



## EARLY CARE & EDUCATION LAW UNIT

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### CHILD CARE LIABILITY INSURANCE

This handout provides child care businesses with information about insurance. Purchasing insurance is a method of shifting risk from your child care business to an insurance company in exchange for a premium, which is the payment you make for an insurance policy. As a child care provider, you must be proactive both about risk management and being responsive to the families in case an accident occurs while a child is under your care. If you have insurance, your insurance company may pay the cost of certain accidents; if you do not have insurance, you may be exposed to a substantial financial loss.

#### GENERAL LIABILITY INSURANCE

##### 1. What is general liability insurance?

General liability insurance covers payment for accidents that are covered by the insurance policy as well as any legal costs of defending you in a lawsuit. Although the law does not require family child care providers to carry liability insurance, Public Counsel strongly recommends that providers purchase insurance to protect themselves and their businesses. Knowing and recognizing the factors that may lead to lawsuits can help providers avoid situations that may increase their liability. While providers have the option to obtain written affidavits from parents of children enrolled in their child care program instead of purchasing liability insurance, this does not guarantee that a parent will not sue the provider if their child is injured while under the provider's care. The parents' affidavits merely acknowledge that the provider does not carry liability insurance.

##### 2. Must a provider obtain general liability insurance for their family child care business?

**NO.** California State law requires family child care providers to have one of the following:

- a. Liability insurance of at least \$100,000 per incident or \$300,000 in total annual aggregate covering injuries to clients and guests due to the negligence of the licensee or employees; or
- b. A \$300,000 bond; or

- c. Written affidavits signed by each parent or guardian of any child enrolled in the child care program demonstrating their acknowledgment of the provider's lack of insurance.<sup>1</sup>

### 3. Does a provider's homeowner's insurance policy cover their child care business?

**NO.** Homeowner's insurance, which covers personal liability in the event that the owner or a resident of the home are found legally responsible for an injury that occurs on the premises, does not cover businesses like in-home child cares. Most homeowner policies add specific exclusions for in-home child care businesses.<sup>2</sup> Some companies may offer an option for homeowner's insurance policies to be adapted through the use of endorsements, or additions to a policy that give limited protection for in-home child cares. These companies often restrict the provider to a maximum of three to four children.

## OTHER TYPES OF INSURANCE

In addition to general liability insurance, there are other types of insurance child care providers may want to consider obtaining for their operations. The following is a short list of the various insurance policies which child care providers may want to inquire about when talking to an insurance broker.

1. **Worker's compensation** covers medical expenses and lost wages for workplace related injuries. California law requires a business owner to carry workers' compensation insurance if the business has any employees.
2. **Business automobile insurance** covers damages the business may have to pay as a result of bodily injury or property damage caused by a business vehicle such as a car accident during a field trip.
3. **Business property insurance**, or commercial property insurance, covers the repair or replacement of certain business assets due to a covered loss such as a fire or theft.
4. **Business interruption insurance** covers income lost if a business is closed due to direct physical loss or damage as may be caused by a natural disaster.<sup>3</sup>
5. **Crime and fidelity insurance** covers the theft of money or other business assets during the course of work-related duties.
6. **Umbrella insurance policies** can provide additional coverage if the cost of an accident, such as the death of a child, exceeds the policy limits of other insurance policies.

<sup>1</sup> Cal. Health & Safety Code § 1597.531(a).

<sup>2</sup> Downs, Liz, *Questions and Answers: Liability of the Family Child Care Provider*, New England Insurance Services, Inc. <https://neisinc.com/questions-answers-liability-of-the-family-child-care-provider/>

<sup>3</sup> Note that many business interruption insurance claims related to COVID-19 are being denied; insurance companies maintain that because COVID-19 is not a *physical* event that interrupted the business operations, COVID-19 was not an incident for which coverage was provided.

## TALKING TO INSURANCE BROKERS AND REVIEWING INSURANCE POLICIES

This section provides a brief overview of issues to consider when talking to an insurance broker/carrier and purchasing a policy. These are only general suggestions. Additionally, this section does not discuss all of the considerations that may be relevant to purchasing an insurance policy for your business.

