

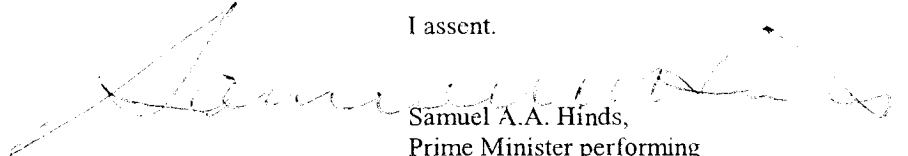


GUYANA

ACT NO. 12 OF 2011

CHILDCARE AND DEVELOPMENT SERVICES ACT 2011

I assent.



Samuel A.A. Hinds,
Prime Minister performing
the functions of the President.

September 19, 2011

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AN ACT to regulate childcare services and to provide for parameters for the granting of licences for childcare and development services and connected matters.

A.D. 2009 Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement.

1. (1) This Act may be cited as the Childcare and Development Services Act 2009.

(2) This Act shall come into operation on such date as the Minister may by order appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires –

Act No. 2 of 2009.

(a) “Agency” means the Childcare and Protection Agency established under section 3 of the Childcare and Protection Agency Act 2009;

(b) “childcare service” means a pre-school care or a service providing care, developmental and educational assistance including early stimulation, such as, play group, home care, day care or night care services or a combination of both or a safe home, to one or more children under twelve years by a caregiver or sponsor, in the absence of any parent or guardian -

(i) for a fee or reward; or

(ii) if any parent or guardian uses the services or residential care facility provided by any sponsor, that service or facility;

(c) “licence” means a childcare service licence issued annually by the Agency to a caregiver or sponsor for a childcare service;

(d) “development” means the systematic physical and mental progress expected of a child for its age and abilities in keeping with norms and practices;

(e) “guardian”, in relation to a child, means the legal guardian or the person who has the custody or control of the child but does not include a caregiver or sponsor;

(f) “home care service” means a childcare service that is provided in the home of a caregiver or sponsor or in any other childcare facility during the day or night time;

- (g) "Minister" means the Minister responsible for the welfare of children;
- (h) "night care service" means a childcare service that is provided at night in the absence of any parent or guardian in the home of the sponsor or caregiver or in a childcare facility or residential care facility for a fee or reward;
- (i) "Register" means the register of caregivers or sponsors maintained and updated by the Agency under section 6;
- (j) "relative" in relation to a child means a parent, grandparent, brother, sister, uncle, aunt or cousin of the full blood or half-blood, or by marriage including a *de facto* marriage, or by adoption;
- (k) "residential care facility", in relation to a child means a home providing care and accommodation for a child which is carried on by a voluntary organisation but does not include --
 - (a) a nursing home, mental nursing home or residential care home;
 - (b) a school; or
 - (c) a hospital;
- (l) "sponsor", in relation to a child care service, includes the owner of the service and, in relation to a proposed childcare service, includes the person who proposes to own the service and may be an agency including a Company, corporation, an agency established under a business name, provided that where a sponsor is a company, the company secretary shall be liable to comply with any conditions as a sponsor under this Act;
- (m) "voluntary organisation" means a non profit non-governmental organisation that offers accommodation and other childcare services;

(2) Words and expressions not defined in this Act but defined in the Childcare and Protection Agency Act 2009 and the Protection of Children Act 2009 shall have the respective meanings assigned to them in those Acts.

Power of
Minister to
specify childcare
services.

3. The Minister may specify from time to time the nature and extent of childcare services that may be performed by a caregiver, sponsor, residential care facility or a voluntary organisation.

PART II CAREGIVING

Caregiver.

4. (1) For the purposes of this Act, a person is regarded as a caregiver if that person offers childcare services —

- (a) to one or more children under the age of twelve, for a fee or reward; and
- (b) for a period, or the total of the periods, exceeding two hours during a day or a night.

