

4 (3) The [department that licenses the group home] **DIVISION OF**
 5 **LICENSING AND MONITORING OF RESIDENTIAL CHILD CARE PROGRAMS** shall
 6 notify any [group home] **RESIDENTIAL CHILD CARE FACILITY** utilized under the
 7 provisions of this section of the requirements of [§ 7–309 of the Education] **TITLE 8,**
 8 **SUBTITLE 11 OF THE HUMAN SERVICES** Article.

9 (b) (1) The Department shall reimburse these corporations for the cost of
 10 these services at appropriate monthly rates [that the Department determines]
 11 **DETERMINED BY THE INTERAGENCY RATES COMMITTEE**, as provided in the State
 12 budget.

13 (2) The reimbursement rate may differ between homes and
 14 institutions that provide intermediate services, as defined by the Department, and
 15 homes and institutions that provide full services.

16 (c) The Department, or the Department’s designee, may not place a child in
 17 a residential group home or other facility that is not operating in compliance with
 18 applicable State licensing laws.

19 Article – Health – General

20 1–101.

21 (a) In this article the following words have the meanings indicated.

22 (c) “Department” means the Department of Health and Mental Hygiene.

23 7–903.

24 (a) **(1)** In addition to any other license required by law, a person shall be
 25 licensed by the Administration before the person may provide the following services to
 26 an individual with developmental disability or a recipient of individual support
 27 services:

28 [(1)] **(I)** Day habilitation services;

29 [(2)] **(II)** Residential services;

30 [(3)] **(III)** Services coordination;

31 [(4)] **(IV)** Vocational services;

1 [(5)] (v) More than 1 family support service, as defined under §
2 7-701 of this title;

3 [(6)] (vi) More than 1 individual support service; and

4 [(7)] (vii) More than 1 community supported living arrangements
5 service.

6 (2) **A PERSON SHALL BE LICENSED UNDER TITLE 8, SUBTITLE 11**
7 **OF THE HUMAN SERVICES ARTICLE BEFORE THE PERSON MAY PROVIDE**
8 **RESIDENTIAL SERVICES TO A CHILD WITH DEVELOPMENTAL DISABILITIES OR A**
9 **RECIPIENT OF INDIVIDUAL SUPPORT SERVICES THAT ARE PROVIDED IN A**
10 **GROUP HOME.**

11 10-501.

12 In Part I of this subtitle, “license” means a license issued by the Department to
13 operate a private, inpatient facility **THAT IS NOT LICENSED UNDER TITLE 8,**
14 **SUBTITLE 11 OF THE HUMAN SERVICES ARTICLE.**

15 10-514.

16 (a) In Part II of this subtitle the following words have the meanings
17 indicated.

18 (b) “Large private group home” means a private group home that admits at
19 least 9 but not more than 16 individuals.

20 (c) “License” means a license issued by the Secretary to operate a private
21 group home **THAT IS NOT LICENSED UNDER TITLE 8, SUBTITLE 11 OF THE**
22 **HUMAN SERVICES ARTICLE.**

23 (d) (1) “Private group home” means a residence in which individuals who
24 have been or are under treatment for a mental disorder may be provided care or
25 treatment in a homelike environment.

26 (2) “Private group home” does not include:

27 (i) Any facility that is owned by or leased to [this] **THE** State or
28 any public agency;

29 (ii) Any facility that is regulated by the Department of Juvenile
30 Services;

31 (iii) Any facility that is regulated by the Developmental
32 Disabilities Administration;

1 (iv) Any facility that is organized wholly or partly to make a
2 profit; or

3 (v) A foster home that is the domicile of the foster parent.

4 (e) "Small private group home" means a private group home that admits at
5 least 4 but not more than 8 individuals.

6 **Article – Human Services**

7 **SUBTITLE 11. DIVISION OF LICENSING AND MONITORING OF RESIDENTIAL**
8 **CHILD CARE PROGRAMS.**

9 **8–1101.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 21 YEARS,
13 UNLESS OTHERWISE DEFINED IN REGULATIONS OF AN AGENCY THAT SERVES
14 CHILDREN IN NEED OF PLACEMENT IN A RESIDENTIAL CHILD CARE PROGRAM.

15 (C) "DIVISION" MEANS THE DIVISION OF LICENSING AND MONITORING
16 OF RESIDENTIAL CHILD CARE PROGRAMS ESTABLISHED UNDER THIS
17 SUBTITLE.

18 (D) "PROVIDER" MEANS AN OPERATOR OF A RESIDENTIAL CHILD CARE
19 PROGRAM.