### **1. Gather detailed information about your business and home.**

Before calling an insurance broker, gather the following information: who lives in the home, who will be in the home during the hours of child care, whether the landlord should be covered by the policy, how many children will be in your care, whether you will drive children on field trips, whether you will dispense medication, and what areas or aspects of the home have a chance of creating injury to enrolled children or to the property of others (such as a pool or pet).

**It is important to disclose detailed information about your business and home when buying insurance.** If you do not tell the insurance company about hazards or risks on your property, the insurance company may claim that you were not honest in your application and refuse to pay for an accident which your insurance policy normally covers.

### **2. Look over your other insurance policies, such as homeowner's and auto insurance, and get a sense of what coverage they provide.**

Insurance brokers should be able to help you identify what levels of liability insurance or other types of insurance you may want to buy to ensure that you are protecting your business from any risks that are present in the operation of your child care. The more complete their understanding of your situation, the more accurate and helpful their assessment will be. Consider using the same broker and insurance company for all of your insurance needs, including homeowner's, auto, and business liability policies since they will be familiar with all of the details of the policies you have purchased.

### **3. Look over the glossary of insurance terms in the California Department of Insurance's Commercial Insurance Guide.**

It is good to be familiar with common insurance terms and procedures during your conversation with your broker. Knowledge of key terms will help you to know exactly what the policy will cover so that you can better determine whether the policy will adequately protect you from the risks of running your child care business. Always ask follow up questions if you do not understand something. The guide can be found here: <http://www.insurance.ca.gov/01-consumers/105-type/95-guides/09-comm/commercialguide.cfm>.

### **4. Think of a few likely and unlikely accidents that could occur in the operation of your child care business.**

Before speaking with an insurance broker, think of what types of accidents you would like your insurance policy to cover. By talking through a few scenarios with the broker, you can get a better

sense of how the policy will function if an accident occurs and you need the insurance company to make a payment.

**5. Ask whether the policy will offer coverage on a “claims made” or “occurrence” basis.**

A “claims made” policy will pay for covered incidents that occur within the policy period and of which the insurance company is notified of during your policy period or within your extended reporting period. An “occurrence” policy will pay for covered incidents that occur during the time your policy period, regardless of when the insurance company is actually notified of the accident. Under an occurrence policy, if you file a claim for a covered accident that occurred when you had insurance, the occurrence policy would cover the accident even if you no longer have the policy.

**6. Ask what exclusions apply.**

Child care policies vary in what exclusions apply. Some common exclusions include claims involving medical expenses of children in the provider’s care; dispensing of medicine; pet; pools; lead paint; field trips; and the transportation of the children. It is important that you know exactly what exclusions are in your policy prior to purchasing. Some companies may provide coverage in these areas for an additional charge.

**7. Request a copy of the insurance policy to review before purchasing insurance.**

You have a right to, and should, review the actual insurance policy prior to purchasing the insurance coverage. Some companies may send you a summary of your benefits rather than the actual policy; you should demand a copy of the full policy and read it carefully before purchasing coverage.

There are many things to look for when reviewing an insurance policy. This guide cannot and does not provide a comprehensive list of all items. At the least, make sure you know what type of insurance coverage you are getting, what accidents the policy covers (and which are excluded), and the maximum amount your insurance company is willing to pay for costs related to an accident. Additionally, you should check that the policy covers the correct people and the correct number of children in care. The table at the end of this guide may also give you an idea of the types of factors to look for when reviewing your policy.

**8. Call your insurance broker or carrier and ask them to go over any questions that you have after reviewing the policy.**

If you do not understand any part of your policy, be sure to call your insurance broker or carrier and ask them to explain. It is very important that you understand exactly what risks are covered by your insurance policy, when and how you should file a claim, and how much the insurance company will pay so that you can adequately protect your assets from the risks of running your child care.

**9. Keep your insurance carrier updated about any changes to your business.**

If there are big changes to your business, such as caring for a larger number of children or installing a trampoline, contact your insurance carrier to let them know. You may have to purchase expanded coverage to cover your new situation; however, if you do not notify the insurance company about changes to your business, they may claim that you misrepresented the conditions of your business and refuse to pay for an accident that would usually be covered by your insurance policy.