(2) The following person shall not be regarded as a caregiver, if the person —

- (a) is the parent or guardian of a child;
- (b) has parental responsibility for the child;
- (c) has *de facto* custody of the child;
- (d) is employed as a babysitter of the child when looking after that child wholly or mainly in the home of the employer; or
- (e) is employed as a babysitter by two or more different employers while looking after any child wholly or mainly in the home of one of more of the employers.

(3) For the purposes of this Act, a person is regarded as a babysitter in respect of a child if the person is employed to look after the child by —

- (a) a parent or guardian of the child; or
- (b) a person who is not a parent or guardian but who has parental responsibility for the child; or
- (c) a person who has *de facto* custody of the child; or
- (d) a person who is a relative and who has assumed the responsibility of the care of the child due to any reason as may be sufficient in the opinion of the Agency to regard that person as babysitter.

Registration as caregiver or sponsor.

5. (1) Subject to the provisions of this Act, any person, who satisfies the Agency that the person is able to read, write, speak and understand the English language and is of sound mental and physical health, may apply to the Agency for registration as a caregiver or sponsor in the prescribed form and on payment of prescribed fees.

(2) If the Agency is of opinion that an applicant fulfills the requirements specified by it under this Act, it may register the applicant as caregiver or sponsor, as the case may be, and issue the caregiver or sponsor a licence, in the form as the Agency may determine, on an annual basis and impose on the caregiver or sponsor any requirement under this Act.

(3) A person shall apply for separate licence in respect of each premise.

(4) The Agency shall notify the applicant of the decision regarding registration as a caregiver or sponsor within thirty days from the date of receipt of the application after all the requirements imposed by it under this Act have been met.

(5) Notwithstanding anything contained in this Act, the Agency may provisionally register a person as caregiver or sponsor and issue a provisional licence for a period not exceeding three months pending final registration and issuance of the licence.

Register of caregivers or sponsors.

6. (1) The Agency shall maintain and update a Register containing the names and details of caregivers or sponsors registered under this Act.

(2) The Register shall be open for inspection by members of the public at all reasonable times in electronic format or otherwise as determined by the Agency.

Requirements for registration and licence.

7. (1) While registering a person as caregiver or sponsor and issuing a licence, the Agency shall impose such reasonable requirements on the licensee, as it considers appropriate.

(2) In imposing requirements under subsection (1), the Agency shall –

- (a) specify the maximum number of children, or the maximum number of children within a specified age group, the person may provide childcare service as caregiver or sponsor;
- (b) require the person to secure the premises on which the childcare service is provided and ensure that the equipment used in those premises are adequately maintained and kept clean, safe and child friendly;
- (c) require the person to comply with any written law governing specifications for buildings and premises;

- (d) require the person to keep a record of the name, address, age, sex, immunisation record, medical history and the date of admission to the home care service or night care service or residential care facility of –
- (i) every child so provided childcare services on the premises;
 - (ii) every other person who assists the person in providing childcare services to the child; and
 - (iii) every other person living, or likely at any time to be living, at those premises;
- (e) require the person to keep a record of any emergency number of parents and guardians.
- (f) require the person to notify the Agency in writing from time to time of any change in the facilities or persons mentioned in paragraph (d) (ii) and (iii).
- (g) require the person to obtain information from the parents or guardians on immunisation records of the children.
- (h) require any person referred to in paragraph (d) (ii) to have a valid food handlers certificate under any written law;
- (i) require the person to maintain an environment where the welfare of the child is protected and promoted.

(3) The Agency may vary any requirement under this section or exempt any person from complying with any requirement, or, impose any additional requirement, if it considers necessary, taking into account the welfare of the children who are likely to be provided childcare services or the nature of the premises.

(4) In determining the maximum number of children to be specified under section (2) (a), the Agency shall take into account the number of other children who may at any time be on any premises on which the person concerned provides or is likely to provide childcare services, and the size of the building for which the person is to be registered as a caregiver or sponsor.

(5) The Minister may issue directions to the Agency as to any special requirement, which shall be imposed by it under this section if the Minister considers it necessary in the best interest of any child or children.

(6) When a person is registered as caregiver or sponsor in respect of different premises, the caregiver or sponsor shall comply with the requirements under this section in respect of each of the premises.

