



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

1. 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.¹

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

No. They have three options:

- 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 a file of affidavits signed by each parent with a child in the home.²

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

3. What Are the Requirements for the Affidavit Mentioned in Question 2?

The affidavit must be on a form provided by the 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. If the provider does not own the premises used to provide family child care, 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.

4. Does the Affidavit Protect Against Liability?

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 be liable 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 then sued.⁴

5. 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 owner of the property (the landlord) or the homeowners' association to the policy or bond if the owner or homeowners' association meets certain requirements:

- The owner or association makes a written request; and

³ CA Health & Safety Code Sec. 1597.531(a).

⁴ See *Gavin W. v. YMCA of Metropolitan L.A.*, 106 Cal.App.4th 662, 3 Cal. Daily Op. Serv. 1693 (CA Court of Appeals, February 2003).

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

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

- 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

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

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

No. Because the law severely restricts landlords' ability to place restrictions on family child care homes, landlords cannot require family child care providers to have liability insurance.⁶

7. Where can Family Child Care Providers Find Insurance?

Check with your local family child care association or visit the website of the California Department of Insurance:

<http://www.insurance.ca.gov/docs/FS-Consumer.htm>. This website describes different insurance policies, lists insurance agents and brokers, and provides tips on making sure that you obtain the type of insurance coverage that you need. Or talk to a local family child care providers' association (call your Resource and Referral agency or licensing agency for information about providers' associations).

8. Does a Residential Property Insurance Policy Cover Losses Arising from Family Child Care?

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

9. How Can Family Child Care Providers Find Liability Insurance?

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

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

In order to be covered for losses arising from their family child care, family child care providers must purchase a separate endorsement or insurance policy for which premiums are assessed and paid.⁷

10. 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 homeowners' 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 as long as the insurance company does business in the new place. Check before you move.

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

First, 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 using the form on the website listed in question 7. The California Department of Insurance communicates with the insurer and investigates the problem.

⁷ CA Insurance Code Sec. 676.1(c).

⁸ CA Insurance Code Sec. 676.1(a).

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

Yes. The California law that protects family child care providers does not explicitly cover landlords. However, other laws stop insurance companies from refusing to renew or terminating insurance policies except for

certain specified reasons. Provision of family child care is not among the specified reasons; in addition, provision of family child care is protected by public policy. Therefore, insurance companies may not refuse to renew landlords' insurance policies or terminate these policies because the tenant is doing family child care.

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 2004, but the law changes often. If you need legal advice, seek help from a competent attorney.

Footnotes 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. Do not be scared to look up the law to understand your rights. The following are some of the laws that may apply to your situation: California Health & Safety Code, California Insurance Code, and California Business and Professions Code.

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/resx/direclsp.htm>, 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.
- Call the **Child Care Law Center at (415) 394-7144** on Mondays, Tuesdays, and Thursdays from 12-3 for legal information about child care issues. We are a national and California child care support center for legal services programs, and we:
 - Write useful publications, including the following: *Your Rights and Responsibilities: Family child Care Homes in Rental Property in California*. Visit our website at www.childcarelaw.org.
 - Conduct trainings for community agencies, and others.
 - Provide legal representation only in cases that have an impact on many people.
- Visit the website of the **Legal Services of Northern California**, www.lsn.net for information about California laws.
- 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/docs/FS-Consumer.htm>, 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.