

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 139 Child Care Facilities

SPONSOR(S): Health & Human Services Committee; Health & Human Services Access Subcommittee; Ahern

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee	14 Y, 0 N	Billmeier	Bond
3) Health & Human Services Committee	15 Y, 0 N, As CS	Batchelor	Gormley

SUMMARY ANALYSIS

Current law provides for minimum standards for the care and protection of children in child care facilities. This bill creates a definition for household children and requires that certain household children be included in the capacity calculation of licensed family day care homes and large family child care homes. Specifically, this bill defines household children to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The definition also leaves supervision of the operator's household children to the discretion of the operator unless those children receive subsidized child care to be in the home. This bill provides that household children under the age of 13 be included in the overall capacity of the licensed home when on the premises of a family day care home, large family child care home or on a field trip with children enrolled in child care.

The bill amends s. 402.481, F.S., to allow a Gold Seal provider to correct any Class III violations for which it is cited within one year from the date of the violation before losing its Gold Seal designation or becoming ineligible for the designation.

The bill provides a definition for "usable floor space" The definition provides that the total available floor space refers to a facility as a whole and that when calculating usable floor space for each child under s. 402.306, F.S., the total available floor space of the facility, not of each room, shall be used.

This bill also requires persons advertising or publishing an advertisement for a child care facility, family day care home, or large family child care home to include in the advertisement the state or local agency license number or registration number of such facility or home.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Licensing

The Department of Children and Family Services (DCF) licenses child care facilities based on licensing standards established in statute and rule.¹ However, current law permits any county with local licensing standards that meet or exceed the state minimum standards to either designate a local licensing agency to license child care facilities or contract with DCF to administer the state minimum standards in the county.² Currently, DCF is responsible for administering child care licensing and training in 61 of Florida's 67 counties. The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) have licensing standards that exceed the state's minimum licensing standards for family day care homes.³ These counties license family day care homes as a function of county government.

Family Day Care Homes

A family day care home is, "an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit."⁴ Care can be provided for one of the following groups of children, including children under the age of 13 who are related to the caregiver:

- A maximum of four children from birth to 12 months;
- A maximum of three children from birth to 12 months, and other children over the age of 12 months, up to a total of six children;
- A maximum of six preschool children if all are older than 12 months;
- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months.⁵

Current law requires family day care homes have either a license or registration. The home must have a license if it is presently being licensed under an existing county ordinance, participating in the subsidized child care program, or if the county passes a resolution requiring licensure.⁶ If not subject to license, then the family day care home shall register annually with DCF and receive a registration number.⁷

Large Family Child Care Home

A large family child care home is an occupied residence in which child care is provided for children from at least two unrelated families for a payment, fee, or grant for any of the children receiving care, whether or not operated for profit; and which has at least two full-time child care personnel.⁸ Before seeking licensure, large family child care homes must first have operated for a minimum of 2 consecutive years, with an operator who has had a child development associate credential or its

¹ Section 402.305(1), F.S.

² Section 402.306(1), F.S.

³ Staff Analysis HB 411(2010), Florida House of Representatives

⁴ Section 402.302(8), F.S.

⁵ Section 402.302(8), F.S.

⁶ Section 402.313(1), F.S.

⁷ Section 402.313(1)(a), F.S.

⁸ Section 402.302(9), F.S.

equivalent for 1 year.⁹ Care can be provided to one of the following groups, which includes those children under 13 years of age who are related to the caregiver:

- A maximum of 8 children from birth to 24 months;
- A maximum of 12 children, with no more than 4 children under 24 months.¹⁰

Large family day care homes are required to be licensed and are subject to minimum standards established by rule.¹¹ DCF is permitted to provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.¹²

Supervision

DCF has promulgated administrative rules related to supervision of children and staffing requirements.¹³ These rules apply to all children in the home including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping.¹⁴ When children are napping or sleeping in bedrooms, the rules require that the room's doors must remain open.¹⁵ All children, during the daytime, must have adult supervision consisting of watching and directing their activities, both indoors and outdoors.¹⁶ If a child is sick and placed in isolation, he or she must remain within sight and hearing of the operator.¹⁷ Additionally, children being diapered or when changing clothes must be attended to at all times.¹⁸

Usable Floor Space

Section 402.305, F.S. provides specifications regarding the square footage of facility space at child care facilities. Current square footage requirements for a facility that holds a valid license on October 1, 1992, must have a minimum of 20 square feet of usable indoor floor space for each child and a minimum of 45 square feet of usable outdoor play area for each child.¹⁹ Facilities that were not licensed on October 1, 1992, must have a minimum of 35 square feet of usable indoor floor space for each child and a minimum of 45 square feet of usable outdoor play area for each child.²⁰

Current statute provides that DCF shall establish minimum standards by rule. DCF has established rules, 65C-22.002, F.A.C., provides that in addition to the requirements specified in statute, each room in a facility that is routinely occupied by children must also adhere to a minimum of 20 square feet or 35 square feet per child at all times.

Gold Seal Quality Care Designation

The Gold Seal Quality Care Program was created in 1996 to acknowledge child care facilities, large family child care homes, and family day care homes that are accredited by nationally recognized agencies approved by DCF and whose standards reflect quality in the level of care and supervision provided to children.²¹ Providers with a Gold Seal designation that provide early learning services

⁹ Section 402.302(9), F.S., Rule 65C-20.013(1)(a), F.A.C.