20 **8–1102.**

21 **THIS SUBTITLE DOES NOT APPLY TO THE CARE OF CHILDREN BY:**

22 (1) A PARENT OR GUARDIAN OF THE CHILD;

23 (2) AN INDIVIDUAL RELATED TO THE CHILD BY BLOOD OR
24 MARRIAGE WITHIN 4 DEGREES OF CONSANGUINITY OR AFFINITY UNDER THE
25 CIVIL LAW RULE;

26 (3) A PERSON WHO:

27 (I) EXERCISES TEMPORARY CARE, CUSTODY, OR CONTROL
28 OVER THE CHILD AT THE REQUEST OF A PARENT OR GUARDIAN OF THE CHILD;
29 AND

1 (II) IS NOT OTHERWISE REQUIRED TO BE LICENSED;

2 (4) A PERSON:

3 (I) WITH WHOM THE CHILD IS PLACED IN INDIVIDUAL
4 FAMILY CARE OR FOSTER CARE BY A LICENSED CHILD PLACEMENT AGENCY, A
5 COURT OF COMPETENT JURISDICTION, THE DEPARTMENT OF HEALTH AND
6 MENTAL HYGIENE, THE DEPARTMENT OF HUMAN RESOURCES, OR THE
7 DEPARTMENT OF JUVENILE SERVICES; AND

8 (II) WHO IS OTHERWISE REQUIRED TO BE LICENSED; OR

9 (5) AN INSTITUTION THAT IS OPERATED BY THE DEPARTMENT OF
10 HEALTH AND MENTAL HYGIENE, THE DEPARTMENT OF HUMAN RESOURCES,
11 THE DEPARTMENT OF JUVENILE SERVICES, OR A POLITICAL SUBDIVISION OF
12 THE STATE.

13 8-1103.

14 (A) THERE IS A DIVISION OF LICENSING AND MONITORING OF
15 RESIDENTIAL CHILD CARE PROGRAMS IN THE GOVERNOR'S OFFICE FOR
16 CHILDREN.

17 (B) THE DIVISION:

18 (1) SHALL LICENSE AND MONITOR RESIDENTIAL CHILD CARE
19 PROGRAMS IN THE STATE; AND

20 (2) MAY IMPOSE A SANCTION FOR A VIOLATION OF A LICENSING
21 OR MONITORING REQUIREMENT ESTABLISHED BY THE CHILDREN'S CABINET
22 THROUGH REGULATIONS.

23 (C) THE CHILDREN'S CABINET SHALL HAVE OVERSIGHT AUTHORITY
24 OVER THE DIVISION.

25 (D) THE CHILDREN'S CABINET SHALL ADOPT REGULATIONS TO CARRY
26 OUT THE PROVISIONS OF THIS SUBTITLE.

27 8-1104.

28 A PERSON SHALL BE LICENSED BY THE DIVISION BEFORE THE PERSON
29 MAY OPERATE A RESIDENTIAL CHILD CARE PROGRAM FOR CHILDREN IN THE
30 STATE.

1 8-1105.

2 (A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL:

3 (1) BE INCORPORATED; AND

4 (2) MEET THE REQUIREMENTS OF:

5 (I) CHILDREN'S CABINET REGULATIONS REGARDING
6 RESIDENTIAL CHILD CARE PROGRAMS; AND

7 (II) ANY OTHER REGULATIONS ADOPTED UNDER THIS
8 SUBTITLE.

9 (B) AN APPLICANT FOR A LICENSE SHALL SUBMIT AN APPLICATION TO
10 THE DIVISION ON A FORM THE DIVISION REQUIRES.

11 (C) ON RECEIPT OF A COMPLETED APPLICATION, THE DIVISION SHALL:

12 (1) EVALUATE THE APPLICATION;

13 (2) INSPECT THE PROPOSED PHYSICAL PLANT FOR THE
14 RESIDENTIAL CHILD CARE PROGRAM; AND

15 (3) ISSUE OR DENY THE LICENSE.

16 8-1106.

17 (A) THE DIVISION SHALL SERVE AS A SINGLE POINT OF ENTRY FOR:

18 (1) AN APPLICANT; AND

19 (2) A CURRENT PROVIDER THAT WISHES TO EXPAND AN EXISTING
20 RESIDENTIAL CHILD CARE PROGRAM.

