

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1155 Provisional Child Care Licensing

SPONSOR(S): Maney

TIED BILLS: IDEN./SIM. BILLS: SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Curry	Brazzell
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

DCF and local licensing agencies license and registers child care facilities, family day care homes, and large family child care homes.

DCF and local licensing agencies may issue a provisional license or registration for child care facilities, family day care homes, or large family homes for an initial license or registration or to licensees or registrants seeking a renewal who are unable to meet all the standards provided for in the state's child care law (ss. 402.301-402.319, F.S.). A provisional license or registration allows the operator of the child care facility or home to operate while working to come into compliance with the minimum standards required for a non-provisional license or registration. A provisional license or registration may also not be issued unless the child care provider complies with the applicable background screening requirements for all child care personnel.

Family day care homes are occupied residences in which child care is regularly provided for children from at least two unrelated families and which receives payments, fees, or grants for the children receiving care, whether or not operated for profit. The Department of Defense (DoD) certifies family child care (FCC) providers who provide child care service in their homes. DoD FCC home providers are very similar to family day care homes in Florida.

The DoD certification and training requirements for FCC providers is similar to DCF's licensure and registration requirements for family day care homes. Both require introductory training focusing on child development, health and safety, behavioral health, and abuse and neglect. Both DoD and DCF also require ongoing annual in-service training updates as well as training in first aid, CPR, fire prevention, and safe sleep/SIDS.

The background screening requirements are also very similar. Both entities require:

- Federal fingerprint-based National Crime Information Center (NCIC) criminal history check;
- Federal fingerprint-based NCIC Sex Offender Registry check;
- A state criminal records search for all states in which the person has resided in the previous five years;
- A state sex-offender registry or repository check for all states in which the person has resided in the previous five years; and
- A state child abuse and neglect registry and database check for all states in which the person has resided in the previous five years.

However, Florida requires all family day care home providers to receive a level 2 background screen using the Care Provider Background Screening Clearinghouse. Processing through the Clearinghouse is not required by DoD.

The bill requires DCF or the local licensing agency to issue a provisional license or registration to operate a family day care home when the operator provides evidence of the completion of training and background screening that meets the requirements of the DOD for a family child care home.

The bill does not have a fiscal impact on state or local government.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1155.CFS

DATE: 3/13/2023

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Child Care Licensure

Child care is the care, protection and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.¹ If a program meets the statutory definition of child care, it is subject to regulation by the Department of Children and Families (DCF) or local licensing agencies (LLAs),² unless the statute specifically excludes or exempts it from regulation.³

Types of Child Care Facilities and Homes

DCF licenses and regulates child care facilities⁴, family day care homes,⁵ and large family child care homes,⁶ establishing the licensing standards that each licensed child care facility must meet.⁷ Child care facilities with religious affiliation and certain family day care homes are exempt from licensure, but are required to register with the DCF.

Child care facilities are child care centers or child care arrangements that care for more than five children unrelated to the operator and receive a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.⁸

Family day care homes are occupied residences in which child care is regularly provided for children from at least two unrelated families and which receives payments, fees, or grants for the children receiving care, whether or not operated for profit.⁹ Large family child care homes are occupied residences in which child care is regularly provided for children from at least two unrelated families, which receives payments, fees, or grants for the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation.¹⁰

Currently, DCF licenses and registers child care facilities and homes in 62 out of 67 counties in Florida. Five counties have elected to designate an LLA to regulate child care providers in their areas. These counties include Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota.¹¹

Requirements for Registration or Licensure of Family Day Care Homes

Family day care homes may be licensed or registered. Under current law, a family day care home must be licensed if licensure is required under a specific county ordinance or resolution. Most counties in

¹ S. 402.302(1), F.S.

² Broward, Hillsborough, Palm Beach, Pinellas and Sarasota counties have decided – either by statute or by the adoption of a local ordinance or resolution – to designate an LLA to regulate child care providers in their areas. However, Hillsborough will transfer licensing duties back to DCF June 30, 2023. See DCF, *Child Care Licensure*, available at <https://www.myflfamilies.com/services/licensing/child-care-licensure> (last visited March 8, 2023) and DCF, *Agency Bill Analysis HB*

1155 (2023), p. 2.

