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By: ~~Senator Currie~~ Senators Currie, Middleton, Ruben, DeGrange, Della, Gladden, Hooper, Jones, Kelley, Klausmeier, Kramer, McFadden, and Teitelbaum

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Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Residential Child Care Programs - Corporate Responsibility and**  
 3 **Governance**

4 FOR the purpose of requiring certain corporations to meet certain requirements as a  
 5 condition of licensure ~~as to operate~~ a residential child care program; requiring a  
 6 corporation to demonstrate to a certain agency certain capabilities; requiring  
 7 certain corporations to submit certain documents to a certain agency; requiring  
 8 that the boards of directors of certain corporations be composed of a certain  
 9 ~~percentage number~~ number of State residents ~~or individuals residing within a certain~~  
 10 ~~distance of certain offices or programs~~; prohibiting certain individuals from  
 11 serving on the boards of directors of certain corporations; requiring certain  
 12 corporations to adopt written bylaws that require the corporation's board of  
 13 directors to be legally responsible for certain actions; requiring certain  
 14 corporations ~~above a certain size~~ to have a board of directors composed of a  
 15 certain number of individuals with certain expertise and to have a certain  
 16 corporate officer; requiring the ~~Governor's Office for Children~~ members of the  
 17 Children's Cabinet to adopt certain regulations to provide certain exceptions  
 18 under certain circumstances; authorizing certain agencies to deny certain  
 19 licenses to certain corporations under certain circumstances; requiring certain  
 20 agencies to conduct certain inspections under certain circumstances; prohibiting  
 21 ~~an individual~~ a person from operating a residential child care program in the  
 22 State without a license; establishing certain penalties for a violation of a certain  
 23 provision of this Act; defining certain terms; and generally relating to the  
 24 licensing of corporations that operate residential child care programs.

1 BY adding to  
 2 ~~Article—Education~~  
 3 ~~Section 7-309.1 and 7-309.2~~  
 4 New Article 49D - Children, Youth, and Family Services  
 5 Section 1-101 and 1-102  
 6 Annotated Code of Maryland  
 7 (~~2004~~ 2003 Replacement Volume and 2005 Supplement)

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

10 **~~Article—Education~~**

11 **ARTICLE 49D - CHILDREN, YOUTH, AND FAMILY SERVICES**

12 **TITLE 1. OPERATORS OF RESIDENTIAL CHILD CARE PROGRAMS.**

13 ~~7-309.1, 1-101.~~

14 (A) (1) IN THIS ~~SECTION~~ TITLE THE FOLLOWING WORDS HAVE THE  
 15 MEANINGS INDICATED.

16 (2) "CORPORATION" MEANS AN ENTITY WITH ARTICLES OF  
 17 INCORPORATION THAT IS AN APPLICANT FOR OR HAS BEEN GRANTED A LICENSE TO  
 18 OPERATE A RESIDENTIAL CHILD CARE PROGRAM IN THIS STATE.

19 (3) (I) "LICENSING AGENCY" MEANS THE AGENCY DESIGNATED BY  
 20 ~~THE GOVERNOR'S OFFICE FOR CHILDREN~~ TO BE RESPONSIBLE FOR LICENSING A  
 21 RESIDENTIAL CHILD CARE PROGRAM.

22 (II) "LICENSING AGENCY" INCLUDES THE DEPARTMENT OF  
 23 HEALTH AND MENTAL HYGIENE, THE DEPARTMENT OF HUMAN RESOURCES, AND  
 24 THE DEPARTMENT OF JUVENILE SERVICES.

25 (4) "OFFICE" MEANS THE GOVERNOR'S OFFICE FOR CHILDREN.

26 (5) "PROGRAM" MEANS A RESIDENTIAL CHILD CARE PROGRAM.

27 (6) "RESIDENTIAL CHILD CARE PROGRAM" HAS THE MEANING STATED  
 28 ~~IN § 7-309(A) OF THIS SUBTITLE~~ § 20-101 OF THE HEALTH OCCUPATIONS ARTICLE.

29 (B) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (G) OF THIS  
 30 SECTION AND IN ADDITION TO THE STANDARDS SET FORTH IN COMAR 14.31.06 AND  
 31 14.31.07, A CORPORATION SHALL MEET THE REQUIREMENTS PROVIDED IN THIS  
 32 SECTION AS A CONDITION OF LICENSURE.

33 (C) A CORPORATION SHALL DEMONSTRATE TO THE LICENSING AGENCY THE  
 34 CAPABILITY TO PROVIDE FOR AND ARRANGE FOR THE PROVISION OF ALL

1 APPLICABLE SERVICES PROPOSED IN THE LICENSE APPLICATION BY SUBMITTING,  
2 AT A MINIMUM, THE FOLLOWING DOCUMENTS TO THE LICENSING AGENCY:

3 (1) A BUSINESS PLAN THAT CLEARLY DEMONSTRATES THE ABILITY OF  
4 THE PROGRAM OPERATED BY THE CORPORATION TO PROVIDE SERVICES IN  
5 ACCORDANCE WITH MARYLAND REGULATIONS AND FUNDING REQUIREMENTS;