Cancellation, etc.
of licence.

8. (1) The Agency may, on a request made by a licensed caregiver or sponsor, after giving prior notice to the parent or guardian, if the Agency is satisfied otherwise, cancel the licence of the caregiver or sponsor in respect of the premises, subject to any requirement as it may deem fit.

(2) The Agency may, issue a new licence in the name of another person in respect of the same premises subject to the provisions of this Act.

(3) The Agency may direct the caregiver or sponsor to continue to provide childcare services in the premises until such period as may be directed by the Agency or until the transfer of the licence is completed.

(4) The Agency may require the licensed caregiver, sponsor or the new applicant to comply with any additional requirement for a new licence as it may deem fit.

(5) Where it appears to the Agency that a licensed caregiver or sponsor has contravened any requirement under this Act or where circumstances exist which render the Agency necessary for the Agency to take immediate action in the best interest of any child or in the public interest, the Agency may suspend the licence for a specified period or cancel the licence:

Provided that the caregiver or sponsor may be afforded an opportunity of being heard before suspending or cancelling the licence.

(6) Where the Agency cancels or suspends the licence under this section, it may direct the caregiver or sponsor to notify immediately the parent or guardian to whom childcare services are provided by the caregiver or sponsor.

(7) Where the Agency issues a new licence in the name of another person under subsection (2), it shall be the duty of the new caregiver or sponsor to immediately notify the parent or guardian who is provided childcare services of the new caregiver or sponsor of the change of name of the licensee.

Disqualifications.

9. A person shall not be registered as caregiver or sponsor if that person -

- (a) is, or at any time has been, of unsound mind or is so declared by a competent court;
- (b) is, or has been, convicted of an offence, which in the opinion of the Agency, involves moral turpitude;

(c) is, or at any time has been, adjudicated as an insolvent.

Training. 10. The Agency may require a caregiver or sponsor to display certification of other evidence of having received any training in early childhood care and development as determined by the Agency to be satisfactory at any time before or after issue of a licence.

Exemption. 11. Sections 5 and 7 shall not apply to any childcare service provided by any hospital.

No licence under certain circumstances. No. 17 of 2009. 12. (1) The Agency shall not register an applicant as a caregiver or sponsor if it is satisfied that the person is not suitable or is on the list kept under section 53 of the Protection of Children Act 2009 for the time being or who has committed any offence under this Act or any written law.

PART III CHILDCARE AND DEVELOPMENT SERVICES

Duty to protect children from hazards. 13. Every caregiver or sponsor shall ensure that all reasonable care is taken at all times by the caregiver or sponsor -

- (a) to protect every child from being exposed to any kind of hazards, whether mental or physical in the premises;
- (b) to protect every child in the premises under active and proper adult supervision;
- (c) to keep the buildings and grounds and all equipment and furnishings used for childcare services well maintained, secure, clean and hygienic conditions.

Power of Agency to inspect. 14. (1) The Agency may, on its own motion or on a complaint, authorise any of its officers or employees to carry out any inspection at any reasonable time in the premises where childcare, homecare or night care service is provided for the purpose of ascertaining compliance of the provisions of this Act.

(2) An authorised person referred to in subsection (1) shall have all powers to enter the premises, to inspect any book, register, record, computer, electronic device or equipment or any material that is used for any childcare services or any other place or area that the authorised person considers appropriate for inspection relating to the childcare service.

Discipline of children. 15. Notwithstanding anything contained in any written law, a caregiver or sponsor shall ensure that no child being cared for by the caregiver or sponsor or any person authorised or employed by them is subjected to -

- (a) any form of corporal punishment;
- (b) any abuse of any nature whatsoever.

Change of management.

16. (1) A licence issued under this Act is not transferable.

(2) Where there is a change of management of the premises of the childcare services, the licensee shall notify the Agency within thirty days from the date of change.

Licence to be displayed.

17. A licensee at all times shall display a copy of the licence conspicuously at a place where childcare service is provided.

