



Analysis: A Critical Discrepancy in D.C. Family-based Child Care Regulations

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ISSUE

A regulation allowing up to six children in a “Child Development Home” (home-based day care site) conflicts with a previously enacted statute allowing only up to than five children being served in any one Child Development Home. Providers are not aware of the more restrictive statute, which has not, to our knowledge, been enforced. The revised OSSE licensing regulations (Chapter 29) are awaiting final approval before they are released publicly. These new regulations align with the statute by limiting to a maximum of five the number of children who may be cared for in a Child Development Home.

ANALYSIS

In the process of revising the Child Development Facilities Regulations, we have discovered an existing regulation that conflicts with a D.C. statute. The conflicting provisions relate to the maximum number of children that can be served by a “Child Development Home” (home-based child care sites). Under the existing Regulations, Title 29, Chapter 3, § 351.1, a Child Development Home can provide care for up to six (6) children. However, the Day Care Policy Act, codified at DC Code § 4-401 defines the term “Child Development Home” as “a private residence which provides a child development program for up to a total of 5 children” (not including the caregiver’s children over the age of six). Therefore there is a conflict between the regulation and the statute. Under basic principles of statutory construction, the statute takes precedence over the regulation, rendering the regulation unenforceable, and without legal effect.

IMPLICATIONS

The practical impact of this conflict is significant. There are differing views among the many stakeholders as to where to set the upper limit for Child Development Homes. While there is considerable community pressure to raise the capacity of homes to more than six children, many experts recommend enforcing the statutory limit of five. Regardless of what the maximum number should ultimately be, it would be counterproductive to immediately enforce the five-child limit, as it would result in many Homes (that had previously relied upon the regulation permitting service of up to six children) to simply release children from their care, leaving these children and their parents without day care. What is needed is an amendment to the statute to permit Child Development Homes currently serving six children to continue to do so for a transitional period of time.