# CONFERENCE COMMITTEE REPORT
# DIGEST FOR ESB 305

**Citations Affected:** IC 12-7-2; IC 12-17.2.

**Synopsis:** Child care and development fund eligibility. Conference committee report for ESB 305. Specifies requirements that must be met by a child care provider as a condition of eligibility to receive a federal Child Care and Development Fund (CCDF) voucher payment. Requires the committee on child care to study and make certain recommendations during the 2013 interim concerning due process for child care providers. (The introduced version of this bill was prepared by the committee on child care.) **(This conference committee report: (1) replaces a 2013 interim requirement for the committee on child care to study various issues with a requirement to study due process for child care providers; (2) reconciles a conflict between IC 12-17.2-3.5-4 as amended by HEA 1494-2013 and this bill; (3) removes a provision specifying that a provider is ineligible for a CCDF voucher payment if the provider fails to correct a noncompliance required by the division of family resources; and (4) makes technical changes.)**

**Effective:** July 1, 2013.

| Adopted | Rejected |
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# CONFERENCE COMMITTEE REPORT

***MR. SPEAKER:***

***Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 305 respectfully reports that said two committees have conferred and agreed as follows to wit:***

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 12-7-2-55.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 55.8. "Decertify", for purposes of IC 12-17.2-3.5, means to remove, for any period of less than two (2) years, a provider's eligibility to receive a voucher payment.**

SECTION 2. IC 12-7-2-77.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 77.2. "Enforcement action", for purposes of IC 12-17.2, refers to the following:**

**(1) Revocation or decertification of eligibility for a voucher payment under IC 12-17.2-3.5.**

**(2) Denial, suspension, or revocation of a license under IC 12-17.2-4 or IC 12-17.2-5.**

SECTION 3. IC 12-7-2-149.1, AS AMENDED BY P.L.143-2011, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 149.1. "Provider" means the following:

(1) For purposes of IC 12-10-7, the meaning set forth in IC 12-10-7-3.

(2) For purposes of the following statutes, an individual, a partnership, a corporation, or a governmental entity that is enrolled in the Medicaid program under rules adopted under

IC 4-22-2 by the office of Medicaid policy and planning:
(A) IC 12-14-1 through IC 12-14-9.5.
(B) IC 12-15, except IC 12-15-32, IC 12-15-33, and IC 12-15-34.
(C) IC 12-17.6.
(3) Except as provided in ~~subdivision~~ **subdivisions** (4) **and (6),** for purposes of IC 12-17.2, a person who operates a child care center or child care home under IC 12-17.2.
(4) For purposes of IC 12-17.2-3.5, a person that:
(A) provides child care; and
(B) is directly paid for the provision of the child care under the federal Child Care and Development Fund voucher program administered under 45 CFR 98 and 45 CFR 99.
The term does not include an individual who provides services to a person described in clauses (A) and (B), regardless of whether the individual receives compensation.
(5) For purposes of IC 12-21-1 through IC 12-29-2, an organization:
(A) that:
(i) provides mental health services, as defined under 42 U.S.C. 300x-2(c);
(ii) provides addiction services; or
(iii) provides children's mental health services;
(B) that has entered into a provider agreement with the division of mental health and addiction under IC 12-21-2-7 to provide services in the least restrictive, most appropriate setting; and
(C) that is operated by one (1) of the following:
(i) A city, town, county, or other political subdivision of the state.
(ii) An agency of the state or of the United States.
(iii) A political subdivision of another state.
(iv) A hospital owned or operated by a unit of government or a building authority that is organized for the purpose of constructing facilities to be leased to units of government.
(v) A corporation incorporated under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.
(vi) An organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
(vii) A university or college.
**(6) For purposes of IC 12-17.2-2-10, the following:**
**(A) A person described in subdivision (4).**
**(B) A child care center licensed under IC 12-17.2-4.**
**(C) A child care home licensed under IC 12-17.2-5.**

SECTION 4. IC 12-7-2-199.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 199.2. "Volunteer", ~~or "volunteers"~~ for purposes of ~~IC 12-17.2-3.5, has the meaning set forth in IC 12-17.2-3.5-1.7.~~ **IC 12-17.2, means an individual who, without compensation, provides services to a child care home, child care center, provider (as defined in section 149.1(4) of this chapter), or**

**child care ministry for at least eight (8) hours per month.**

SECTION 5. IC 12-17.2-2-10, AS AMENDED BY P.L.145-2006, SECTION 94, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) The division may grant a variance or waiver of a rule governing ~~child care centers, or child care homes.~~ **a provider.** A variance or waiver granted under this section must promote statewide practices and must protect the rights of persons affected by this article.

