

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 411

Child Care Facilities

SPONSOR(S): Nehr

TIED BILLS:

IDEN./SIM. BILLS: SB 834

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee		Schoonover	Schoolfield
2)	Health Care Appropriations Committee			
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 411 amends ch. 402, F.S., to create a definition for household children and also require that certain household children be included in the capacity calculation of licensed family day care homes and large family child care homes. Specifically, the bill defines household children to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, an adult household member who meets the level 2 screening requirement as provided in s. 435.04, F.S. The definition also conditions 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. The bill provides that household children, under the age of 13, be included in the overall capacity of the licensed home, whether 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 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 the state or local agency license number of such facility home. Additionally, the bill will require the Department of Children and Family Services or local licensing agencies to report violations of the advertising requirements to the state attorney's office.

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

The bill becomes effective on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

##### *Licensing*

The Department of Children and Family Services (DCF) establishes licensing standards that each licensed child care facility in the state must meet.<sup>1</sup> However, current law permits that any county, with licensing standards that meet or exceed the state minimum standards, may designate a local licensing agency to license child care facilities in the county or contract with DCF to delegate the administration of the state minimum standards in the county to the Department.<sup>2</sup> 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.<sup>3</sup> These counties license family day care homes as a function of the county.

##### *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 it is operated for profit.<sup>4</sup> Care can be provided for one of the following groups of children, including children under the age of 13:

- A maximum of four children from birth to 12 months old;
- A maximum of three children from birth to 12 month old, and other children for a maximum total of six children;
- A maximum of 10 children if all are older than 12 months old;

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<sup>1</sup> s. 402.305(1), F.S.

<sup>2</sup> s. 402.306(1), F.S.

<sup>3</sup> "Child Care Services Placement Options for Legislative Consideration," Office of Program Policy Analysis and Government Accountability, Research Memorandum. December 30, 2009. (email received by: Kerry Schoolfield, Staff Director)

<sup>4</sup> s. 402.302(7), F.S.

- A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.<sup>5</sup>

Current law requires family day care homes to either have 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 that family day care homes be licensed.<sup>6</sup> If not subject to license, then the family day care home shall register annually with DCF, and receive a registration number.<sup>7</sup>

### *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 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. Additionally, 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 equivalent for 1 year. 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 old;
- A maximum of 12 children, with no more than 4 children under 24 months old.<sup>8</sup>

Large family day care homes are required to be licensed by DCF and subject to standards established by rule.<sup>9,10</sup> DCF is permitted to provide technical assistance to counties to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.<sup>11</sup>

### *Background Screening*

Personnel of both family day care homes and large family child care homes shall be subject to level 2 screening and other screening requirements established by law.<sup>12</sup> Screening includes any member over the age of 12 years of a family day care home operator's family, or persons over the age of 12 years residing with the operator in the family day care home. Family members or persons residing with the operator, who are between the ages of 12 and 18 years are not required to be fingerprinted but shall be screened for delinquency records.<sup>13</sup>

### *Supervision*

DCF has promulgated administrative rules related to supervision of children and staffing requirements. 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.<sup>14</sup> Further, while children are napping or sleeping in bedrooms, the room's doors must remain open.<sup>15</sup> All children, during the daytime, must have adult supervision consisting of watching and directing their activities, both indoors and outdoors.<sup>16</sup> If a child is sick and placed in

<sup>5</sup> Id.

<sup>6</sup> s. 402.313(1), F.S.

<sup>7</sup> s. 402.313(1)(a), F.S.

<sup>8</sup> s. 402.302(8), F.S.

<sup>9</sup> s. 402.3131(1), F.S.

<sup>10</sup> s. 402.3131(7), F.S.

<sup>11</sup> s. 402.3131(1)(b), F.S.

<sup>12</sup> s. 402.313(3), F.S.

<sup>13</sup> s. 402.313(3), F.S.

<sup>14</sup> 65C-20.009(5)(a), F.A.C.

<sup>15</sup> Id.

<sup>16</sup> Id.

isolation, he or she must remain within sight and hearing of the operator.<sup>17</sup> Additionally, children being diapered or when changing clothes must be attended to at all times.<sup>18</sup>

### *Advertisement*

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility. Failure to do so is a misdemeanor of the first degree.<sup>19</sup> 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.

### **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, an adult household member who meets the level 2 screening requirements as provided in s. 435.04, F.S. The effect of this definition will broaden the extent of children that will be included as part of the child care home. Current law only includes children under 13 years of age who are related to the caregiver. This definition will include children not only related to the caregiver but also related to an adult household member who is not the caregiver. The definition also conditions 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. The effect of this change will not allow DCF inspectors to restrict an operator’s supervision of their household children and hold the parents to the same supervision standards for the other children enrolled in child care.<sup>20</sup>

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 numbers of children that can receive care. While current law includes children under 13 years of age that are related to the caregiver in determining the amount of children that can be cared for, the use of “household children” will provide more clarification and direction as to what is considered for calculation purposes. As previously mentioned the term is broader and will include children related by blood, marriage, or legal adoption, or who are the legal wards of an adult household member. Therefore, this change will ensure that calculations of household size include not just the children under 13 years of age who are related only to the operator, but also those children who are related to any adult household guest over the age of 13, such as an adult household guest on vacation with his or her children. Additionally, the bill provides that the household children be included in the overall capacity of the licensed home regardless if 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 not adjusted if household children are not on the premises or participating in a fieldtrip.

The bill amends advertising requirements in s. 402.318, F.S. to include family day care homes and large family child care homes. Further, the bill also amends the requirements so that they also apply to publications. Additionally the bill requires DCF or local licensing agencies to report violations of the advertising and publications requirements to the state attorney’s office. The effect of this change will protect the consumers from fraudulent child care advertisements and publications. The change will also likely require DCF staff to take on additional workload by having to check advertisements and publications for fraud and to forward such activity to the state attorney’s office.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 402.302, relating to definitions.

Section 2. Amends s. 402.318, relating to advertisement.

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<sup>17</sup> 65C-20.009(5)(b), F.A.C.

<sup>18</sup> 65C-20.009(5)(c), F.A.C.

<sup>19</sup> s. 402.318, F.S.

<sup>20</sup> 65C-20.009(5), F.A.C.

Section 3. Provides an effective date of July 1, 2010.

## 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:

This 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:

Lines 114-116 refer to children who are the legal wards of an adult household member who meets level 2 screening requirements as provided in s. 435.04, F.S. The level 2 screening language in the definition provides confusion since all members of family day care homes and large family child care homes over the age of 13 must complete level 2 screening, pursuant to s. 402.313, F.S. The apparent intent of including the screening requirement in the definition is to ensure that the definition includes any children who are the legal wards of any adult member in the child care home, whether permanent or temporary.

Amending these lines to state that household children include those who are the legal wards of the family day care home or large family child care home operator, or any adult household member would clarify the definition's intent.

Line 191 needs to also require registration numbers since a family day care home may be registered instead of licensed by the Department.

Lines 191 to 194 require DCF to report violations to the State Attorney's office. This could create a workload increase for DCF in this mandate. Further, it is also unclear whether DCF will be required to monitor common advertising and publishing venues for fraudulent activity.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**