

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF SENATE  
SUBSTITUTE FOR HOUSE BILL NO. 2356**

As Agreed to May 8, 2010

**Brief\***

Senate Sub. for HB 2356 would create Lexie's Law and amend current law concerning the supervision, licensing and inspection requirements for specified child care facilities under a single licensure category.

The bill would eliminate the category of registered "family day care home" and create a transition process for those homes to become licensed. In addition, the bill would require the creation of an online information dissemination system accessible to the public which would provide the names of licensees, applicants, and the history of citations and substantiated findings.

The term "day care home" is defined in the rules and regulations of the Kansas Department of Health and Environment (KAR 28-4-113) to mean "the premises in which care is provided for a maximum of 10 children under 16 years of age, with a limited number of children under kindergarten age in accordance with KAR 28-4-114(e)(1)."

**Supervision**

The bill would provide that the Kansas Department of Health and Environment, through the rules and regulations process, shall establish requirements that provide that "competent supervision" as it relates to children less than five years of age includes, but is not limited to, direction of activities,

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adequate oversight including sight or sound monitoring, or both, physical proximity to the children, diapering and toileting practices; and for all other children, competent supervision includes, but is not limited to daily activities, planning and supervision, safe sleep practices, including but not limited to, visual or sound monitoring and periodic checking, emergency response procedures and drills, illness and injury response procedures, food service preparation and sanitation, playground supervision, pool and water safety practices. In addition, the bill would require that the notice of hearing on initial rules and regulations proposed to be adopted under this section be published in the *Kansas Register* between February 17, 2011 and March 10, 2011.

#### **Denial of New License or Employment as a Licensee**

The bill would permanently prohibit a licensee (child care provider) from applying for a new license to provide child care or to seek employment under another licensee if the care provider has:

- Had his or her license revoked or license renewal refused due to being a repeat, three or more times, violator of statutory requirements or rules and regulations; or
- Been found to have contributed to the death or serious bodily harm of a child under his or her care.

The bill would amend another statute (KSA 65-506) to delete requirements regarding disciplinary action by the Secretary of Health and Environment for registered family day care homes. [Under the bill, the category registered family day care is eliminated.]

## **Inspection Requirements**

The bill would change the inspection requirement for a maternity or a child care facility to a frequency of at least once every fifteen months, instead of the current requirement of twelve months until July 1, 2011, at which time the current twelve month inspection cycle would be required. Additionally, the bill would require that the inspections of child care facilities would begin on or after the effective date of the Act.

The inspection must occur when:

- A complaint is received;
- An application for licensure of a new child care facility has been received, in which case an inspection would occur prior to issuance of a license; or
- The child care facility provides services to military families receiving military assistance, in which case an inspection is required every twelve months.

In addition, the Secretary may inspect more frequently when the child care facility has a record of repeated complaints or serious violations. Licenses would be awarded with an expiration sticker stating the date of expiration of the license once licensure was granted.

## **Release of Certain Facility Information**

The bill would allow the Kansas Department of Health and Environment or its agents to release from records in its possession, individual names of licensees, applicants, facilities and maternity centers. The bill would require the establishment of an online information dissemination system which would be accessible to the public and would provide the names of licensees, applicants, and the history of citations and substantiated findings.

The bill would change in current law the language regarding the release of the name, address and telephone number of a maternity center or a child care facility from allowing the release when it is necessary to protect the health, safety, or welfare of the public, patients or children enrolled in a maternity center or child care facility, (current law) to prohibiting the release when prohibition would protect the same interests. Additionally, the bill would not prohibit the release of any information as required by law and would clarify the entities to whom the information could be released.

### **Fire Safety**

The bill would require each day care home to be equipped with a fire extinguisher which would be maintained in operable condition and be readily accessible.

### **Additional Requirements for Child Care Facilities and Staff**

The Kansas Department of Health and Environment would be required to establish new rules and regulations to require adequate hand washing, safe storage of toxic substances and hazardous chemicals, sanitary diapering and toileting, home sanitation, after hour care, sudden infant death syndrome (SIDS) and safe sleep practices training, prohibition on corporal punishment, crib safety, protection from electrical hazards, protection from swimming pools and other water sources, fire drills, emergency plans, safety of outdoor playground surfaces, door locks, safety gates and transportation by licensed child care providers.

In addition, the bill would require that all individuals that maintain child care facility be a high school graduate or the equivalent. However, the bill would provide that all current child care providers and anyone with an application filed with the Department be exempted from this requirement and be issued a license if the facility meets all other requirements.

### **Fee Changes; Creation of Special Revenue Fund**

The bill would establish a Maternity Centers and Child Care Facilities Licensing Fee Fund and the proceeds of the Fund could be used only to pay for licensure activities. Under current law the fees charged to registered and licensed facilities are deposited into the State General Fund.