21 (B) AS THE SINGLE POINT OF ENTRY, THE DIVISION SHALL:

22 (1) PROVIDE INFORMATION TO PERSONS INTERESTED IN
23 OPERATING A RESIDENTIAL CHILD CARE PROGRAM;

24 (2) LICENSE A RESIDENTIAL CHILD CARE PROGRAM FOR WHICH A
25 NEED HAS BEEN IDENTIFIED BY THE DEPARTMENT OF HEALTH AND MENTAL

1 **HYGIENE, DEPARTMENT OF HUMAN RESOURCES, OR DEPARTMENT OF**
2 **JUVENILE SERVICES THROUGH THE STATEMENT OF NEED PROCESS; AND**

3 **(3) MONITOR RESIDENTIAL CHILD CARE PROGRAMS IN**
4 **ACCORDANCE WITH REQUIREMENTS FOR THE LICENSING AND MONITORING OF**
5 **RESIDENTIAL CHILD CARE PROGRAMS.**

6 **8-1107.**

7 **(A) A PERSON MAY NOT OPERATE, ATTEMPT TO OPERATE, OR HOLD**
8 **ONE'S SELF OUT AS OPERATING A RESIDENTIAL CHILD CARE PROGRAM UNLESS**
9 **LICENSED UNDER THIS SUBTITLE.**

10 **(B) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBTITLE IS**
11 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**
12 **EXCEEDING \$1,000 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR**
13 **EACH SUBSEQUENT OFFENSE.**

14 **8-1108.**

15 **ANY PERSON AGGRIEVED BY A SANCTION OR FINE IMPOSED BY THE**
16 **DIVISION MAY TAKE ANY APPEAL ALLOWED BY THE ADMINISTRATIVE**
17 **PROCEDURE ACT.**

18 **9-235.**

19 (a) Except as provided in subsection (b) of this section, a person shall be
20 licensed [by the Department] **UNDER TITLE 8, SUBTITLE 11 OF THIS ARTICLE** as a
21 child care home before the person may exercise care, custody, or control over a child
22 who is alleged to be or is adjudicated delinquent or in need of supervision.

23 (b) This section does not apply to:

24 (1) a parent of the child;

25 (2) an individual related to the child by blood or marriage within 4
26 degrees of consanguinity under the civil law rule;

27 (3) a guardian of the child;

28 (4) a person who exercises temporary custody or control over the child
29 at the request of a parent or guardian of the child and who is not required otherwise to
30 be licensed;

1 (5) a person who has the care, custody, or control of the child through
2 placement by a parent or grandparent of the child in contemplation of adoption, if the
3 requirements of § 5–507(b)(2) and (c) of the Family Law Article are met;

4 (6) an institution that has a child care institution license under [this
5 subtitle or § 5–509 of the Family Law Article] **TITLE 8, SUBTITLE 11 OF THIS**
6 **ARTICLE**;

7 (7) an institution operated by a unit of the State or a political
8 subdivision; or

9 (8) a foster care provider with whom the child is placed by:

10 (i) a licensed child placement agency;

11 (ii) a local department of social services;

12 (iii) the Secretary of Health and Mental Hygiene;

13 (iv) the Department; or

14 (v) a court of competent jurisdiction.

15 9–236.

16 (a) Except as otherwise provided in subsection (b) of this section, a person
17 shall be licensed [by the Department] **UNDER TITLE 8, SUBTITLE 11 OF THIS**
18 **ARTICLE** as a child care institution before the person may operate an institution for
19 the care, custody, or control of a child alleged to be or adjudicated delinquent or in
20 need of supervision.

21 (b) This section does not apply to:

22 (1) an institution or facility operated by a unit of the State or a
23 political subdivision; or

24 (2) a child care home that has a license under [this subtitle or §
25 5–508 of the Family Law Article] **TITLE 8, SUBTITLE 11 OF THIS ARTICLE**.

26 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
27 General Assembly that the Governor:

28 (1) transfer 16 regular positions and \$1,239,588 (\$710,799 in general
29 funds and \$528,789 in federal funds) for those positions from the Department of
30 Human Resources to the Division of Licensing and Monitoring of Residential Child
31 Care Programs in the Governor’s Office for Children; and

1 (2) transfer 11 regular positions and \$1,192,882 in general funds for
2 those positions from the Department of Juvenile Services to the Division of Licensing
3 and Monitoring of Residential Child Care Programs in the Governor's Office for
4 Children.

5 SECTION 3. AND BE IT FURTHER ENACTED, That the transfer of duties
6 and employees from the Department of Human Resources and the Department of
7 Juvenile Services to the Division of Licensing and Monitoring of Residential Child
8 Care Programs in the Governor's Office for Children shall be made using existing
9 resources.

10 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2010.