



Questions and Answers about Child Care in California: Liability Insurance for Family Child Care Providers

1. Who Are the Important Players Involved in Insurance for Family Child Care Homes?

The following are people and/or entities that may be relevant to liability insurance:

- **Family Child Care Providers:** These are the individuals who provide the child care service. It is up to providers to decide whether they want to purchase liability insurance or to have parents sign affidavits (see Question #5).
- **Landlords:** These are the individuals who own the property where the family child care service is located.
- **Insurance Companies:** Liability insurance is usually purchased from these companies. Many different insurance companies have different policies, so it is best to double check that the policy being purchased will cover what the provider wants it to cover.¹

2. What Is Family Child Care?

Family child care is licensed child care in the home of a child care provider. The provider may be licensed for up to eight (8) children in a small family child care, or up to fourteen (14) children in a large family child care.

3. Are Family Child Care Providers Required to Have Liability Insurance?

No. State law requires providers to make one of three choices:

- Purchase insurance covering injury to clients and guests in the amount of at least \$100,000 per occurrence and \$300,000 in total; or
- Purchase a bond in the total amount of \$300,000; or

- Keep affidavits (signed statements) stating the parents know the provider does not carry insurance in the child's file² (see Question #5).

Tip: Although family child care providers are not required to have insurance, it is a good idea for them to have insurance.

4. What Are the Benefits of Having Liability Insurance?

Generally, liability insurance prevents a child care provider from paying out of pocket if the provider is sued by parents. Insurance companies also have lawyers who can represent child care providers who have a policy with them if they do get sued. If a provider wants to know the specific benefits of a particular insurance policy, he or she should speak to an insurance company representative.

5. What Are the Requirements for the Affidavit Mentioned in Question 1?

The affidavit must be on a specific form (LIC 282) provided by the California Department of Social Services, Community Care Licensing Division. The affidavit states that the parent knows that the family child care home does not have liability insurance or a bond. The provider may be a renter who does not own the home where the child care is provided. If so, the affidavit says that the parent knows that if the owner of the property or the homeowners' association has liability insurance, that insurance may not cover losses related to the family child care.³

Note: Some parents may refuse to sign the affidavit, and choose a provider who has insurance. Providers must have affidavits from all the parents who have children in care.

6. Does an Affidavit Mean I Am Protected From Being Sued?

No. The affidavit simply shows that parents know that the child care provider does not have liability insurance. It has no impact on whether or not a child care provider would have legal and financial responsibilities if a child were injured in his or her care. Some providers have parents sign a separate document, called a liability disclaimer, which says that the provider is not liable if a child is injured in the provider's care. However, a liability disclaimer might not hold up in court if a child were injured in the care of a child care provider and the parents then sued.⁴

7. What Requirements Apply to Family Child Care Providers Who Share Common Space with a Homeowners' Association or Rent Their Homes?

If these family child care providers have liability insurance or bonds, they must add the landlord or the homeowners' association to their policy or bond, provided the landlord or association meets the following requirements:

- The owner or association makes a written request; and
- The addition of the owner or association does not result in the cancellation or nonrenewal of the policy or bond; and
- The owner or association pays any additional premium.⁵

Note: The three steps explained above are what the law requires, however, it is possible that the landlord or association may make a verbal request. In this case, a provider can ask for it in writing and keep it on file.

Tip: Adding a landlord or homeowners' association to a bond or insurance policy can be a good way of maintaining a good relationship with them.

8. Can Landlords Require Family Child Care Providers to Have Insurance Policies?

No. Because the law severely limits landlords' ability to place restrictions on family child care

homes, landlords cannot require family child care providers to have liability insurance.⁶

9. Are Family Child Care Providers Required to Have Auto Insurance for Their Programs?

No, unless the provider drives the children in his or her care. If so, the provider should make sure the auto insurance covers incidental commercial usage. The provider may need to talk to his or her auto insurance provider to determine whether their personal automobile insurance covers this kind of incidental use. Providers can also purchase separate commercial auto insurance, but that may be expensive.

10. What Types of Auto Insurance Are Available to Drivers for a Family Child Care Program?

Automobile insurance that covers people who do not own the vehicle they are driving provides coverage for injuries and property damage for which the child care program is held legally responsible, except that it does not protect the driver from liability. If the driver has his or her own auto insurance, or if a separate "Volunteers' and Employees' Excess Auto Liability Insurance" policy is in place for the program, the driver will also be protected.

11. Where Can Family Child Care Providers Find Insurance?

Visit the website of the California Department of Insurance:

<http://www.insurance.ca.gov/0100-consumers/>

This website describes different insurance policies, lists insurance agents and brokers, and provides tips on making sure that providers obtain the type of insurance coverage that they need. A provider can also talk to a local family child care providers' association (call your Resource and Referral agency or licensing agency for information about providers' associations).

