

SESSION OF 2023

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 96**

As Recommended by House Committee on
Health and Human Services

Brief*

House Sub. for SB 96 would establish and update law regulating child care centers and child care homes. The bill would provide certain definitions, provide license capacity and staff-to-child ratios, and establish staffing requirements, including professional development training.

Definitions

The bill would define the following terms:

- “Assistant teacher” would mean an individual who is 18 years of age or older and completes staff orientation at the time of employment;
- “Child care center” would mean a facility that meets child care center regulations and provides care and educational activities for children who are 2 weeks to 10 years of age for at least 3 hours but less than 24 hours per day or care before and after school for school-age children;
- “Child care home” would mean premises where care is provided for a maximum of 12 children under 10 years of age by 1 provider or a maximum of 17 children under 10 years of age by 2 or more providers, provided all children enrolled are at least

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

2.5 years old but under 10 years of age. Additionally, no more than 8 children under the age of 5 could be cared for with 1 provider and 12 with 2 or more providers;

- "Day care facility" would have the same meaning as in current law but would not include a drop-in program;
- "Drop-in program" would mean the same as defined in KSA 65-527: a child care facility that is not located in an individual's residence, that serves exclusively school-age children and youth where the operator permits children and youth to arrive at and depart from the program at the child or youth's own volition at unscheduled times;
- "Infant" would mean a child who is between 2 weeks and 12 months of age or a child older than 12 months of age who has not learned how to walk;
- "Lead teacher" would mean an individual who is 18 years of age or older, has a high school diploma or equivalent education, and meets the training requirements in the bill;
- "Licensure year" would mean the period of time beginning on the effective date and ending on the expiration date of a license;
- "Program director" would mean the staff member of a child care center who is at least 18 years of age; meets the training requirements for the license capacity of the child care center; and is responsible for implementing and supervising the comprehensive and coordinated plan of activities that provide for the education, care, protection, and development of children who attend a child care center;

- “School-age” would mean a child who will be at least 6 years of age on or before the first day of September of any school year, but is under the age of 16;
- “Toddler” would mean a child a who has learned to walk and is at least 12 months, but less than 30 months, of age; and
- “Unit” would mean the number of children that may be present in one group in a child care center.

Staff Training and Education Requirements

Program Director for Child Care Centers

The bill would require a child care center to have a program director on the premises. The Secretary of Health and Environment (Secretary) could not require a program director to have training requirements that are more restrictive than those outlined below. Related training would be defined to include, but not be limited to, early childhood education, elementary education, special education, speech pathology, occupational therapy, social work, or family science and human development.

- If a child care center is licensed for fewer than 18 children, the program director would need:
 - Three months experience in a licensed child care facility, preschool, or working with children in a related field;
 - Five sessions of observation for at least 2.5 consecutive hours per observation in a licensed day care facility and 10 hours of workshops approved by the state licensing staff;
 - At least three credit hours from a postsecondary educational institution or

equivalent training in childhood development, early childhood education, or curriculum resources and supervised observation in high school or college and three months caring for children in a licensed child care facility or preschool or working with children in a related field; or

- A child development associate credential.
- If a child care center is licensed for at least 18 but not more than 36 children, the program director would need:
 - Five sessions of observation for at least 2.5 consecutive hours per observation in a licensed day care facility and six months of teaching experience or a supervised practicum in a licensed child care facility or preschool or a related field;
 - Six credit hours from a postsecondary educational institution or equivalent training in childhood development, early childhood education, or curriculum resources and three months experience teaching in a licensed child care facility or preschool, or working with children in a related field or one year of supervised practicum in a licensed child care facility; or
 - A child development associate credential.
- If a child care center is licensed for 36 or more children, the program director would need:
 - Six credit hours from a postsecondary educational institution or equivalent training in childhood development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervised practicum or administration of early childhood programs and six months of experience

teaching in a licensed child care facility, preschool, or working with children in a related field;

- A child development associate credential, an associate of arts degree, or a two-year certificate in child development, and nine months of teaching experience or supervised practicum in a licensed child care facility or preschool, or working with children in a related field;
 - A bachelor of arts or science degree in child development or early childhood education, including a supervised practicum and three months experience teaching in a licensed child care facility or preschool or working with children in a related field; or
 - A bachelor of arts or a bachelor of science degree in a related academic discipline and 12 hours of academic study or equivalent training in child development, early childhood education, curriculum resources, nutrition, child guidance, parent education, supervised practicum, or administration of early childhood programs, and six months of experience teaching in a licensed child care facility, preschool or working with children in a related field;
- The bill would require a child care center that is licensed for more than 75 children to have:
 - A program director employed full-time; and
 - An administrator, who may also be the program director.