6 (2) A SUMMARY OF THE CORPORATION'S DEMONSTRATED EXPERIENCE  
7 IN THE FIELD OF HUMAN SERVICES, IN ACCORDANCE WITH STANDARDS DEVELOPED  
8 BY THE OFFICE;

9 (3) PRIOR LICENSING REPORTS ISSUED WITHIN THE PREVIOUS 10 YEARS  
10 FROM ANY IN-STATE OR OUT-OF-STATE ENTITIES ASSOCIATED WITH THE  
11 CORPORATION OR THE PROGRAM, INCLUDING DEFICIENCY REPORTS AND  
12 COMPLIANCE RECORDS ON WHICH THE STATE MAY MAKE REASONED DECISIONS  
13 ABOUT THE QUALIFICATIONS OF THE CORPORATION OR THE PROGRAM; AND

14 (4) A WRITTEN QUALITY ASSURANCE PLAN, APPROVED BY THE  
15 LICENSING AGENCY, TO ADDRESS HOW THE CORPORATION WILL ENSURE THE  
16 HEALTH AND SAFETY OF THE INDIVIDUALS SERVED BY THE PROGRAM AND THE  
17 QUALITY OF SERVICES PROVIDED TO INDIVIDUALS BY THE PROGRAM.

18 (D) (1) AT LEAST ~~75%~~ ONE MEMBER OF A CORPORATION'S BOARD OF  
19 DIRECTORS SHALL BE ~~RESIDENTS~~ A RESIDENT OF THE STATE ~~OR RESIDE WITHIN A~~  
20 ~~400-MILE RADIUS OF THE CORPORATION'S ADMINISTRATIVE OFFICES OR THE~~  
21 ~~PROGRAM.~~

22 (2) ~~NO~~ AN EMPLOYEE OF A CORPORATION OR PROGRAM OR AN  
23 IMMEDIATE FAMILY MEMBER OF AN EMPLOYEE OF A CORPORATION OR PROGRAM  
24 MAY NOT SERVE ON THE CORPORATION'S BOARD OF DIRECTORS.

25 (3) A PERSON WHO IS COMPENSATED BY A CORPORATION FOR  
26 PROVIDING GOODS OR SERVICES MAY NOT SERVE ON THE CORPORATION'S BOARD OF  
27 DIRECTORS.

28 (E) A CORPORATION SHALL ADOPT WRITTEN BYLAWS THAT REQUIRE THE  
29 CORPORATION'S BOARD OF DIRECTORS TO BE LEGALLY RESPONSIBLE FOR:

30 (1) OVERSEEING THE MANAGEMENT AND OPERATION OF THE PROGRAM  
31 OPERATED BY THE CORPORATION;

32 (2) ENSURING THAT THE PROGRAM OPERATES IN COMPLIANCE WITH  
33 ALL APPLICABLE LAWS AND REGULATIONS;

34 (3) APPROVING ~~A~~ THE PROGRAM'S MISSION STATEMENT, LONG-TERM  
35 GOALS, POLICIES, PROCEDURES, AND ANNUAL BUDGET;

36 (4) DEFINING AND PROHIBITING CIRCUMSTANCES THAT WOULD  
37 CREATE A FINANCIAL OR PERSONAL CONFLICT OF INTEREST FOR MEMBERS OF THE

1 BOARD OF DIRECTORS, CORPORATE OFFICERS, EMPLOYEES, AGENTS, ASSIGNS, AND  
2 VOLUNTEERS;

3 (5) ENSURING THAT THE PROGRAM RESPONDS TO ALL REQUESTS FROM  
4 THE LICENSING AGENCY IN A TIMELY MANNER;

5 (6) APPROVING A THE PROGRAM'S SERVICE PLAN AND ENSURING THAT  
6 SERVICES ARE PROVIDED IN ACCORDANCE WITH THE PLAN;

7 (7) IF THE CORPORATION IS A NONPROFIT CORPORATION, REVIEWING  
8 ANNUALLY WHETHER THE CORPORATION IS SATISFYING ITS CHARITABLE MISSION;

9 (8) ENSURING THAT THE CORPORATION HAS LIABILITY INSURANCE;

10 (9) REQUIRING THAT MEMBERS OF THE BOARD OF DIRECTORS HAVE  
11 TRAINING IN THEIR RESPONSIBILITIES REGARDING THE GOVERNANCE OF THE  
12 PROGRAM; AND

13 ~~(10) PROHIBITING A PERSON FROM SERVING AS A MEMBER OF THE~~  
14 ~~BOARD OF DIRECTORS IF THE PERSON IS COMPENSATED BY THE CORPORATION FOR~~  
15 ~~PROVIDING GOODS OR SERVICES;~~

16 ~~(10)~~ (10) ESTABLISHING COMMITTEES OR MEMBER ASSIGNMENTS TO  
17 PERIODICALLY REVIEW AS WARRANTED BUT NOT LESS THAN ANNUALLY:

18 (I) COMPENSATION OF OFFICERS AND STAFF OF THE  
19 CORPORATION AND THE PROGRAM;

20 (II) QUALITY OF SERVICES PROVIDED TO CLIENTS, INCLUDING ALL  
21 INCIDENTS HARMING OR POTENTIALLY HARMING CLIENTS;

22 (III) FINANCIAL PROBLEMS AND CONCERNS RELATING TO THE  
23 PROGRAM;

24 (IV) PERFORMANCE OF KEY STAFF AND THE NOMINATIONS OF NEW  
25 MEMBERS OF THE BOARD OF DIRECTORS; AND

26 (V) POTENTIAL CONFLICTS OF INTEREST.