(b) The division may grant a variance to a rule if ~~an applicant for~~ a ~~license or a licensee under this chapter~~ **provider** does the following:

(1) Submits to the division a written request for the variance in the form and manner specified by the division.

(2) Documents that compliance with an alternative method of compliance approved by the division will not be adverse to the health, safety, or welfare of a child receiving services from the applicant for the variance, as determined by the division.

(c) A variance granted under subsection (b) must be conditioned upon compliance with the alternative method approved by the division. Noncompliance constitutes the violation of a rule of the division and may be the basis for revoking the variance.

(d) The division may grant a waiver of a rule if ~~an applicant for~~ a ~~license or a licensee under this chapter~~ **provider** does the following:

(1) Submits to the division a written request for the waiver in the form and manner specified by the division.

(2) Documents that compliance with the rule specified in the application for the waiver will create an undue hardship on the applicant for the waiver, as determined by the division.

(3) Documents that the applicant for the waiver will be in substantial compliance with the rules adopted by the division after the waiver is granted, as determined by the division.

(4) Documents that noncompliance with the rule specified in the application for a waiver will not be adverse to the health, safety, or welfare of a child receiving services from the applicant for the waiver, as determined by the division.

(e) Except for a variance or waiver of a rule governing child care homes, a variance or waiver of a rule under this section that conflicts with a building rule or fire safety rule adopted by the fire prevention and building safety commission is not effective until the variance or waiver is approved by the fire prevention and building safety commission.

SECTION 6. IC 12-17.2-3.5-1, AS AMENDED BY P.L.124-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) This chapter applies to all child care providers regardless of whether a provider is required to be licensed or registered under this article. However, **except as provided in section 4(b) of this chapter,** a child care provider that is licensed under IC 12-17.2-4 or IC 12-17.2-5 is considered to be in compliance with this chapter. ~~unless the child care provider is found to be in violation of this chapter.~~

(b) If a school age child care program that is:

(1) described in IC 12-17.2-2-8(10); and
(2) located in a school building;
is determined to be in compliance with a requirement of this chapter by another state regulatory authority, the school age child care program is considered to be in compliance with the requirement under this chapter.

SECTION 7. IC 12-17.2-3.5-1.7 IS REPEALED [EFFECTIVE JULY 1, 2013]. ~~Sec. 1.7. As used in this chapter, "volunteer" or "volunteers" refers to an individual who, without compensation, provides services to a provider.~~

SECTION 8. IC 12-17.2-3.5-4 AS AMENDED BY HEA1494-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. **(a)** A provider is ineligible to receive a voucher payment if the provider:

(1) has been convicted of a:
(A) felony:
(i) related to the health or safety of a child;
(ii) that is a sex offense (as defined in IC 11-8-8-5.2);
(iii) that is a dangerous felony; or
(iv) that is not a felony otherwise described in items (i) through (iii), and less than ten (10) years have elapsed from the date the person was discharged from probation, imprisonment, or parole, whichever discharge date is latest;
(B) misdemeanor related to:
**(i)** the health or safety of a child; **or**
**(ii) welfare fraud;**
(C) misdemeanor for operating a child care center without a license under IC 12-17.2-4-35, or of a substantially similar offense committed in another jurisdiction if the offense is directly or indirectly related to jeopardizing the health or safety of a child; or
(D) misdemeanor for operating a child care home without a license under IC 12-17.2-5-35, or of a substantially similar offense committed in another jurisdiction if the offense is directly or indirectly related to jeopardizing the health or safety of a child;
(2) allows an individual who has been convicted of a crime specified under subdivision (1) to reside with the provider, if the provider operates a child care program in the provider's home;
(3) employs an individual or allows an individual to volunteer who:
(A) has direct contact with a child who is receiving child care from the provider; and
(B) has been convicted of a crime specified in subdivision (1);
**(4) has had a revocation of eligibility under this chapter during the immediately preceding two (2) years;** or
~~(4)~~ **(5)** fails to meet the requirements ~~set forth in sections 5 through 12.1~~ of this chapter.

**(b) A provider whose:**
**(1) license under IC 12-17.2-4 or IC 12-17.2-5; or**

**(2) compliance with this chapter;**

**is subject to an enforcement action is ineligible to receive a voucher payment, regardless of whether the provider meets the requirements of this chapter, until the outcome of any proceeding under IC 4-21.5 reflects a final determination that the provider's license or eligibility is in good standing.**

**(c) If the division decertifies a provider under this chapter, the provider:**

**(1) may reapply for eligibility to receive a voucher payment at any time that the provider is able to demonstrate compliance with this chapter; and**

**(2) is not eligible to receive a voucher payment under this chapter until the provider receives notice from the division that the provider's application under subdivision (1) has been approved.**

SECTION 9. IC 12-17.2-3.5-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.1. (a) This section applies to the following:

(1) A provider, if the provider is an individual.

