

**BILL No. 31 of 2009**

*Wednesday 8<sup>th</sup> July, 2009*

PARLIAMENT OFFICE  
Public Buildings,  
Georgetown,  
Guyana.

8<sup>th</sup> July, 2009.

The following Bill which will be introduced in the National Assembly is published for general information.

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



**GUYANA**

**BILL No. 31 of 2009**

**CHILDCARE AND DEVELOPMENT SERVICES BILL 2009**

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**A BILL**

**Intituled**

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 -

- (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, to one or more children 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 welfare of children and social security;
- (h) "night care service" means a childcare service that is provided for the 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 or non-governmental organization 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 or a non-governmental organisation;
- (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.

No. 2 of 2009.  
No. 17 of 2009.

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 eight, 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 persons shall not be regarded as a caregiver, if the person -

- (a) is the parent or guardian;
- (b) has parental responsibility of 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) who is employed as a babysitter by two or more different employers while looking after any child wholly or mainly in the home of the employers.

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

- (a) a parent or guardian; or
- (b) a person who is not a parent or guardian but who has parental responsibility of the child; or
- (c) 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 he 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 him a licence, in the form as the Agency may determine, on an annual basis and impose on him any requirement under this Act.

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

(4) The Agency shall intimate the applicant 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 him, 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.

(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 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, he 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 by him, if it is satisfied otherwise, cancel his licence 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 that where circumstances exist which render it necessary for it to take immediate action in the best interest of any child or in public interest, it 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 who is provided childcare services by him.

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

Disqualification.

9. A person shall not be registered as caregiver or sponsor if he -
- (a) is, or at any time has been, 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 evidence of having received any training in early childhood care and development as determined by it 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 -
- (a) any children's home run by a voluntary residential care facility;
  - (b) any hospital;
  - (c) any children's home provided, equipped and maintained by the State or its agencies.

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 a suitable individual 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 him -
- (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 equipments 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 he 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 is subjected to -

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

Change of management.

16. Where there is a change of management of the premises of the childcare services, the licensee shall intimate 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 his 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 him to surrender his licence.

(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.

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 his name in the Register any time from the date of removal and the Agency may consider his application 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  
organization.

24. (1) On and from the date as may be appointed by the Minister, every voluntary organization 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.

Services  
provided by  
voluntary  
organization.

25. A voluntary organisation may provide services to a child by placing the child with -

- (a) a family;
- (b) a relative;
- (c) any other suitable person;
- (d) any residential care facility, on such terms as may be offered by the organisation.

Duties of  
voluntary  
organization.

26. (1) Where a child is accommodated by a voluntary organisation, it shall be the duty of the organization -

- (a) to safeguard and promote the welfare of the child; and
- (b) to make use of the services and facilities available to the child as appears to the organisation reasonable.

(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) 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  
organizations.

27. (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) promote the permanent placement of children at risk, including placement in foster homes and promote reunion with their families;
- (d) 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; or
  - (iii) a relative; 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 a person to furnish such records of a kind required to be kept by or under this Act in whatever form they are held, or allow him to inspect such records, as he may at any time direct.

(5) An authorised person exercising any power under this section may require any person to facilitate him 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**

Penalty for not complying with requirement under section 7.

28. A caregiver or a sponsor who fails to comply with any requirement under section 7 is liable on summary conviction to have his licence revoked.

Punishment for preventing authorizing person.

29. Any person who prevents or intentionally obstructs an authorised person referred to in section 14 or in section 27 (4) from discharging his duties commits an offence and is liable on summary conviction to a fine of fifty thousand dollars.

Penalty for employing disqualified persons.

30. 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.

31. Where a person fails to comply with any condition or contravenes of 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 twenty thousand dollars for the first offence and, in the case of every continuing offence of failure or contravention, to an additional fine of ten thousand dollars on every occasion.

General penalty.

32. Where a person fails to comply with any requirement or contravenes of 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 and, in the case of every continuing offence of failure or contravention, to an additional fine of ten thousand dollars on every occasion.

Prosecution.

33. Prosecution under this Act shall be initiated and conducted in a court of summary jurisdiction by a person authorised by the Agency.