The bill would allow the program director or administrator to perform the duties of a lead teacher or assistant teacher for up to half of total hours worked during each month.

Lead Teacher

The bill would require a lead teacher to be 18 years of age or older, possess a high school diploma or equivalent education, and have:

- Three months of experience caring for children in a licensed child care facility or preschool, or working with children in a related field;
- Thirty days' teaching experience in a licensed child care facility, preschool, or a related field;
- Five sessions of observation for at least 2.5 consecutive hours per observation in a licensed day care facility and 10 clock hours of workshops approved by the state licensing staff; or
- At least three credit hours or equivalent training in childhood development, early childhood education, or curriculum resources, and supervised observation in high school or college.

Assistant Teacher

The bill would require an assistant teacher to be 16 years of age or older and complete staff orientation at the time of employment.

Child Care Units

The bill would require a unit with at least one infant to have at least one lead teacher. A unit where all children are at least 12 months old would be required to have at least 1 lead teacher or assistant teacher present. All staff members would be required to be at least three years older than the oldest child in the unit.

Professional Development

The bill would require any staff member who provides care to children in a child care center or a child care home to complete at least 12 hours of professional development training per year. The bill would allow the Secretary to specify the training for at least 8 of the 12 hours. The bill would also require an individual who provides care to children in a child care center or a child care home to provide proof of completion for up to four hours of training to the Secretary and require the Secretary to retain records of an individual's professional development.

The bill would require a person who maintains a child care home with one provider, if caring for four infants at once at any time during the licensure year, to submit proof of completion of at least three hours of professional development training in an infant-specific subject to the Secretary and require the Secretary to retain records of such compliance.

License Capacity

The bill would allow a child care home with 1 provider to have a license capacity of 12 if the children enrolled are all at least 2.5 years of age, but under the age of 10.

If all enrolled children are not between the ages of 2.5 and 10 years of age, the bill would set maximum number of children for a child care home with 1 provider as follows:

Under 12 months of age	At least 12 months of age, but under 5 years of age	At least 5 years of age, but under 10 years of age	License Capacity
0	8	4	12
1	7	4	12
2	4	4	10

Under 12 months of age	At least 12 months of age, but under 5 years of age	At least 5 years of age, but under 10 years of age	License Capacity
3	3	3	9
4	2	2	8

The bill would allow a child care home with 2 providers to have a license capacity of 17 if the children enrolled are all at least 2.5 years of age, but under the age of 10.

If all enrolled children are not between the ages of 2.5 and 10 years of age, the bill would set maximum numbers of children for a child care home with 2 providers as follows:

Under 12 months of age	At least 12 months of age, but under 15 years of age	At least 5 years of age, but under 10 years of age	License Capacity
0	12	5	17
1	11	5	17
2	10	4	16
3	9	4	16
4	8	3	15

The bill would require a second provider if the number of children present exceeds the maximum number allowed for one provider.

The bill would allow children five years of age and older to be substituted for younger children in the license capacity for child care homes with one or two providers. The bill would also allow one or two children who are 2.5 years of age or older to not be counted toward license if they are present in the child care home between 11:00 a.m. and 1:00 p.m. for the noon meal.

The bill would also allow one or two children who are at least 5 years of age, but under the age of 10 to not be counted toward the license capacity of the child care home if they are present:

- During the academic school year before and after school, in-service days, school holidays, scheduled or emergency closures, and school breaks not to exceed two consecutive weeks;
- During the two consecutive weeks before the opening of the academic school year in August or September; or
- During the two consecutive weeks following the end of the academic school year in May or June.

The bill would also allow no more than 2 children who are at least 10 years of age and unrelated to the applicant or licensee to be present for up to 2 hours each day during child care hours if the additional children are:

- Not on the premises for the purposes of receiving child care in the facility;
- Visiting the applicant's or licensee's own child or children; or
- Supervised by a provider if they have access to the children in care.