PART IV DISCIPLINARY PROCEEDINGS BY AGENCY

Disciplinary proceedings by Agency.

18. Notwithstanding anything contained in this Act, where the Agency is satisfied that a caregiver or sponsor who -

- (a) is convicted of an offence outside Guyana which if committed in Guyana would be punishable on indictment;
- (b) is convicted of an offence referred to in paragraph (a) in Guyana;
- (c) is guilty of misconduct or malpractice in Guyana or in any other country,

the Agency may initiate disciplinary proceedings against the caregiver or sponsor upon a complaint or on its own motion.

Penalty by Agency.

19. In any proceedings under section 18, if the Agency is satisfied that a caregiver or sponsor is guilty of misconduct or malpractice and it is expedient and in the interests of any child to take appropriate action, it may -

- (a) censure the caregiver or sponsor;
- (b) suspend the caregiver's or sponsor's licence for a specified period;
- (c) remove the caregiver's or sponsor's name from the Register and cancel the licence,

in addition to any fine that may be imposed on him by the Agency:

Provided that the caregiver or sponsor shall be afforded an opportunity to be heard before any action is taken against him.

Surrender of
licence.

20. (1) Where the name of caregiver or sponsor is removed from the Register under section 19 (c), the Agency shall, in writing, require the caregiver or sponsor to surrender the caregiver's or sponsor's licence immediately.

(2) Where the Agency suspends a licence under section 19 (b) or removes the name of the caregiver or sponsor from the Register under section 19 (c), the caregiver or sponsor shall immediately notify the parent or guardian of the child and any person who fails to comply with this subsection commits an offence.

Restoration of
name in the
Register.

21. (1) A caregiver or sponsor whose name has been removed from the Register under section 19 (c) may apply for restoration of the name of the caregiver or sponsor in the Register any time from the date of removal and the Agency may consider an application of the caregiver or sponsor afresh under the provisions of this Act.

(2) Notwithstanding subsection (1), the Agency may, at any time on its own motion for reasons to be recorded in writing, restore the name of the caregiver or sponsor to the Register.

Appeal.

22. Any caregiver dissatisfied with any order or decision of the Agency may appeal to the Minister within thirty days from the date of receipt of the order or decision.

Power of
Minister to
suspend decision
of Agency.

23. The Minister may, direct that the impugned order or decision of the Agency be suspended pending final decision on an appeal under section 22.

PART V

RESIDENTIAL CARE FACILITY BY A VOLUNTARY ORGANISATION

Registration as a
voluntary
organisation.

24. (1) On and from the date as may be appointed by the Minister, every voluntary organisation providing childcare shall be registered with the Agency in the manner as may be prescribed by the Minister and subject to such conditions as the Agency may determine.

(2) The Agency shall not charge any fee for registration under subsection (1).

(3) The Agency shall maintain and update a register of voluntary organisations including in electronic format.

(4) The Agency may, after giving the voluntary organisation an opportunity of being heard, cancel the registration of the organisation and remove its name from the register of voluntary organisations, if it is satisfied that the organisation has violated any of the conditions of registration.

Duties of
voluntary
organisation.

25. (1) Where a child is accommodated by a voluntary organisation, it shall be the duty of the organisation –

- (a) to safeguard and promote the welfare of the child; and
- (b) to make use of the services and facilities provided for the child.

(2) Before making any decision with respect to any child, the organisation shall, so far as it is reasonably practicable, ascertain and give due consideration to the wishes and feelings of -

- (a) the child;
- (b) the parent or guardian;
- (c) any person who is not a parent or guardian but who has parental responsibility of the child; and
- (d) any other person whose wishes and feelings the organisation considers to be relevant,

regarding the matter to be decided.

(3) In making any such decision, the organisation shall give due consideration having regard to the age, understanding, wishes and feelings of the child.

Powers of
Agency with
respect to
voluntary
organisations.