(2) If a provider operates a child care program in the provider's home, an individual who resides with the provider and who is at least eighteen (18) years of age.

(3) An individual who:

(A) is employed; or

(B) volunteers;

~~as a caregiver~~ at the facility where a provider operates a child care program.

(b) If information used by the division under ~~IC 31-33-17-6(7)~~ **IC 31-33-26-16(a)(10) or obtained by the division under section 18 of this chapter** indicates that an individual described in subsection (a) has been named as ~~an alleged~~ **a** perpetrator, the following are ineligible to receive a voucher payment:

(1) The individual.

(2) A provider in whose home the individual resides if the provider operates a child care program in the provider's home.

(3) A provider that:

(A) employs the individual; or

(B) allows the individual to volunteer;

~~as a caregiver~~ at the facility where the provider operates a child care program.

SECTION 10. IC 12-17.2-3.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. **(a)** A provider shall have:

(1) working smoke detectors that meet the standards adopted by rule for smoke detectors in licensed child care homes; and

(2) hot and cold running water;

in the area of the facility where the provider operates a child care program.

**(b) A provider shall meet sanitation standards for bathrooms and handwashing, as established by the division.**

SECTION 11. IC 12-17.2-3.5-5.5, AS AMENDED BY

P.L.162-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.5. (a) A provider shall ensure that a child in the provider's care is continually supervised by a caregiver.

(b) A provider ~~who operates a child care program in the provider's home (including a child care home licensed under IC 12-17.2-5) and who receives a voucher payment under this chapter~~ **who cares for children who are less than twelve (12) months of age** shall:

**(1)** complete the training course provided or approved by the division under IC 12-17.2-2-1(10) concerning safe sleeping practices; **and**

**(2) ensure that all caregivers of children who are less than twelve (12) months of age follow safe sleeping practices.**

SECTION 12. IC 12-17.2-3.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. **(a)** A provider shall have written plans for notifying parents regarding the following:

(1) Illness, serious injury, or death of the provider.

(2) Care in an emergency.

(3) Emergency evacuation.

The plan required under subdivision (3) must be posted in a conspicuous location in the facility where the provider operates a child care program.

**(b) A provider shall:**

**(1) maintain a written child discipline policy;**

**(2) ensure that all employees and volunteers follow the child discipline policy;**

**(3) provide to the parent or legal guardian of each child cared for by the provider a written copy of the child discipline policy; and**

**(4) maintain in each child's file a copy of the child discipline policy that has been signed by the parent or legal guardian described in subdivision (3).**

**(c) A provider shall allow unscheduled visits by a parent or legal guardian to a facility where the provider operates a child care program during the hours the child care program is in operation.**

SECTION 13. IC 12-17.2-3.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) At least one (1) adult individual who maintains annual certification in a course of cardiopulmonary resuscitation applicable to all age groups of children cared for by a provider shall be present at all times when a child is in the care of the provider.

(b) **The following apply to** an individual who

~~(1)~~ is employed or

~~(2)~~ volunteers

as a caregiver at a facility where a provider operates a child care program:

**(1) The individual** shall maintain current certification in first aid applicable to all age groups of children cared for by the provider.

**(2) If the individual is:**

**(A) at least eighteen (18) years of age, the individual may act as a caregiver without supervision of another caregiver; or**

**(B) less than eighteen (18) years of age, the individual may act as a caregiver only if the individual:**

**(i) is at least fourteen (14) years of age; and**

**(ii) is, at all times when child care is provided, directly supervised by a caregiver who is at least eighteen (18) years of age.**

**(3) The provider must verify that an employee or a volunteer has received training concerning child abuse detection and prevention.**

**(4) Before beginning employment or volunteer duties, the individual must receive a formal orientation to the facility and the child care program.**

**(c) A provider shall:**

**(1) maintain at the facility where the provider operates a child care program documentation of all training required by this section; and**

**(2) make the documentation available to the division upon request.**

SECTION 14. IC 12-17.2-3.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. **(a)** A provider shall provide for a safe environment by ensuring that the following items are placed in areas that are inaccessible to the children in the provider's care:

(1) Firearms and ammunition.

(2) Poisons, chemicals, bleach, and cleaning materials.

