

REPORT TO THE TWENTY-NINTH HAWAII STATE LEGISLATURE 2018

**IN ACCORDANCE WITH
SECTION 3, ACT 161, SESSION LAWS OF HAWAII 2017,
Regarding Child Care Liability Insurance**

**Child Care Program Office
Benefit, Employment, and Support Services Division
DEPARTMENT OF HUMAN SERVICES
December 2017**

ACT 161, SLH 2017, established the requirement for all child care providers to obtain and maintain liability insurance coverage in an amount determined by the Department of Human Services (DHS) as a condition of continued licensure, temporary permission, or registration to operate a child care facility. Section 3 of Act 161 requires the Department to report to the Legislature on the following issues:

- (1) The amount of liability insurance coverage required to be obtained by child care providers;
- (2) The costs incurred by child care providers to obtain liability insurance and the projected impact these costs may have on the rates charged to consumers; and
- (3) Outreach efforts conducted by the department.

1. Amount of liability insurance

To determine the amount of liability insurance for different child care settings, the department reviewed the 2014 child care regulatory requirements of other states:

- Six (6) states require family child care homes to maintain liability insurance coverage, and only two (2) of those specify the amount of coverage to be maintained which are \$50,000 and \$300,000;
- Ten (10) states require group child care homes to maintain liability insurance coverage, and three (3) of those states specify the amount of coverage to be maintained which are \$100,000 or \$300,000; and
- Twenty-five (25) states require group child care centers to maintain liability insurance coverage, and eight (8) of those specify the amount of coverage to be maintained which range from \$25,000 to \$500,000.

2. Cost of liability insurance and potential impact

The Department conducted a survey of Hawaii child care providers, and 129 providers offered information as to the amount of insurance coverage they currently maintain:

- 20% maintain \$100,000 of coverage;
- 11% maintain \$300,000 of coverage;
- 22% maintain \$500,000 of coverage;
- 38% maintain \$1,000,000 of coverage; and
- 8% maintain an amount other than those specified above.

About 72 providers offered information as to the cost of the insurance they maintain:

- 68% reported premiums less than \$2,999 per year;
- 18% reported premiums between \$3,000 and \$9,999 per year; and

- Almost 14% reported premiums of more than \$10,000 per year.

DHS staff also met with members from two insurance brokerage agencies and learned that there is a variety of types and kinds of coverages available in Hawaii for home based child care providers. Endorsement (rider) policies may be available through a homeowner's policy, but there is a likelihood that endorsement policies exclude abuse or death of a child. Surplus line policies may be available for those whose homeowners or renters policies do not offer child care coverage. The cost for policies could range from \$300 annually to nearly \$1,000 annually. For professional liability policies that may not exclude abuse to or death of a child, the cost could range from \$3,000 annually to \$8,000 annually for \$1,000,000 or more in coverage.

Sexual assault is consistently excluded from coverage.

3. Outreach efforts by the Department

The Department requested its contractor that provides recruitment, training, and outreach services to child care providers, to conduct a survey and convene outreach meetings statewide regarding the new law. The survey was conducted at the end of July 2017 and meetings were held in September 2017.

In August 2017, Department reviewed the requirements of Act 161 (2017) at the Child Care Advisory Committee meeting with child care provider stakeholders in attendance.

Providers also contacted their DHS child care licensing offices and the Child Care Program Office to ask questions and express their concerns regarding provisions of Act 161 (2017).

Here is the feedback gathered from the survey, meetings, and from the licensing offices:

1. Home-based child care providers were especially concerned about the increased cost of doing business and raising their rates charged to families;
2. There is concern as to whether there is affordable and/or available liability insurance coverage available for home-based child care providers in Hawaii. If the cost is excessive, providers gave feedback that they may consider closing their registered family child care home business rather than continuing to be registered with DHS;
3. Providers expressed concerns about providing the coverage amount to parents and guardians as they felt the information was private and should be confidential information, to be provided only to the Department for verification for licensure or registration, and to be provided to parents and guardians *when* an incident or injury occurred at the child care facility. Providers said that disclosing the amount of coverage the provider maintains may be an inducement for families to sue or to look for the provider with the most coverage in order to sue. Providers suggested that families would know that the provider maintains liability insurance coverage because the

