

ergothérapeutes du Québec, to the roll of the Ordre professionnel de la physiothérapie du Québec and to the roll of the Ordre des podiatres du Québec.

The draft Regulation has no impact on the public and on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Pascale Simard, Direction des affaires juridiques, Office des professions du Québec, 800, place D'Youville, 10<sup>e</sup> étage, Québec (Québec) G1R 5Z3; telephone: 418 643-6912 or 1 800 643-6912; email: pascale.simard@opq.gouv.qc.ca.

Any person wishing to comment is requested to submit written comments within the 45-day period to Guylaine Couture, Secretary of the Office des professions du Québec, 800, place D'Youville, 10<sup>e</sup> étage, Québec (Québec) G1R 5Z3. Comments will be forwarded by the Office to the Minister of Justice and they may also be sent to interested persons, departments and bodies.

GUYLAINE COUTURE,  
*Secretary of the Office  
des professions du Québec*

## Regulation to amend the Regulation respecting the roll of professional orders

Professional Code  
(chapter C-26, s. 12, 4th par., subpar. 6, subpar. a)

**1.** The Regulation respecting the roll of professional orders (chapter C-26, r. 9) is amended by replacing section 3 by the following:

“**3.** The roll of the Ordre professionnel des chimistes du Québec contains, for each member, the year in which a professional inspection was conducted of the member.”.

**2.** The following is inserted after section 4.1:

“**4.2.** The roll of the Ordre professionnel des ergothérapeutes du Québec contains, for each member, the member’s number.”.

**3.** Section 7.1 is amended by striking out “email address and” in paragraph 1.

**4.** The following is inserted after section 8:

“**8.1.** The roll of the Ordre professionnel de la physiothérapie du Québec contains, for each member, the member’s number.”.

**8.2.** The roll of the Ordre professionnel des podiatres du Québec contains, for each member, the member’s number.”.

**5.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

103895

## Draft Regulation

An Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements  
(chapter R-24.0.1)

### Preventive withdrawal

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the preventive withdrawal of certain home childcare providers, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation establishes a preventive withdrawal plan for pregnant or breast-feeding recognized subsidized home childcare providers, administered by the Commission des normes, de l'équité, de la santé et de la sécurité du travail. To that end, the Commission is vested with all the powers, duties and immunities at its disposal concerning preventive reassignment, to the extent that they are consistent with the provisions of the Regulation respecting the preventive withdrawal of certain home childcare providers.

The draft Regulation sets eligibility criteria for preventive withdrawal and the procedure that must be followed by a home childcare provider who applies for it, a physician who authorizes it and a home childcare coordinating office that granted its recognition. The draft Regulation also contains parameters for setting the income replacement indemnity to which a home childcare provider is entitled, as well as the rules for the computation, payment and cessation of that indemnity.

The draft Regulation provides for a right to review, according to the nature of the decision rendered, before the Minister of Families or the Commission des normes, de l'équité, de la santé et de la sécurité du travail, as applicable. In addition, in certain cases, the draft Regulation provides for the right to contest a decision of the Commission before the Administrative Labour Tribunal.

The draft Regulation provides that the amount of the indemnities paid by the Commission des normes, de l'équité, de la santé et de la sécurité du travail under the Regulation is repaid by the Minister of Families.

The draft Regulation also provides that the plan administration costs are determined by agreement between the Minister of Families and the Commission des normes, de l'équité, de la santé et de la sécurité du travail and repaid by the Minister of Families.

Lastly, the draft Regulation contains transitional provisions.

The establishment of the preventive withdrawal plan involves a slight increase in administrative work for home childcare coordinating offices.

Further information may be obtained by contacting Odette Guirguis Boucher, Direction des politiques de main-d'oeuvre et des relations de travail, 600, rue Fullum, bureau 7.00, Montréal (Québec) H2K 4S7; telephone: 514 873-7200, extension 6701; email: odette.gboucher@mfa.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Carole Vézina, Assistant Deputy Minister, Direction générale des services de garde éducatifs à l'enfance, Ministère de la Famille, 425, rue Jacques-Parizeau, 4<sup>e</sup> étage, Québec (Québec) G1R 4Z1.