27 (F) ~~IN ADDITION TO THE REQUIREMENTS SET FORTH IN SUBSECTION (C) OF~~  
28 ~~THIS SECTION, A CORPORATION SERVING MORE THAN 10 CHILDREN OR OPERATING~~  
29 ~~MORE THAN TWO SITES SHALL HAVE:~~

30 (1) A BOARD OF DIRECTORS THAT COMPRISES AT LEAST FIVE  
31 INDIVIDUALS WITH AN INTEREST IN OR KNOWLEDGE OF THE NEEDS OF CHILDREN  
32 AND THEIR FAMILIES, ON WHICH:

33 (I) AT LEAST ONE OF WHOM SHALL HAVE DEMONSTRATED  
34 EXPERIENCE IN OR KNOWLEDGE OF THE HUMAN SERVICES FIELD; AND

1 (II) AT LEAST ONE OF WHOM SHALL HAVE DEMONSTRATED  
2 KNOWLEDGE IN THE FIELDS OF ACCOUNTING, BUSINESS, OR FINANCIAL  
3 MANAGEMENT; AND

4 (2) A CHIEF FINANCIAL OFFICER.

5 (G) ~~THE OFFICE MEMBERS OF THE CHILDREN'S CABINET SHALL ADOPT~~  
6 REGULATIONS TO PROVIDE A WAIVER FROM SOME OR ALL OF ~~THESE THE~~  
7 REQUIREMENTS ~~OF THIS SECTION FOR SMALL CORPORATIONS OR FOR~~  
8 CORPORATIONS THAT CAN DEMONSTRATE THAT THEIR BYLAWS AND POLICIES ARE  
9 SUBSTANTIALLY SIMILAR TO THOSE REQUIRED UNDER THIS SECTION.

10 (H) A LICENSING AGENCY MAY DENY A LICENSE TO:

11 (1) ANY CORPORATION OR ENTITY THAT HAS HAD A LICENSE REVOKED  
12 BY A LICENSING AGENCY WITHIN THE PREVIOUS 10 YEARS; OR

13 (2) ANY CORPORATION OR ENTITY THAT HAS A CORPORATE OFFICER  
14 WHO HAS SERVED AS A CORPORATE OFFICER FOR A CORPORATION OR ENTITY THAT  
15 HAS HAD A LICENSE REVOKED BY A LICENSING AGENCY WITHIN THE PREVIOUS 10  
16 YEARS.

17 (I) (1) UNLESS A PROGRAM ADMINISTRATOR OR AN EMPLOYEE OF A  
18 PROGRAM IS REQUIRED TO BE PRESENT, A LICENSING AGENCY SHALL CONDUCT  
19 UNANNOUNCED INSPECTIONS OF PROGRAMS.

20 (2) THE UNANNOUNCED INSPECTIONS REQUIRED UNDER PARAGRAPH  
21 (1) OF THIS SUBSECTION SHALL INCLUDE INSPECTIONS CONDUCTED DURING  
22 NONBUSINESS HOURS.

23 ~~7-309.2. 1-102.~~

24 (A) A PERSON MAY NOT OPERATE A PROGRAM IN THE STATE WITHOUT A  
25 LICENSE.

26 (B) ~~A PERSON WHO OPERATES A RESIDENTIAL CHILD CARE PROGRAM IN THIS~~  
27 ~~STATE WITHOUT A LICENSE VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY~~  
28 ~~OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING~~  
29 ~~\$1,000 FOR EACH DAY OF OPERATION.~~

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Attorney  
31 General, the Governor's Office for Children, the Department of Health and Mental  
32 Hygiene, the Department of Human Resources, and the Department of Juvenile  
33 Services, in cooperation with Maryland nonprofit organizations, shall jointly:

34 (a) prepare a training curriculum in corporate governance and fiduciary  
35 responsibility to be provided to corporate boards of directors governing residential  
36 child care programs; and

1 (b) on or before October 1, 2006, in accordance with § 2-1246 of the State  
2 Government Article submit a report to the Governor's Office for Children, the Senate  
3 Budget and Taxation Committee, the Senate Finance Committee, the House  
4 Appropriations Committee, and the Joint Committee on Children, Youth, and  
5 Families that includes:

6 (1) a draft of the training curriculum;

7 (2) recommendations on which, if any, portions of the curriculum shall be  
8 made a condition of licensure ~~as~~ to operate a residential child care program;

9 (3) a time line for implementation of the training curriculum;

10 (4) barriers to implementing the training curriculum; and

11 (5) any regulatory or statutory changes required to implement the  
12 curriculum.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 July 1, 2006.