**(3) Medications.**

**(b) A provider shall do the following with respect to transporting children away from the facility where the provider operates a child care program:**

**(1) Obtain written permission from the child's parent or legal guardian to transport the child.**

**(2) Ensure that the child is transported only by an employee or a volunteer who:**

**(A) is at least eighteen (18) years of age;**

**(B) holds a valid driver's license; and**

**(C) transports the child in a properly licensed and insured motor vehicle.**

SECTION 15. IC 12-17.2-3.5-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 16. A provider is ineligible, and the division may revoke for a period of not less than two (2) years from the date on which a final determination is made under IC 4-21.5 a provider's eligibility, to receive a voucher payment under this chapter for any of the following reasons:**

**(1) The provider is determined by the division to have made false statements in the provider's:**

**(A) application for eligibility to receive a voucher payment; or**

**(B) records required by the division;**

**under this chapter.**

**(2) Credible allegations of fraud have been made against the**

**provider, as determined by the division.**

**(3) Criminal charges of welfare fraud have been filed against the provider.**

**(4) Allegations of welfare fraud committed by the provider have been substantiated by the division.**

SECTION 16. IC 12-17.2-3.5-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 17. (a) A provider is ineligible to receive a voucher payment under this chapter if any of the following conditions exist, posing an imminent threat to the life or well-being of a child in the care of the provider at a facility where the provider operates a child care program:**

**(1) Building damage due to:**

**(A) earthquake;**

**(B) flooding or water damage;**

**(C) tornado;**

**(D) severe wind;**

**(E) ice storm;**

**(F) fire;**

**(G) lead contamination; or**

**(H) asbestos.**

**(2) Sewage problems as follows:**

**(A) Sewage backup.**

**(B) Toilets cannot be flushed or are overflowing.**

**(C) Sewage system is not operating properly.**

**(3) Inadequate or unsafe water supply as follows:**

**(A) Contaminated water supply.**

**(B) Water supply not functioning.**

**(4) No electricity in the building.**

**(5) Heating system problems.**

**(6) Gas, carbon monoxide, or other noxious gases leak.**

**(7) Filthy conditions.**

**(8) Rodent, roach, or vermin infestation.**

**(9) Building renovation occurring in a room or area occupied by children.**

**(10) Building condition that is structurally unsafe.**

**(11) Lack of supervision that results in the death or serious injury of a child.**

**(12) The presence at the facility where the provider operates a child care program of an individual who is, based on the results of a criminal history background check required by this chapter, prohibited under this chapter from being present at the facility.**

**(b) If an employee or agent of the division determines that a condition described in subsection (a) exists at a facility where a provider that is currently eligible to receive a voucher payment under this chapter operates a child care program, the division shall:**

**(1) issue an emergency or another temporary order under IC 4-21.5-4 decertifying the provider; and**

**(2) contact the parent or guardian of each child in the care of**

**the provider to inform the parent or guardian:**

**(A) that the division has issued an order decertifying the provider; and**

**(B) of the reason for the decertification;**

**pending the outcome of proceedings conducted under section 14 of this chapter. However, a provider's eligibility may be reinstated in accordance with subsection (e).**

**(c) An emergency or other temporary order issued by an employee or agent of the division must be approved by the director.**

**(d) An approval under subsection (c) may be communicated orally to the employee or agent issuing the order. However, the division shall maintain a written record of the approval.**

**(e) If, within the fifteen (15) day period beginning on the date on which an order is issued under subsection (b), the provider:**

**(1) submits to the division a remediation plan that is approved for implementation by the division; and**

**(2) completes the remediation plan to the satisfaction of the division;**

**the order issued under this section is void and the provider's eligibility to receive a voucher payment is reinstated.**

SECTION 17. IC 12-17.2-3.5-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 18. (a) Upon receiving notice of a claim of abuse or neglect in a facility where a provider operates a child care program, the department of child services shall:**

**(1) forward a copy of the notice to the division; and**

**(2) conduct an investigation of the claim.**

**(b) After an investigation under subsection (a), the department of child services shall make a determination of whether abuse or neglect occurred at the facility.**

**(c) If the department of child services makes a determination under IC 31-33-8-12 that abuse or neglect at the facility is substantiated, the department shall send a copy of the department's report to the appropriate office of the division.**

SECTION 18. [EFFECTIVE JULY 1, 2013] **(a) The committee on child care established by IC 12-17.2-3.3-2 shall, during the 2013 interim of the general assembly, study and make recommendations concerning due process for child care providers.**

**(b) This SECTION expires December 31, 2013.**

(Reference is to ESB 305 as reprinted April 11, 2013.)

# Conference Committee Report
**on**
# Engrossed Senate Bill 305

Signed by:

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|---|---|
| Senator Holdman<br>Chairperson | Representative Smith M |
| Senator Taylor | Representative Riecken |
| **Senate Conferees** | **House Conferees** |