MATHIEU LACOMBE,  
*Minister of Families*

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## Regulation respecting the preventive withdrawal of certain home childcare providers

An Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements  
(chapter R-24.0.1, s. 58)

### CHAPTER I OBJECT

**1.** This Regulation establishes a preventive withdrawal plan for pregnant or breast-feeding home childcare providers covered by the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements (chapter R-24.0.1).

For the purposes of the administration of the plan, the Commission des normes, de l'équité, de la santé et de la sécurité du travail is vested with all the powers, duties and

immunities at its disposal concerning protective reassignment, to the extent that they are consistent with the provisions of this Regulation.

### CHAPTER II PREGNANT OR BREAST-FEEDING HOME CHILDCARE PROVIDER'S ELIGIBILITY FOR PREVENTIVE WITHDRAWAL

**2.** A home childcare provider is eligible for preventive withdrawal if

- (1) she is pregnant or breast-feeding;
- (2) she is medically fit to provide childcare; and

(3) her physician, after consultation with the public health director or the person designated by the director, and under the conditions provided for in sections 3 and 4, issued a certificate for her preventive withdrawal attesting that her working conditions may be physically dangerous to her unborn child, to the child she is breast-feeding, or to herself by reason of her pregnancy.

**3.** Before issuing a preventive withdrawal certificate, a physician must

(1) ensure that the eligibility conditions set out in paragraphs 1 and 2 of section 2 are met;

(2) send to the public health director or the person designated by the director of the region in which the residence where childcare is provided, for recommendations, his or her observations on the physical dangers to the unborn child, the child being breast-fed or the home childcare provider herself by reason of her pregnancy; and

(3) send to the public health director or the person designated by the director the information concerning the home childcare provider's pregnancy and the expected date of delivery.

**4.** For the purpose of determining whether there is physical danger to the home childcare provider, her unborn child or the child she is breast-feeding, the public health director or the person designated by the director may require from the home childcare provider or the home childcare coordinating office that granted its recognition any information relating to the childcare services.

**5.** The public health director or the person designated by the director assesses the physical dangers and sends his or her written recommendations to the physician, who decides whether or not to issue the preventive withdrawal certificate on the basis of the director's recommendation.

**6.** The preventive withdrawal certificate must comply with Schedule I to the Regulation respecting the certificate issued for the preventive withdrawal and re-assignment of a pregnant or breast-feeding worker (chapter S-2.1, r. 3). The copies it includes must be signed by the home childcare provider and dated and signed by the physician.

The physician keeps his or her copy and sends the public health director and the Commission the copies intended for them.

The physician gives the home childcare provider the copy intended for her, as well as the copy to be sent to the coordinating office. The coordinating office sends a copy to the Minister.

**7.** A home childcare provider who seeks preventive withdrawal must send the home childcare coordinating office that granted its recognition a copy of the preventive withdrawal certificate intended for it.

**8.** A home childcare provider notifies the parents of the children to whom childcare is provided and the coordinating office of the closing of her home childcare service and stops providing childcare as of the date of sending of the certificate to the coordinating office.

**9.** A home childcare provider who exercises her rights under section 2 retains all the benefits relating to her recognition.

Subject to section 15, preventive withdrawal does not confer on the home childcare provider rights or advantages she would not have had if she had continued to provide childcare.

**10.** On receipt of the certificate, the coordinating office must, without delay, begin the process to have the recognition suspended, in accordance with section 79 of the Educational Childcare Regulation (chapter S-4.1.1, r. 2). In addition, the coordinating office must send the Minister a copy of the certificate.

**11.** A home childcare provider who wishes to avail herself of the right to an income replacement indemnity must complete and sign the section reserved for that purpose on the calculation chart for establishing the income replacement indemnity to which a home childcare provider on preventive withdrawal is entitled. She must then send it to the coordinating office, along with the supporting documents, so that the coordinating office can determine the net average annual eligible income in accordance with sections 15, 16 and 17.