Department would verify that coverage is maintained at time of application and renewal of licensure or registration;

4. Providers said that the amount of coverage should be determined by the providers themselves and their insurance companies, and not set by the Department;
5. Providers reported that when they contacted the insurance companies providing their homeowners insurance policies to inquire about liability insurance coverage for child care, some companies responded that conducting a child care business places them in a high-risk category and that the insurance company would not be renewing their homeowners policies;
6. Providers reported that other insurance companies offered liability insurance coverage, but would only cover up to four (4) children in care. The Department allows a registered family child care home to care for up to six (6) children at any one time. It was not clear how the insurance company would determine which 4 of the 6 children in care would be covered on any given day in the event of an incident for a claim, or whether the coverage for 4 would restrict the provider to providing care to 4 children at any one time, though the individual was licensed to care for up to 6 children at any one time;
7. Providers expressed that some insurance companies providing homeowners insurance coverage would not allow Family Child Care providers to obtain a separate liability insurance policy from a different insurance company for their child care business, as providers reported that once a second policy was disclosed or "dual coverage" the homeowners policy may not be renewed;
8. Providers also reported that liability insurance policies may have exclusions that would not cover claims for abuse to or death of a child, situations that Act 161 (2017), were intended to address;
9. Home-based providers were concerned at being singled out by the Legislature. Additionally, these providers were concerned about being required to maintain a specified amount established by the State and having to disclose it to applying families and enrolled families when an incident had not occurred. Providers questioned why public schools are not required to disclose the insurance coverage information to families of enrolled students, why drivers of vehicles registered in the State are not required to display their insurance coverage information on their vehicles, or why medical doctors licensed in the State are not required to give their insurance coverage information to patients prior to providing health care services; and
10. Home-based child care providers felt unappreciated for the vital service that they provide to the local communities and working families in Hawaii. Home-based child care providers felt that the law was enacted without their input or feedback and that they are busy doing child care and unable to attend legislative hearings to provide their input.

On September 14, 2017, DHS sent a written notice to all licensed and registered child care providers informing them about the passage of Act 161 (2017), and of the requirement to obtain and maintain liability insurance coverage as a condition of licensure or registration. The notice informed providers that the law became effective July 1, 2017, and that DHS would begin enforcement of the requirements on January 1, 2019 as prescribed by Act 161 (2017). Consequently, although DHS would not enforce the requirement until January 1, 2019, because the law is in effect all child care providers must obtain liability insurance coverage if they currently do not have any coverage. See attachment 1.

DHS will continue outreach efforts with licensed and registered child care providers during the 2018 calendar year to ensure that all providers are aware of the requirements of Act 161 (2017).

DHS Findings & Recommendations

Based on the foregoing information, DHS finds:

1. It is evident that insurance coverage for child care will most likely not cover child abuse, child sex abuse or child death that occurs in a child care setting;
2. While insurance coverage may be accessible to mostly center based providers, family child care home providers are receiving mixed responses from insurers regarding coverage amounts;
3. Providers have expressed that if the cost of insurance is too high, they would consider no longer providing the service as a regulated child care provider.
4. As DHS does not have expertise in the field of establishing insurance coverage, the issue requires further study by the Legislature to determine the best way to provide access to affordable child care insurance coverage and maintain safe, affordable and accessible child care throughout the state.

DHS recommends, that to preserve safe, existing, accessible and affordable regulated child care throughout the state, the Legislature should amend Act 161 (2017) by:

- a. Delaying the implementation and enforcement dates to July 1, 2019 or a future date so that that reasonable and affordable coverage amounts are established and child care liability insurance coverage are readily accessible, with particular attention to coverage available to family child care homes;
- b. Removing provisions that require DHS to establish the coverage amount;
- c. Allowing providers to provide proof of insurance only, and only be required to produce the effective policy when an incident occurs; and/or
- d. Consider allowing an exemption, particularly in rural and hard to serve communities with limited access to regulated child care, for providers who meet all other licensing requirements but cannot afford or do not have access to a minimum amount of liability insurance coverage, and allow parents to knowingly consent to child care by an uninsured regulated child care provider.