¹⁰ Section 402.302(9), F.S.

¹¹ Sections 402.3131(1),(7), F.S.

¹² Section 402.3131(1)(b), F.S.

¹³ Rule 65C-20.009, F.A.C.

¹⁴ Rule 65C-20.009(5)(a), F.A.C.

¹⁵ *Id*

¹⁶ *Id*

¹⁷ Rule 65C-20.009(5)(b), F.A.C.

¹⁸ Rule 65C-20.009(5)(c), F.A.C.

¹⁹ s. 402.305(6)(a), F.S.

²⁰ s. 402.305(6)(b)

²¹ s. 402.281, F.S.

receive a higher reimbursement rate per child and receive property tax incentives through the Department of Revenue or county tax appraiser.²²

In order to obtain and maintain a designation as a Gold Seal provider, a child care facility, large family child care home, or family day care home must meet certain criteria, including:²³

- The provider must not have had any Class I violations, as defined by rule, within the two years preceding its application for designation. Citation for a Class I violation is grounds for termination of the designation until the provider has not had any Class I violations for two years.
- The provider must not have had three or more Class II violations, as defined by rule, within the two years preceding its application for designation. Citation for three or more Class II violations within a two-year period is grounds for termination of the designation until the provider has not had any Class II violations for one year.
- The provider must not have been cited for the same Class III violation, as defined by rule, three or more times within the two years preceding its application for designation. Citation for the same Class III violation three or more times during a two-year period is grounds for termination of the designation until the provider has not had any Class III violations for one year.

Advertisement

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility.²⁴ Failure to do so is a misdemeanor of the first degree.²⁵ This advertisement requirement does not address whether registered family day care homes have to list their DCF-issued registration number in an advertisement. Therefore under current law, registered family day care homes are not required to list their registration number in advertisements.

Financial Assistance for Childcare through School Readiness Program

The School Readiness program administered by the Agency for Workforce Innovation (AWI) provides at risk or low income families with financial assistance for child care through a variety of services.²⁶ This program is sometimes referred to as subsidized child care.

Effect of Proposed Changes

This bill creates the definition, “household children,” to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The effect of this definition will increase the number of children considered to be part of the child care home. Current law only includes children under 13 years of age who are related to the caregiver. This definition counts children who may be related to the care-giving operator as well as to an adult household resident who is not the caregiver, such as a temporary or permanent resident.

The definition also conditions supervision of the operator’s household children to the discretion of the operator unless those children receive subsidized care to be in the home. In effect, the law will require DCF inspectors to distinguish between an operator’s household children, and other children in the home when applying rules for supervision related to the child care program.²⁷

This bill also amends the definitions for both “family day care home” and “large family child care home” to clarify that “household children” are included in the calculations to determine the maximum number of children that can receive care.

²² See Fla. Dep’t of Children and Families, *Gold Seal Quality Care*, <http://www.dcf.state.fl.us/programs/childcare/goldseal.shtml>

²³ s 402.281(4), F.S.

²⁴ Section 402.318, F.S.

²⁵ *Id*

²⁶ Section 411.0101, F.S.

²⁷ Rule 65C-20.009(5), F.A.C.

Additionally, the bill provides that the household children be included in the overall capacity of the licensed home when they are on the premises or on a field trip with children enrolled in licensed care. The effect of this change will ensure that the capacity is adjusted if household children are not either on the premises or participating in a fieldtrip.

The bill provides that amends a Gold Seal provider is able to correct any Class III violations for which it is cited within one year from the date of the violation before losing its Gold Seal designation or becoming ineligible for such designation.

The bill provides a definition for "usable floor space" The definition provides that the total available floor space refers to a facility as a whole and that when calculating usable floor space for each child under s. 402.306, F.S., the total available floor space of the facility, not of each room, shall be used. In effect, DCF will be required to consider the facilities square footage in its entirety when calculating floor space for children, as opposed to calculating floor space in each room.

The bill amends advertising requirements in s. 402.318, F.S., to include family day care homes and large family child care homes. It also requires registered family day care homes or large family child care homes to include their registration numbers in advertisements. Violation of these advertising requirements is a misdemeanor of the first degree.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.281, F.S., relating to the Gold Seal Quality Care Program

Section 2: Amends s. 402.302, F.S., relating to definitions.

Section 3: Amends s. 402.318 F.S., relating to advertisement.

Section 4: Amends s. 411.01, F.S., relating to School readiness programs; early learning coalitions.

Section 5: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2011, the Health & Human Services Access Subcommittee adopted two amendments to House Bill 139.

The first amendment specifies subsidized child care to mean the School Readiness Program.

The second amendment removes provisions that an individual or a local licensing agency has a cause of action against an unlicensed or unregistered individual who falsely advertises. It also removes provisions that would allow the prevailing party in a suit to reasonable attorney's fees and costs incurred in connection with a claim filed under this section.

This bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

On April 20, 2011, the Health and Human Services Committee adopted two amendments to CS/HB 139.

The first amendment amends s. 402.281, F.S., to allow a Gold Seal provider to correct any Class III violations for which is it cited within one year from the date of the violation before losing its Gold Seal designation or becoming ineligible for such designation.

The second amendment amends s. 402.302, F.S., providing a definition for the term "usable floor space." The definition provides that when DCF is calculating total available floor space, the facility floor space as a whole, as opposed to the floor space of each room, shall be used to determine usable floor space for children.

This bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.