The Minister publishes the calculation chart for establishing the income replacement indemnity to which a home childcare provider on preventive withdrawal is entitled on the Internet.

**12.** On receipt of the calculation chart and supporting documents, the coordinating office completes it, signs it and sends it without delay to the Commission so that the Commission can establish the income replacement indemnity to which the home childcare provider is entitled. The coordinating office also sends copies to the Minister and the home childcare provider with a statement that the home childcare provider may apply to the Minister for a review of the decision within 10 days of receipt, in accordance with section 19.

**13.** The Commission renders a decision on the home childcare provider's eligibility for preventive withdrawal and rules on the date on which preventive withdrawal begins.

The decision of the Commission is rendered in writing and must give reasons. It is notified to the home childcare provider and the Minister, with a statement that they may apply to the Commission for a review of the decision within 10 days of notification. A copy of the decision is also sent to the coordinating office.

The decision takes effect immediately.

If the home childcare provider is eligible for preventive withdrawal, the Commission establishes the income replacement indemnity according to the calculation chart received.

### CHAPTER III INCOME REPLACEMENT INDEMNITY

#### DIVISION I COMPUTATION OF THE INDEMNITY

**14.** When on preventive withdrawal, for the first 19 days after the closing of her childcare service, the home childcare provider continues to receive the same subsidies she received the day before her medical certificate was issued.

If the Commission subsequently decides that the home childcare provider is not eligible and, consequently, is not entitled to the subsidies in the first paragraph, the Minister claims the overpayment and may take compensation from any other subsidy he or she may have to pay to the home childcare provider.

**15.** At the end of the 19-day period provided for in section 14, the home childcare provider is entitled to an income replacement indemnity equal to 90% of the weighted net

income computed in accordance with sections 16 and 17 and section 63 of the Act respecting industrial accidents and occupational diseases (chapter A-3.001).

For the purposes of the table of income replacement indemnities referred to in section 63 of the Act respecting industrial accidents and occupational diseases, the gross annual income for the purposes of indemnification is obtained on the basis of the net average annual eligible income, computed as determined in section 16.

Despite the foregoing, the net average annual eligible income cannot be less than \$26,420.

The amount is adjusted according to the increase, as a percentage, of the minimum wage on 1 May of each year.

**16.** The net average annual eligible income is computed on the basis of the calculation chart provided for in section 11. It is equal to the gross average annual eligible income as determined in section 17, from which the result of the computation of business expenses related to subsidized childcare operations is deducted.

The total amount of business expenses eligible for the purposes of the first paragraph is obtained by multiplying the gross average annual eligible income by the percentage obtained by applying the following formula:

$$(A-B) / A \times 100$$

For the purposes of the formula in the second paragraph,

(1) A is the gross income related to subsidized childcare operations declared on line 12 of Schedule L to the Québec fiscal return referred to in section 1000 of the Taxation Act (chapter I-3) or on line 130 of form TP-80-V;

(2) B is the net income related to subsidized childcare operations declared on line 22 of Schedule L to the Québec fiscal return or on line 264 of form TP-80-V;

Home childcare providers who can refer to their Québec fiscal return for the last taxation year preceding the current year must provide the coordinating office with Schedule L or form TP-80-V of the return. Home childcare providers who cannot refer to it because it has yet to be filed must refer to their Québec fiscal return corresponding to the second year preceding the current year.

In either case, if home childcare providers cannot determine their income related to childcare operations on the basis of the data in the Québec fiscal return, they must provide the coordinating office with Schedule L to the

Québec fiscal return established in accordance with form TP-80-V. Form TP-80-V must present an estimate of the home childcare provider's business expenses related to subsidized childcare operations on the date of the closing of the home childcare service.