Staff-to-Child Ratio in Child Care Centers

The bill would set the ratio of staff members to children in a child care center based the ages of the children as follows and require that no child be left unsupervised:

Age of Children	Minimum per Unit	Maximum
Infants	1 to 4	12
Infants and other children under age 6	1 to 6 (including 3 or fewer infants)	12 (including 6 or fewer infants)
Toddlers	1 to 6	12
Children at least 2 but under 3 years of age	8	16
Children at least 2.5 years of age but under school age	12	24
Children at least 3 years of age or under	15	30
Kindergarten enrollees	18	36
School age	20	40

Local Ordinances

The bill would prohibit local governments from adopting any ordinance, resolution, or regulation that is more restrictive than defined for license capacity for child care homes or staff-to-child ratios for child care centers.

The bill would require child care centers to meet fire protection, water supply, and sewage disposal requirements of the local jurisdiction. The bill also would require a designated area for children’s activities to contain a minimum of 28 square feet of floor space per child, excluding kitchens, passageways, storage areas, and bathrooms, and a minimum of 75 square feet of outdoor play space for each child using the space at a given time.

Licensing

The bill would clarify conditions on expedited occupational credentialing to include any licensing of individuals by the Secretary. The bill would also remove the annual fee for child care centers, day care homes, and group day care home; however, the bill would require these facilities to pay a \$75 fee if they fail to renew their license in the appropriate time frame.

The bill would prohibit the Secretary from requiring the licensee to live in the child care home.

The bill would allow a licensee to request and would allow the Secretary to waive any requirements for a day care facility for a set period of time.

Pilot Programs

The bill would allow the Secretary to develop and operate a pilot program designed to increase the availability or capacity of child care facilities or drop-in programs. The Secretary would be authorized to waive the requirements related to licensure and operation of the child care facility, including staff requirements. The Secretary would be prohibited from granting a license for a pilot if the Secretary determines that a day care facility or drop-in program or staff of such facility or program would endanger the health, safety, and welfare of any child.

The bill would allow a pilot program to be in operation for up to five years and would allow the Secretary to extend the pilot program for an additional two years.

If the Secretary determines a pilot program has been successful and would increase the availability or capacity of child care facilities in the state, the Secretary would be required to make suggestions and recommendations for statutory changes related to day care facilities and drop-in

programs and adopt any rules and regulations consistent with the findings of such pilot program, including additional licensure categories and requirements for such categories.

The Secretary would be required to prepare and submit a report on or before the first day of each regular session of the Legislature regarding any pilot program. The content of the report would be as outlined in the bill.

Use of Hygiene Products

The bill would provide child care facilities with the option to use toothbrushes after meals or as appropriate.

The bill would also clarify that maternity centers and child care facilities would be required to provide each resident and employee with an individual towel, washcloth, or disposable products.

Background

SB 96 was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Tyson. The bill would have created the Pregnancy Resource Act, which would have provided for a tax credit for contributors to nonprofit pregnancy centers or residential maternity centers exempt from federal income tax pursuant to section 501(c)(3) of the federal Internal Revenue Code, provided that such centers comply with the provisions of the bill.

The House Committee on Health and Human Services removed the contents of SB 96, inserted the contents of SB 282 as amended by the Senate Committee on Commerce, and recommended a substitute bill.

SB 282

SB 282 was introduced in the Senate Committee on Federal and State Affairs at the request of Senator Blasi. The bill was amended by the Senate Committee on Commerce.

Senate Committee on Commerce

In the Senate Committee hearing, **proponent** testimony was provided by Senator Blasi and representatives of the Alliance of Boys and Girls Clubs, Americans for Prosperity Kansas, Bright Minds Academy, Kansas Chamber of Commerce, Miss Marty's Nursery School - Day Care Home, Opportunity Solutions Project, Stormont Vail Health, and the Wichita Regional Chamber of Commerce. The proponents generally stated the bill would expand childcare availability, modify child to staff ratios, and reduce the financial investment necessary to operate a center. Written-only proponent testimony was provided by representatives of the Dodge City/Ford County Development Corporation, Grandma B's Daycare, Kansas Bankers Association, Kansas Hospital Association, Kimbers Kinders, and Little Steps Child Care Center.