12. Does a Homeowner's or Renter's Insurance Policy Cover Losses Arising from Family Child Care?

No. Residential property insurance (also known as homeowners' insurance or renters' insurance) does not protect against losses arising from family child care.⁷

13. May an Insurance Company Cancel or Refuse to Renew a Homeowner's Insurance Policy Because the Policyholder Has a Family Child Care License?

No. Arbitrary cancellation of or refusal to renew such a policy solely on the basis that the policyholder has a family child care license violates California law. Insurers may be punished for violating this law. However, the insurance company can cancel a policy in the following circumstances:

- The family child care provider has lied ("made a material misrepresentation of fact"); or
- The risks have changed substantially since the policy was issued; or
- The premium has not been paid; or
- The insurer no longer writes homeowner's insurance policies.⁸

Tip: When a family child care provider moves to a new home, coverage of the new home is considered a renewal of an insurance policy for the previous home, rather than a new policy, as long as the insurance company does business in the new place. Check before moving.

14. What Can Family Child Care Providers Do if They Have Trouble With an Insurance Company or Think an Insurance Company is Discriminating?

First, providers should talk to the insurance company, agent, or broker. Then call the California Department of Insurance at (800) 927-4357. Follow up the telephone call with a written complaint from <http://www.insurance.ca.gov/0100-consumers/>. Providers should keep a copy of the complaint and any other written documents. The California Department of Insurance communicates with the insurer and

investigates the problem. Providers can also call their county Lawyer Referral Service if they wish to speak to an attorney (see Useful Resources below).

15. Are Landlords Protected Against Nonrenewal or Termination of Insurance Because a Tenant Has a Family Child Care License?

Maybe. The law that protects child care providers does not explicitly protect landlords from nonrenewal or termination of insurance because the tenant is operating a family child care.⁹ But California insurance laws stop insurance companies from terminating or refusing to renew insurance policies, except for certain specified reasons.¹⁰ Provision of family child care is not among the specified reasons; in addition, provision of family child care is protected by public policy. Therefore, it is likely that insurance companies may not legally refuse to renew landlords' insurance policies or terminate these policies because the tenant is providing child care in a licensed family child care home.

This document is intended to provide general information about the topic covered and is made available with the understanding that it does not render legal or other professional advice. We believe it is accurate as of January 2011, but the law changes often. If you need legal advice, seek help from a competent attorney.

Useful Resources

- Call **Legal Aid** if you are a low-income family child care provider who needs free help with a problem. Look in the telephone book or call the Coalition of California Welfare Rights Organizations at (916) 736-0616 or visit the Public Interest Clearinghouse, <http://www.pic.org/>, to find out about the Legal Aid office near you.
- Call your **County Bar Association Referral** service to find a private attorney or Legal Aid. Look in the telephone book or visit the California Bar Association website at www.calbar.ca.gov.
- Call a **Resource and Referral** agency if you are a family child care provider who needs technical assistance. Call the California Resource and Referral Network at (415) 882-0234 or visit their website at www.rnetwork.org to get information about your local Resource and Referral agency. If you are a parent looking for child care, you can call 1-800-543-7793.
- The **Child Care Law Center (415-558-8005)** -is a California child care support center for legal services programs, and we:
 - Provide information and referrals;
 - Write useful publications. Visit our website at www.childcarelaw.org.
 - Provide legal representation only in cases that have an impact on many people.
- Visit the **Community Care Licensing** website for information about licensing requirements: www.cclcd.ca.gov.
- Call the **California Department of Insurance** at (800) 927-4357, visit their website at <http://www.insurance.ca.gov/0100-consumers/>, or file a complaint with them by writing to the following address:

California Department of Insurance
Consumer Services and Market Conduct Branch
Consumer Services Division
300 South Spring Street, South Tower
Los Angeles, CA 90013.

Endnotes Explanation: The footnotes in this document are legal citations that support the information given above. To look up the laws that apply to you, visit your local law library. The following are some of the laws that may apply to your situation: California Health & Safety Code, California Insurance Code, and California Business & Professions Code.

¹ CA Health & Safety Code §§ 1596.78, 1597.44, 1597.465.

² CA Health & Safety Code §. 1597.531(a).

³ *Id.*

⁴ See *Gavin W. v. YMCA of Metropolitan L.A.*, 106 Cal.App.4th 662 (CA Court of Appeals, February 2003).

⁵ CA Health & Safety Code §. 1597.531(b).

⁶ CA Health & Safety Code §§ 1597.40(b), 1597.531(a).

⁷ CA Insurance Code § 676.1(c).

⁸ CA Insurance Code § 676.1(a).

⁹ See CA Insurance Code § 676.1 (stating that the licensee is protected from cancellation or nonrenewal).

¹⁰ CA Insurance Code § 676.