**17.** The average gross annual income related to subsidized childcare operations is obtained by adding together all the subsidies paid to the home childcare provider under the Educational Childcare Act (chapter S-4.1.1) for the 26 periods of childcare preceding the date of issue of the medical certificate and the total basic contributions paid by the parents, in accordance with the Reduced Contribution Regulation (chapter S-4.1.1, r. 1) for the same periods.

If the home childcare provider has received subsidies for less than 26 periods of childcare, the average gross annual income provided for in the first paragraph is obtained by projecting the amount of the subsidies and the corresponding basic parental contributions over 26 periods.

**18.** Despite any other provision of this Regulation, the net average annual eligible income cannot exceed the Maximum Yearly Insurable Earnings established under section 66 of the Act respecting industrial accidents and occupational diseases.

## DIVISION II REVIEW OF THE COMPUTATION OF THE NET AVERAGE ANNUAL ELIGIBLE INCOME

**19.** A home childcare provider may apply to the Minister to review the net average annual eligible income established by the coordinating office, in accordance with section 11.

The application must be made in writing within 10 days of the date of receipt of the copy of the calculation chart, and it must set out the reasons why the amount withheld is incorrect. The application is processed without delay.

The Minister sends his or her written decision, with reasons, to the home childcare provider, the coordinating office and the Commission.

That decision cannot be appealed.

**20.** If the net average annual eligible income is reviewed, the Commission recomputes the indemnity accordingly and adjusts it retroactively. The Commission so informs the home childcare provider and the Minister. The new income is not subject to review by the Commission.

### DIVISION III PAYMENT OF THE INDEMNITY

**21.** The indemnity is paid as benefits every other week. It is unassignable and nontaxable. Up to 50% of the indemnity is seizable for alimentary debts. It is subject to the deductions in section 144 of the Act respecting industrial accidents and occupational diseases.

**22.** The income replacement indemnity of the pregnant or breast-feeding home childcare provider cannot be concomitant with the payment of any other indemnity granted to compensate the loss of income related to childcare or any other protective reassignment plan from which she may benefit.

### DIVISION IV CESSATION OF THE INDEMNITY

**23.** If the pregnant home childcare provider is eligible for benefits under the Act respecting parental insurance (chapter A-29.011), her income replacement indemnity ceases as of the fourth week preceding the week of the expected date of delivery as stated in the certificate. The home childcare provider is presumed to be eligible for those benefits from that fourth week.

Subject to the first paragraph, the indemnity ceases on the date of delivery.

“Delivery” means the natural or the lawfully, medically induced end of a pregnancy by childbirth, whether or not the child is viable.

**24.** The expected date of delivery may be changed if the Commission and the coordinating office are informed by the home childcare provider of a new expected date of delivery, as confirmed by the home childcare provider’s physician, not later than 4 weeks before the date stated in the certificate.

The Commission then renders a written decision, with reasons. It is notified to the home childcare provider and the Minister with a statement that they have a right to apply to the Commission for a review of the decision within 30 days of notification.

The decision takes effect immediately.

**25.** The income replacement indemnity of the breast-feeding home childcare provider ceases when the breast-feeding period ends.

**26.** The income replacement indemnity of the pregnant or breast-feeding home childcare provider also ceases, subject to section 29, on the date of resumption of her childcare operations.

**27.** The home childcare provider must notify the Commission and the coordinating office in writing, without delay, of any change affecting her situation and which may affect her entitlement to an indemnity or the amount of the benefits she receives.

The Commission may cease the indemnity or adjust the amount of the benefits, as applicable.

**28.** The coordinating office must notify the Commission and the Minister in writing, without delay, of any change affecting the recognition of the home childcare provider during her preventive withdrawal.

**29.** The income replacement indemnity ceases if the home childcare provider’s recognition is suspended for a reason other than her protective reassignment or is revoked, or if she becomes unfit to exercise or resume her functions.

In all cases, the indemnity ceases as of the date of suspension or revocation of the recognition, or when the home childcare provider becomes unfit.

**30.** A home childcare provider who has received an indemnity to which she was not entitled or that was in excess of the amount to which she was entitled must repay the overpayment to the Commission.