Power to make regulations.

34. (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 manner which children are to be placed;
- (b) the conduct and management;
- (c) the methods of securing the welfare of the children;
- (d) the standards to which the premises used for childcare are to conform;

- (e) the requirements of accommodation, staff and equipment to be provided and to the arrangements to be made for protecting the health of children;
- (f) the control and discipline of children;
- (g) 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;
- (h) the limit on the number of children who may be accommodated;
- (i) the keeping of records and giving of notices with respect to children;
- (j) the disqualification of persons.

(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.

**EXPLANATORY MEMORANDUM**

This Bill seeks to provide for regulating childcare services in the country and for granting licences for childcare and development services.

**Clause 1** sets out the short title and the date of commencement of the Act.

**Clause 2** explains the words and expressions used in the Bill.

**Clause 3** provides for the power of Minister responsible for welfare of children and social security to specify childcare services from time to time.

**Clause 4** clarifies as to the person who is regarded as a caregiver under the Bill.

**Clause 5** provides for registration as caregiver or sponsor.

**Clause 6** provides for maintenance of the register of caregivers or sponsors.

**Clause 7** explains the requirements for registration and licence as a caregiver or sponsor.

**Clause 8** deals with the circumstances under which a licence may be cancelled or suspended.

**Clause 9** provides for disqualifications for a person not to be registered as a caregiver or sponsor.

**Clause 10** makes provision for requirement of training of caregiver or sponsor by the Agency.

**Clause 11** states that registration and any requirement for the same are not necessary in the case of childcare services provided by certain agencies.

**Clause 12** clarifies that only a suitable individual will be qualified to be registered as a caregiver or sponsor.

**Clause 13** stipulates that a caregiver or a sponsor has a duty to protect children from hazards.

**Clause 14** provides for powers to the Agency to inspect a premises, etc., where any child care service is being provided.

**Clause 15** requires that a caregiver or sponsor shall ensure that a child is not subjected to corporal punishment or any kind of abuse.



**Clause 16** provides that a licensee shall intimate the Agency within thirty days of any change in management of any premises where childcare service is offered.

**Clause 17** mandates that a licensee shall display a copy of licence at the place where childcare service is provided.

**Clause 18** gives power to the Agency to initiate disciplinary proceedings against a caregiver or sponsor in certain circumstances.

**Clause 19** provides for penalty on a caregiver or sponsor by the Agency if it is satisfied that in any proceedings under section 18, it is expedient and in the interests of any child to take action against him.

**Clause 20** gives power to the Agency to require a caregiver or sponsor to surrender his licence in the event of his name being removed from the Register.

**Clause 21** provides for restoration of licence of a caregiver or sponsor subject to the other provisions of the Bill.

**Clause 22** makes provision for appeal to the Minister by a caregiver or sponsor if he is aggrieved by any order or decision by the agency.

**Clause 23** gives power to the Minister to direct that an impugned order or decision of the Agency be suspended pending final decision on the appeal.

**Clause 24** provides that every voluntary organisation shall be registered with the Agency under the provisions of the Bill.

**Clause 25** lists out the manner by which a voluntary organisation may provide services to a child.

**Clause 26** provides for duties of a voluntary organisation.

**Clause 27** lists out the powers of the Agency with respect to a voluntary organisation.

**Clause 28** provides for penalty for not complying with the requirement of licence.

**Clause 29** provides for punishment for preventing authorised persons from discharging their duties under the Bill.

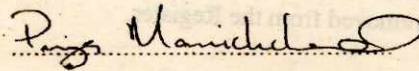
**Clause 30** provides for penalty for employing disqualified persons.

Clause 31 provides for penalty for failure to comply with provisions under Part VI of the Bill.

Clause 32 makes provision for general penalty against a person who fails to comply with any requirement or contravenes any provision of the Bill.

Clause 33 provides that a prosecution under the Bill shall be conducted by a person authorised by the Agency in a court of summary jurisdiction.

Clause 34 provides the Minister to make regulations for giving effect to and carrying out the provisions of the Bill.



Ms. Priya Manickchand, MP  
Hon. Minister of Human Services and Social Security.