

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Judiciary Committee

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**BILL:** CS/CS/SB 364

**INTRODUCER:** Commerce and Tourism Committee, Children, Families, and Elder Affairs Committee, and Senator Latvala

**SUBJECT:** Child Care Facilities

**DATE:** April 11, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	<b>Fav/CS</b>
2.	Hrdlicka	Cooper	CM	<b>Fav/CS</b>
3.	O'Connor	Maclure	JU	<b>Pre-meeting</b>
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill creates a definition for “household children” in ch. 402, F.S., providing that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care to be in the home. The bill also amends the definitions of “family day care home” and “large family child care home” to require that household children be included in the capacity calculation of those homes when the child is on the premises of the home or on a field trip with children enrolled in child care.

The bill expands the requirements for advertising by prohibiting a person from advertising (or publishing an advertisement) for a child care facility, family day care home, or large family child care home without including the license or registration number of the facility or home.

The bill allows 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 adds requirements for providers that meet a religious exemption to display a certificate of compliance issued by an accrediting agency, and requires the accrediting agency to meet minimum health, safety, and sanitation standards of the Department of Children and Families. An accrediting agency may not own, operate, or administer a child care program that the agency accredits, including a program owned or operated by relatives. However, these changes do not authorize the Department of Children and Families to regulate these religious-exempt providers in any other area.

This bill amends the following sections of the Florida Statutes: 402.281, 402.302, 402.316, 402.318, and 411.01.

## II. Present Situation:

### Child Care Facilities

#### *Licensing of Child Care Facilities*

Child care facilities in the state must meet licensing standards that are established by the Department of Children and Family Services (DCF).<sup>1</sup> Current law permits a county that meets or exceeds the state's minimum licensing requirements to designate a local agency to license child care facilities. If the county does not wish to administer its own child care licensing program, it can contract with DCF to delegate administration of the standards to the department.<sup>2</sup> Currently, DCF is responsible for administering child care licensing in 61 of Florida's 67 counties.<sup>3</sup> The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) administer their own inspections and licensure of child care facilities.<sup>4</sup>

#### *Family Day Care Homes*

Florida law defines a family day care home as "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."<sup>5</sup> A family day care home is allowed to provide care for one of the following groups of children:

- A maximum of four children from birth to 12 months of age.
- A maximum of three children from birth to 12 months of age, and other children, for a total of six children.
- A maximum of six preschool children if all of them are older than 12 months of age.
- 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 of age.<sup>6</sup>

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

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

<sup>3</sup> Fla. Dep't of Children and Families, *Child Care Regulation, Licensing Information*, <http://www.dcf.state.fl.us/programs/childcare/licensing.shtml> (last visited 4/7/2011).

<sup>4</sup> *Id.*

<sup>5</sup> Section 402.302(8), F.S.

<sup>6</sup> *Id.*

The above groups include children under 13 years of age who are related to the caregiver. However, these numbers do not include children under the age of 13 who reside in the caregiver's home but are not related to the caregiver.

Current law requires a family day care home to either have a license or be registered. A family day care home is required to be licensed if they are presently licensed under a county license ordinance or if the board of county commissioners passes a resolution that family day care homes are to be licensed.

If a family day care home is not subject to licensure by the county, then it must register annually with DCF. In order to register, the home must submit the following information:

- The name and address of the home.
- The name of the operator.
- The number of children served.
- Proof of a written plan to provide at least one other competent adult to be available in place of the operator in an emergency.
- Proof of screening and background checks.
- Proof of successful completion of the 30-hour training course.
- Proof that immunization records are kept current.
- Proof of completion of the required continuing education units or clock hours.<sup>7</sup>

### ***Large Family Child Care Homes***

A large family child care home is similar in definition to a family day care home, except that a large family child care home has at least two full-time child care personnel on the premises during the hours of operation.<sup>8</sup> One of these persons must be the owner or occupant of the residence. In order to become a large family child care home, the home must have first operated as a licensed family day care home for two years and the operator must have a child development associate credential, or its equivalent, for one year.<sup>9</sup> A large family child care home may provide care for one of the following groups of children, which includes children under the age of 13 who are related to the caregiver:

- A maximum of eight children from birth to 24 months of age.
- A maximum of 12 children, with no more than four children under 24 months of age.<sup>10</sup>

However, these numbers do not include children under the age of 13 who reside in the caregiver's home but are not related to the caregiver.