**GENERAL LIABILITY INSURANCE CARRIERS**

The following table provides a non-exhaustive list of insurance carriers that provide liability insurance coverage for family child care homes. **This list is current as of January 2022 and is meant to provide general information only. It is not a referral, endorsement, or recommendation of any particular insurance company or policy.**

Public Counsel does not guarantee the accuracy of any of the following liability insurance carrier information. Providers should contact the carriers directly and review each policy carefully with an insurance broker. If the information in this list does not match the terms of the policy offered or purchased, providers should rely on the policy itself rather than this list.

| Insurance Companies/Brokers | Assure Child Care  | Markel Corporation<br>(insurance provided by<br>American Federation<br>of Daily-Care Services)                      | Day Care Insurance<br>Services, Inc.  | New England<br>Insurance Services, Inc.   |
|-----------------------------|--|---|---|---|
| <b>Website</b>              | English:<br><a href="https://www.assurechildcare.com/index.html?lang=en">https://www.assurechildcare.com/index.html?lang=en</a><br><br>Spanish:<br><a href="https://www.assurechildcare.com/es/index.html?lang=es">https://www.assurechildcare.com/es/index.html?lang=es</a> | <a href="https://www.markelinsurance.com/in-home-child-care">https://www.markelinsurance.com/in-home-child-care</a> | <a href="https://www.dcins.com/in-home-care.html">https://www.dcins.com/in-home-care.html</a> | <a href="https://www.neisinc.com/in-home-child-care-day-care-insurance.htm">https://www.neisinc.com/in-home-child-care-day-care-insurance.htm</a> |
| <b>Phone</b>                | (612) 486-4752   | Toll Free: (888) 515-8537   | Toll Free: (800) 624-0912   | (860) 844-8288<br>Toll Free: (888) 845-8288   |
| <b>Email</b>                | <a href="mailto:info@assurechildcare.com">info@assurechildcare.com</a>   | <a href="mailto:mscsupport@markel.com">mscsupport@markel.com</a>  | <a href="mailto:info@dcins.com">info@dcins.com</a>  | <a href="mailto:info@neisinc.com">info@neisinc.com</a>  |
| <b>Languages Provided</b>   | English, Spanish   | English   | English, Spanish  | English, Spanish  |
| <b>Basis of coverage</b>    | Occurrence   | Occurrence  | Occurrence  | Occurrence  |

| Insurance Companies/Brokers   | Assure Child Care  | Markel Corporation<br>(insurance provided by American Federation of Daily-Care Services)   | Day Care Insurance Services, Inc.  | New England Insurance Services, Inc.  |
|---|--|--|--|---|
| <p><b>Cost of annual premium for a \$100,000 per occurrence; \$300,000 aggregate policy</b></p>                                     | <p>Small (1–8 children): \$376 + \$45 membership fee to “Child Care Services System”</p> <p>Large (7–14 children): \$672 + \$45 (membership fee to “Child Care Services System”)</p> <p>*Rate is for policies with \$300,000</p> | <p>Small (1–6 children): \$496</p> <p>Large (7–12 children): \$660 (13–18 children): \$857</p> <p>*Rate is for \$300,000 per occurrence, \$900,000 aggregate limit policies.</p> <p>**Provider must purchase student accident policy (medical expenses) at a cost of \$6 per child per month</p> | <p>Small (1–8 children): \$490 + \$185*</p> <p>Large (7–14 children): \$637 + \$279*</p> <p>*Providers in the City of Los Angeles subject to surcharge</p> <p>**Rate is for \$300,000 per occurrence, \$600,000 aggregate limit policies</p> | <p>Small (1–8 children): \$502–\$707</p> <p>Large (7–14 children): \$701–\$940</p> <p>*Rates differ based on the maximum number of children in care at any given time</p> |
| <p><b>Does coverage include Professional Liability/Negligent Supervision?</b></p>   | <p>Yes</p>   | <p>Yes</p>   | <p>Yes</p>   | <p>Yes</p>  |
| <p><b>Does coverage include abuse and molestation claims?</b></p>   | <p>Yes</p>   | <p>Yes; covers monetary judgment against business maximum of \$100,000/\$300,000</p>   | <p>Yes; covers monetary judgment against business maximum of \$100,000/\$300,000</p>   | <p>Yes; covers monetary judgment against business maximum of \$100,000/\$300,000</p>  |
| <p><b>Are all residents of the household covered for negligence (including those not employed in the child care operation)?</b></p> | <p>No; only employees are covered</p>  | <p>Yes</p>   | <p>Yes</p>   | <p>No; only Immediate family is covered</p>   |
| <p><b>Are all residents of the household and employees also insured for child abuse coverage?</b></p>                               | <p>No; only employees are covered</p>  | <p>Yes</p>   | <p>Yes</p>   | <p>Owner, spouse, and employees (anyone working for the child care) are covered</p>   |
| <p><b>Are all Administrative Hearing legal expenses covered?</b></p>  | <p>Yes<br/>Limit: \$5,000</p>  | <p>No</p>  | <p>Yes; only for hearings related to allegations of child abuse</p>  | <p>Yes; no limit</p>  |
| <p><b>Are claims covered for libel or slander?</b></p>  | <p>Yes</p>   | <p>Yes</p>   | <p>Yes</p>   | <p>Yes</p>  |