26. (1) The Agency shall be empowered to –

- (a) ensure that a voluntary organisation providing accommodation for a child is satisfactorily safeguarding and promoting the welfare of the child;
- (b) arrange for children who are accommodated by or on behalf of voluntary organisations to be visited, from time to time, in the interests of their welfare;
- (c) make timely interventions in cases where the actions or conduct of a person, where that person has authority, care or custody of a child have resulted in, or are likely to give rise to, any harm or injury to the child.

(2) Where the Agency is not satisfied that the welfare of a child who is accommodated by a voluntary organisation is being satisfactorily safeguarded or promoted, it shall –

- (a) unless it considers that it would not be in the best interests of the child, take such steps as are reasonably practicable to ensure that the protection, care and accommodation of the child is undertaken by –
- (i) a parent or guardian;
 - (ii) a person who is not a parent or guardian but who has parental responsibility for the child;
 - (iii) a relative; or
 - (iv) a foster parent; and
- (b) consider the extent to which the Agency should exercise any of its functions with respect to the child.
- (3) Where the Agency is satisfied, it may order that any child be transferred to another home or premises or residential care facility.
- (4) A person authorised by the Agency may –
- (a) enter, at any reasonable time, and inspect any premises in which any child is accommodated by a voluntary organisation;
 - (b) visit and physically check any premises to ensure the welfare of any child;
 - (c) require the voluntary organisation to furnish such records of a kind required to be kept by the voluntary organisation under this Act in whatever form they are held, or permit the authorised person to inspect such records at any time.
- (5) An authorised person exercising any power under this section may require any person to facilitate the authorised person at any reasonable time and shall have access to any computer, any associated apparatus or material, book or other record which is or has been in use in connection with any information required by the authorised person.

PART VI PENALTY

27. A caregiver or a sponsor who fails to comply with any requirement under section 7 commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and also to revocation of the caregiver's or sponsor's licence.

Penalty for not complying with requirement under section 7.

Punishment for preventing authorised person.

28. Any person who prevents or intentionally obstructs an authorised person referred to in section 14 or in section 26 (4) from discharging the duties of the authorised person commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Penalty for employing disqualified persons.

29. Whoever employs a person who is disqualified under this Act in relation to a childcare service commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Penalty for failure to comply with provisions under Part V.

30. Any person who fails to comply with any requirement or contravenes any of the provisions of Part V for which no penalty is prescribed, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars for the first offence and, in the case of every continuing offence of failure or contravention, to an additional fine of five thousand dollars for everyday the offence continues.

General penalty.

31. Any person who fails to comply with any requirement or contravenes any of the provisions of this Act for which no penalty is prescribed, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars for the first offence, to the said fine and imprisonment for three months for the second or subsequent offence and, in the case of every continuing offence of failure or contravention, to an additional fine of ten thousand dollars for everyday the offence continues.

Prosecution.

32. Prosecutions under this Act shall be initiated and conducted in a court of summary jurisdiction by the Agency.

Power to make regulations.

33. (1) The Minister may, on the advice of the Agency, make regulations for giving effect to and for carrying out the provisions of this Act, and without prejudice to the generality of the foregoing, the regulations may, with respect to childcare facilities or residential care facilities, provide for –

- (a) the conduct and management;
- (b) the methods of securing the welfare of the children;
- (c) the standards to which the premises used for childcare are to conform;
- (d) the requirements of accommodation, staff and equipment to be provided and to the arrangements to be made for protecting the health of children;
- (e) the control and discipline of children;
- (f) the furnishing to the Agency of information as to the facilities provided for the parents or guardians, persons who are not parents or guardians but who have parental responsibility for them and other persons connected with such children, to visit and communicate with the children;
- (g) the limit on the number of children who may be accommodated;

- (h) the keeping of records and giving of notices with respect to children;
- (i) time within which a caregiver or sponsor shall comply with any requirement under this Act; or
- (j) the disqualification of persons who fail to comply with the requirements under this Act.

(2) The regulations may provide that a person who contravenes or fails to comply with any regulation without reasonable excuse commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

Passed by the National Assembly on 17th June, 2011.



S.E. Isaacs,
Clerk of the National Assembly.

(BILL No. 31/2009)