The Department of Children and Family Services (DCF) establishes by rule minimum standards for large family child care homes, which include requirements for staffing, maintenance of

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

<sup>8</sup> Section 402.302(9), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

immunization records, minimum health standards, minimum safety standards, minimum square footage, and enforcement of these standards.<sup>11</sup>

### ***Exempt Providers – Religious Providers***

Under s. 402.316, F.S., certain facilities are exempt from most of the licensing provisions of ch. 402, F.S. These facilities are those that “an integral part of church or parochial schools conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization which publishes and requires compliance with its standards for health, safety, and sanitation.” The facilities are required to meet the minimum requirements of the applicable local governing body as to health, sanitation, and safety and the personnel screening requirements in ch. 402, F.S. Failure by the facility to meet the screening requirements could cause it to lose its exemption from licensure.

### ***Supervision***

The Department of Children and Family Services (DCF) has promulgated administrative rules related to the supervision of children and staffing requirements for family day cares and large family child care homes. 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. If the child is sleeping in a bedroom, the bedroom’s door must remain open. During hours of operation, all children must have adult supervision, consisting of watching and directing their activities both indoors and outdoors. If a child is sick and placed in isolation, the child must remain within eyesight and hearing of the operator. Finally, children must be attended when being diapered or when changing clothes.<sup>12</sup>

### ***Advertising***

Florida law requires that any advertisement for a child care facility include within the advertisement the state or local agency license number of the facility. Failure to do so is a misdemeanor of the first degree.<sup>13</sup>

### ***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.<sup>14</sup> Providers with a Gold Seal designation that provide early learning services receive a higher reimbursement rate per child and receive property tax incentives through the Department of Revenue or county tax appraiser.<sup>15</sup>

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<sup>11</sup> Section 402.3131(7), F.S.

<sup>12</sup> Rule 65C-20.009(5), F.A.C.

<sup>13</sup> Section 402.318, F.S. A first-degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year, a \$1,000 fine, or both. See ss. 775.082 and 775.083, F.S.

<sup>14</sup> See s. 402.281, F.S.

<sup>15</sup> See Fla. Dep’t of Children and Families, *Gold Seal Quality Care*, <http://www.dcf.state.fl.us/programs/childcare/goldseal.shtml> (last visited 4/7/2011).

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:<sup>16</sup>

- 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.

### III. Effect of Proposed Changes:

Section 1 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.

Section 2 amends s. 402.302, F.S., to create the definition “household children” in ch. 402, F.S., 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.” In general, this definition is the current interpretation of the Department of Children and Family Services (DCF) when calculating provider capacity.

The bill also provides that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care to be in the home. The DCF has indicated that this may inhibit a department inspector from correcting a situation where the inspector sees an operator’s child in a hazardous position.

Current law requires that children under the age of 13 who are related to the caregiver be included in determining a provider’s capacity. This bill amends the definitions of “family day care home” and “large family child care home” to provide that “household children” under the age of 13 are included in the calculations to determine the maximum number of children that an operator can supervise at one time when that child is on the premises of the home or on a field trip with children enrolled in child care at the home. In adding these provisions to the capacity

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<sup>16</sup> Section 402.281(4), F.S.

requirements for these specified child care facilities, the bill could result in fewer non-household children being served at each of the respective residences in any county that administers its own child care licensing and does not currently meet this proposed minimum licensing standard.