**31.** Subject to the second paragraph of section 14, sections 430 to 436 of the Act respecting industrial accidents and occupational diseases relating to the recovery of benefits paid without entitlement or the amount of which exceeds that to which a person is entitled, apply to the recovery of the debt, with the necessary modifications.

With the agreement of the Minister and in accordance with section 437 of the Act respecting industrial accidents and occupational diseases, the Commission may remit the debt.

### CHAPTER IV RESUMPTION OF CHILDCARE OPERATIONS

**32.** The home childcare provider must notify the coordinating office in writing of the date of her return or of her intention to avail herself of another condition provided for in section 79 of the Educational Childcare Regulation. On receipt of the notice, the coordinating office undertakes the measures provided for in section 80 of the Regulation.

## CHAPTER V PROCEEDINGS BEFORE THE COMMISSION AND THE ADMINISTRATIVE LABOUR TRIBUNAL

### DIVISION I REVIEW AND RECONSIDERATION OF THE DECISION BY THE COMMISSION

**33.** The Minister or the home childcare provider who believes she has been wronged by a decision rendered by the Commission under this Regulation may ask the Commission to review its decision, except in the case of a refusal to reconsider a decision provided for in section 34.

The application for a review must briefly set forth the grounds on which it is based and be made in writing within 30 days of notification of the contested decision, unless it is a decision pertaining to the home childcare provider's eligibility for preventive withdrawal, in which case the time limit is 10 days.

After giving the parties an opportunity to present observations, the Commission makes a decision on the basis of the record; it may confirm, quash or amend the decision and, if appropriate, make the decision that should, in its opinion, have been made initially.

A decision of the Commission must be in writing, give the reasons on which it is based, be notified to the parties, and state their right to contest the decision before the Administrative Labour Tribunal and the time limit for doing so.

**34.** In order to correct any error, the Commission may, within 90 days, reconsider a decision it has rendered if the decision has not been the subject of a decision rendered pursuant to section 33.

If a decision of the Commission was rendered before an essential fact became known, it may, of its own initiative or at the request of a party, reconsider the decision within 90 days of the fact becoming known.

Similarly, in order to correct any error it may have made in establishing a computation necessary for the purposes of this Regulation, the Commission may, of its own initiative or at the request of a party, redo the computation within 90 days of the error becoming known.

Before reconsidering a decision or a computation, under this section, the Commission so informs the home childcare provider and the Minister.

### DIVISION II CONTESTATION OF THE COMMISSION'S DECISION BEFORE THE ADMINISTRATIVE LABOUR TRIBUNAL

**35.** A party who believes he or she has been wronged by a decision rendered by the Commission under section 33 may, within 45 days of notification, contest the decision before the Administrative Labour Tribunal, unless it is a decision pertaining to the home childcare provider's eligibility for preventive withdrawal, in which case the time limit is 10 days from notification.

Such cases are heard and decided by the occupational health and safety division, in accordance with the Act to establish the Administrative Labour Tribunal (chapter T-15.1).

### CHAPTER VI FINAL AND TRANSITIONAL

**36.** The Minister of Families repays to the Commission des normes, de l'équité, de la santé et de la sécurité du travail the amount of indemnities paid under this Regulation. The Commission repays to the Minister any amount recovered under this Regulation. To that end, the Commission provides, according to terms defined by agreement, the information required for the reconciliation of the amounts paid or recovered as indemnities.

The costs relating to the administration of the home childcare provider's preventive withdrawal plan, including the costs relating to the recovery of indemnities and the adaptation of the Commission's technological infrastructures used exclusively for the execution of this Regulation, are determined by agreement between the Minister and the Commission and are repaid by the Minister.

**37.** In order to avail herself of preventive withdrawal, a home childcare provider whose home childcare service was closed before (*insert the date of coming into force of this Regulation*) is subject to sections 40 to 48 of the Act respecting occupational health and safety until the end of her preventive withdrawal.

**38.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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