The fee cap for a maternity center, a child placement agency, and a child care resource and referral agency would be increased from \$75 per year to \$150 per year; the fee cap for any other child care facility would be \$75 plus \$1 times the maximum number of children authorized under the license to be on the premises at any one time. Any person who fails to renew the license within the time required by rules and regulations would be required to pay a late renewal fee of 100 percent of the fee. The late fee would not apply if the renewal is received within 30 days from the date due.

### **Change of Status of Registered Family Day Care Homes; Lexie's Law**

On the effective date of this act, a family day care home registered under present law would continue as a registered home until the facilities had met all of the licensure requirements. The bill also provides that the amendments to the current law be named "Lexie's Law."

The bill would take effect upon publication in the Statute Book.

### **On-Line Information Dissemination System**

The bill would provide for the Secretary of Kansas Department of Health and Environment to establish an online information dissemination system that is accessible to the public. In addition, the Secretary would be granted authority to adopt rules and regulations which are consistent with the

requirements for the receipt of Child Care ARRA funds. The notice of hearing on the initial rules and regulations proposed to be adopted would be published in the *Kansas Register* after February 15, 2011, but prior to March 11, 2011.

### **Conference Committee Action**

The Conference Committee acceded to the Senate amendments to the bill and agreed to further amend the bill to:

- Delete the term “Family child Care Home” and references to this type of facility;
- Add language that would clarify that all registered family day care homes would continue to be subject to current law until they become licensed (establishes a single-tier system);
- Require an expiration sticker affixed to a provider’s license;
- Establish a special revenue fund for the purpose of financing inspections; increase the fee cap for late renewals; child care facilities; maternity centers, child placement agencies, and child care resource and referral agencies;
- Amend and add language about competent supervision and provide additional requirements for the operation and maintenance of maternity centers and child care facilities;
- Create an educational requirement in statute for new licensees;
- Amend the effective date of the Act and specify the transition process for registrants to become licensees;
- Establish a online information dissemination system;
- Eliminate provisions that would have required the

Department to establish a risk-based system for inspections; and

- Make several technical amendments.

## **Background**

The Senate Committee on Public Health and Welfare recommended the introduction of a substitute bill. The substitute bill incorporates the provisions of Sub. for SB 447 (as amended by SCOW) and as further modified by the Committee. The Senate Committee modified SB 447 to include amendments that assign the term “day care homes” its meaning as defined in rules and regulations (KAR 28-4-113), insert a provision regarding kinship and exemption from the meaning of “family child care home,” and update references to child care provider (the bill now refers to as a “licensee”). The Committee recommendation also included technical amendments. The original bill (2009 HB 2356) would have allowed the Secretary of the Kansas Department of Health and Environment to grant a license to certain accredited facilities.

SB 447 was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Julia Lynn. Proponents of the bill included Senator Julia Lynn, representatives of the Child Care Licensing and Registration Program from the Kansas Department of Health and Environment, Kansas Action for Children, ERC Resource and Referral, and members of the public.

Proponents stated that the bill (SB 447) would have a positive impact on the safety of children and the quality of care they receive. The proponents further testified that the bill would be one step toward improving the quality and oversight of child care in Kansas by implementing inspections for every child care facility. A representative of the Kansas Department of Health and Environment stated that the Department supports more specificity in the expectations for supervision and appropriate child care practices but recommends the definition and specificity

be detailed in regulation. The regulatory process includes broad based input from the regulated community and the public and, if the regulatory requirements need to be amended, the Department could do so without statutory amendments.

No opponents testified at the hearing on the bill. After the hearing, communications from members of the public were received expressing concerns and recommendations. The information was relayed to the Committee.

For the purpose of clarity, the Senate Public Health and Welfare Committee recommended adoption of a substitute bill (SB 447). The subject matter of the original bill and the substitute bill remained the same. Additionally, the language in HB 2221, as amended by the House Committee on Health and Human Services, was included in the bill.

The Senate Committee of the Whole amended the bill to name the new law and to require a fire extinguisher in each day care home.

House Committee on Health and Human Services held hearings on the bill with both proponents and opponents providing testimony and made several changes to the bill, including requirements for supervision of children in care.

The fiscal note on the introduction version of SB 447 prepared by the Division of the Budget stated that the bill would have no fiscal effect for the Kansas Department of Health and Environment because the bill would decrease the inspection frequency and would not require regular inspections for child care homes. The Department of Social and Rehabilitation Services (SRS) indicated the bill would increase expenditures for the federal Child Care Assistance Program by \$275,313. Reimbursement provided for licensed child care facilities is higher than that for registered facilities. Currently, SRS has sufficient federal child care funding to cover the increase. Any fiscal effect resulting from the enactment of this bill is not accounted for in the *FY 2011 Governor's Budget Report*.