Section 3 amends s. 402.316, F.S., related to providers who are exempt from the child care licensing provisions due to their religious nature. The bill adds a requirement for these providers to display a certificate of compliance issued by an accrediting agency, and requires the accrediting agency to meet minimum health, safety, and sanitation standards of DCF. An accrediting agency may not own, operate, or administer a child care program that the agency accredits, including a program owned or operated by relatives. However, these changes do not authorize DCF to regulate these religious exempt providers in any other areas, such as governance, curriculum, testing, evaluation, disciplinary practices, or hiring practices.

Section 4 amends s. 402.318, F.S., by requiring family day care homes and large family child care homes to include their license or registration number in their advertisements. Additionally, the bill provides that a person may not publish an advertisement for a child care facility, family day care home, or large family child care home without including the license or registration number.

Section 5 amends s. 411.01, F.S., to make technical and conforming changes.

Section 6 provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Current law requires a “child care facility” to include its license number in any advertisement. This bill amends current law to extend advertising requirements to family day care homes and large family child care homes as well. To the extent that these homes

are not considered child care facilities, and therefore are not currently required to place a license number in advertisements, the bill's advertising requirements will be a new requirement on these homes.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Children and Family Services (DCF) has stated that creating the definition of "household children" may create confusion and leave an enforcement loophole. Specifically DCF stated, "the bill's intent appears to be that any child in the family day care home who is the provider's responsibility must count against the home's licensed child care capacity, but the definition of household children appears to exclude foster children, children unrelated to the owner/operator who may be in the home on a non-paying basis, children left in the care of the provider without legal documentation of guardianship, etc."<sup>17</sup>

The DCF is responsible for administering child care regulations throughout Florida, unless a county has chosen to assume this regulatory function pursuant to s. 402.306, F.S., which requires that a county meet or exceed prescribed state standards regarding state child care. Pinellas County is one of seven counties that have chosen to designate a local licensing agency to license child care facilities in that county. The Pinellas County Labor Board for Children's Centers and Family Day Care Homes is the licensing body in Pinellas County.<sup>18</sup> According to DCF, "[f]amily day care home providers have raised questions to the Department regarding supervision restrictions that may be placed on the children of owners and operators of child care programs operating from their homes as there have been some restrictions, specifically in Pinellas County, which has local licensing authority. Pinellas County family day care home providers have challenged their local ordinance on this issue."<sup>19</sup> In order for this bill to have effect in Pinellas County, the county's law that regulates children's centers and family day care homes will need to be amended.<sup>20</sup>

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<sup>17</sup> Dep't of Children and Family Services, *Staff Analysis and Economic Impact, SB 364* (Jan. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>18</sup> Gov't Efficiency and Accountability Council, The Florida House of Representatives, *House of Representatives Local Bill Staff Analysis, CS/HB 781* (Mar. 14, 2007), available at <http://www.myfloridahouse.gov/Sections/Bills/bills.aspx> (last visited 4/7/2011).

<sup>19</sup> Dep't of Children and Family Services, *supra* note 17.

<sup>20</sup> Special law 61-2681, Laws of Fla., as amended by section 1 of ch. 70-893, Laws of Fla.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Commerce and Tourism on March 29, 2011:**

The CS amends two additional statutes:

- Section 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.
- Section 402.316, F.S., to add a requirement for providers that meet a religious exemption to display a certificate of compliance issued by an accrediting agency; and require the accrediting agency to meet minimum health, safety, and sanitation standards of the Department of Children and Families. Additionally, this statute is amended to provide that an accrediting agency may not own, operate, or administer a child care program that the agency accredits, including a program owned or operated by relatives. However, these changes do not authorize the Department of Children and Families to regulate these religious exempt providers in any other area.

**CS by Children, Families, and Elder Affairs on March 10, 2011:**

The CS deletes the cause of action against an unlicensed or unregistered person who violates the proposed advertising requirements.

- B. **Amendments:**

None.