| Insurance Companies/Brokers   | Assure Child Care  | Markel Corporation<br>(insurance provided by American Federation of Daily-Care Services)                                       | Day Care Insurance Services, Inc.  | New England Insurance Services, Inc.   |
|---|--|--|--|--|
| <b>Are there exclusions or limitations for animals in the family child care home?</b> | Bodily injury caused by animals:<br>\$25,000 per occurrence;<br>\$50,000 aggregate limit | May not own Rottweiler, Pit Bull, Doberman, Mastiff breeds, or any mixed breed where the dominant breed is one of above listed | May not own Rottweiler, Pit Bull, Doberman, Mastiff, German Shepard breeds, or any mixed breed where the dominant breed is one of above listed | No general liability coverage for pets<br><br>May not own Rottweilers, Pit Bulls, or any mixed breeds including either |
| <b>Are swimming pools on the premises covered?</b>                                    | Yes  | No; 18-inch plastic wading pools are OK  | No   | No   |
| <b>Are swimming pools off the premises covered?</b>                                   | Yes  | No   | No   | No   |
| <b>Is there a deductible for each claim?</b>  | No   | No   | No   | No   |
| <b>Does the policy cover non-emergency extended hours of care?</b>                    | Yes  | No; 18-hour max  | No; only during hours of operation of the childcare  | No coverage for overnight care   |
| <b>What is the maximum limit per child for accident medical payments?</b>             | Medical: \$10,000<br>Dental: \$1,000   | Medical: \$20,000<br>Dental: limited to natural teeth damage   | Medical: \$20,000  | Medical: \$20,000  |
| <b>Will the policy pay for accidents regardless of other insurance coverage?</b>      | Yes  | Yes  | Yes  | Yes  |
| <b>Is there an additional charge to add landlord as additional insured?</b>           | No   | No; referral agencies can also be added at no additional cost  | Yes: \$17  | No   |
| <b>Can additional coverage be added for transportation?</b>                           | No; does not provide automobile policies   | No; does not provide automobile policies   | Yes  | No   |
| <b>Can coverage for a non-owned auto be added?</b>                                    | Yes: \$112   | No   | Yes: \$30  | No; no transportation offered at all   |
| <b>Payment plan available?</b>  | Yes  | Yes  | Yes  | Yes  |

**ADDITIONAL RESOURCES**

For further information, please refer to:

1. Small Business Guide to Commercial Insurance, California Dep't of Insurance:  
<http://www.insurance.ca.gov/flipbook/commercialinsurance/>.

**This document was prepared by Public Counsel's Early Care & Education Law Unit in January 2022 and is meant to provide general information. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or comments, please call the ECE Law Unit's Intake line at 213/385 2977 ext. 300.**

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