Representatives of the At Home Play School, Kansas Action for Children, Child Care Aware of Kansas, Child Care Providers Coalition of Kansas, Kansas Department of Health and Environment, and Thrive Allen County and Zero to Thrive provided **opponent** testimony on the bill. The opponents generally stated the bill proposed changes that would negatively impact the safety and quality of Kansas children and child care programs, decrease the level of competency by lowering education requirements, and did not meet best practice standards. Written-only opponent testimony was provided by representatives of the Butler County Health Department, ERC Resource and Referral (dba ChildCare Aware of Eastern Kansas), Family Conservancy, Family Resource Center, Harmon and Harmon Family Child Care, Johnson County Department of Health and Environment,

Kansas Association for the Education of Young Children, Kansas Child Care Training Opportunities, Kansas Head Start Association, the Salina County Health Department, and United Methodist Health Ministry Fund, and by four private citizens.

A representative of the Kansas Children's Cabinet and Trust Fund provided neutral testimony on the bill. The representative stated a review of the child care licensing rules and regulations is underway and allowing time for a working group to study the issue would lead to recommendations and prevent unintended consequences. Written-only neutral testimony was provided by representatives of Christ Lutheran Early Education Center, Goodwill Industries of Kansas, Kansas Association of Local Health Departments, Olathe Chamber of Commerce, and the Unified Government of Wyandotte County Public Health Department.

The Senate Committee amended the provisions of the bill to:

- Change titles for the following:
 - "Group leader" is changed to "lead teacher";
 - "Assistant group leader" is changed to "assistant teacher"; and
 - "Day care home" is combined with "group day care home" and changed to "child care home";
- Clarify the child care center staff requirements;
- Adjust the age for categorizing children from under 16 years of age to under 10 years of age and some of the maximum numbers of children allowed, and the total license capacity with 1 or 2 providers;
- Adjust staff-to-child ratios for toddlers;

- Add language restricting the Secretary from adopting more restrictive ratios or children per unit; Remove language regarding volunteers;
- Add professional development training requirements for child care homes, in alignment with child care center training requirements;
- Add a definition of drop-in program;
- Add requirements for program directors for child care centers licensed for more than 75 children; and
- Delete a section on the inspection of child care facilities.

The Senate Committee on Commerce removed the contents of HB 2344 (regarding the Council on Travel and Tourism and related grants), inserted the amended contents of SB 282, and recommended a substitute bill.

House Committee on Health and Human Services

In the House Committee, an informational briefing was held on SB 282. Comment on the bill was provided by Senator O'Shea; representatives of Americans for Prosperity Kansas, Kansas Chamber, Opportunity Solutions Project, and Stormont Vail Health; and two private citizens, who generally spoke to an ongoing shortage of child care in the state and its effect on the workforce. Kansas Action for Children provided comment expressing concern that the bill does not address compensation for child care workers, reduces required training hours, and increases the number of children allowed to be cared for per staff member. Written neutral comment was provided by a representative of Kansas Hospital Association.

The House Committee removed the contents of SB 96, inserted the contents of SB 282 as amended by the Senate

Committee on Commerce, and recommending a substitute bill.

Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on SB 282, as introduced, the Kansas Department of Health and Environment (KDHE) would require \$1.1 million from the State General Fund (SGF) in FY 2024 and up to \$9.2 million SGF and up to 93.0 FTE positions beginning in FY 2027. KDHE indicates that the elimination of annual fees would require the agency to replace this funding stream, which is currently used for local health departments, salaries and wages, the purchase of vehicles, and vehicle repairs. KDHE is also contracted with the Department for Children and Families for an obligation to match approximately \$1.0 million from the Child Care and Development Fund, currently used to match funds local health departments put toward the program.

Currently, KDHE uses a hybrid model for surveyors, with 43 of the 105 counties covered by a KDHE surveyor, while the other 62 are covered by a contracted local agency surveyor. Based on the recommended ratio for surveyors of 1:50 surveyors to facilities, an additional 93.0 FTE positions would be recommended at a cost of \$6.2 million. Additionally, \$1.9 million for the purchase of vehicles for added surveyors would be requested. If 78.0 FTE positions would be recommended, at a ratio of 1:60, the estimated cost for salaries and wages would be \$5.2 million and \$1.6 million for vehicles.

Any fiscal effect associated with enactment of SB 282 is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties indicated that the bill could have a fiscal effect for counties, but notes that counties are restricted in their ability to regulate child care centers. The League of Kansas Municipalities noted that the

bill would result in increased costs to local governments to develop and implement new procedures regarding child care facilities and licensure. The added duties would also require additional time and training for city appointed officials. A total fiscal effect could not be estimated.

Child care center; child care facility; child placement agency; child care home; licensure