³ S. 402.306, F.S.

⁴ S. 402.305, F.S.

⁵ S. 402.313, F.S.

⁶ S. 402.3131, F.S. Also see ss. 402.301 through 402.319, F.S.

⁷ See generally ss. 402.301 through 402.319, F.S. See also s. 402.305(1), F.S. The licensing standards must apply to all facilities regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.

⁸ S. 402.302(2), F.S.

⁹ Section 402.302(8), F.S.

¹⁰ Section 402.302(11), F.S.

¹¹ DCF, *Child Care Licensure*, available at <https://www.myflfamilies.com/services/licensing/child-care-licensure> (last visited March 8, 2023).

Florida do not require licensure. However, a family day care provider may choose to be licensed to demonstrate that they meet the state's minimum health, sanitation, and safety standards.¹² If not subject to licensure, family day care homes must register annually with DCF.¹³

Before operating a family day care home, the following basic requirements must be met:¹⁴

- The operator must be 18 years of age or older;
- The operator must reside in the home;
- The operator cannot work outside the home during the hours of operation of the family day care home; and
- The family day care home operator must have proof of a written Substitute Plan to provide at least one other competent adult, 18 years or older, to be available to substitute for the operator in an emergency.

To register, a family day care home must complete the DCF application process and provide the following:¹⁵

- The name of the operator;
- The number of children served (not to exceed capacity as defined by § 402.302(7), F. S.);
- Proof of written plan to provide at least one competent adult to be available to substitute for the operator in an emergency;
- Proof of screening and background checks;
- Proof that immunization records for the children are kept current;
- Proof that each parent has been provided a copy of a completed Health and Safety Checklist; and
- Proof of completion of the 30-hour family day care home training course as well as an approved 5-hour course in early literacy and language development of children ages birth through five years. The 35 hours of training must be completed prior to registration.

Unlike licensed home providers,¹⁶ registered family day care homes are not subject to yearly inspections. However, they are required to annually complete a DCF health and safety home inspection self-evaluation checklist.¹⁷ The completed checklist must be signed by the family day care home operator and provided to the parents of the children in care as certification that basic health and safety standards are being met.¹⁸

The checklist includes several different health and safety quality indicators in which the family day care home operator must check to acknowledge compliance with and attest that the information provided on the checklist is true and correct. Some of the quality indicators on the checklist include:¹⁹

- Emergency Information and Procedures;
- Environment and Sanitation; and
- Hazardous Materials

Provisional Licensure

DCF may issue a provisional license or registration for child care facilities, family day care homes, or large family homes for an initial license or registration or to licensees or registrants seeking a renewal who are unable to meet all the standards provided for in the state's child care law (ss. 402.301-

¹² DCF, *About Family Child Care Home Registration*, at <https://www.myflfamilies.com/services/child-family/child-care/child-care-providers-and-staff/about-family-child-care-home> (last visited March 11, 2023).

¹³ S. 402.313, F.S.

¹⁴ Supra note 12.

¹⁵ Supra note 12.

¹⁶ During the licensure year, licensure family day care homes receive a minimum of two onsite inspections. See Id. at note 12.

¹⁷ S. 402.313(7), F.S.

¹⁸ Once the checklist is completed and signed by the operator, the checklist is given to each parent with a child in care. The parent must sign the checklist to acknowledge receipt.

¹⁹ DCF, *Registered Family Child Care Home Health and Safety Checklist*, at <https://www.myflfamilies.com/sites/default/files/2022-12/RegisteredFamilyChildCareHomeHealthandSafetyChecklist.pdf> (last visited March 11, 2023).

402.319).²⁰ A provisional license or registration allows the operator of the child care facility or home to operate while working to come into compliance with the minimum standards required for a non-provisional license or registration. However, the provisional license or registration may be revoked if upon periodic inspection or review, DCF determines that insufficient progress has been made towards compliance with the minimum standards. A provisional license cannot exceed 6 months and can be renewed one time for unusual circumstances beyond the control of the applicant.²¹

A provisional license or registration may not be issued unless the operator or owner makes adequate provisions for the health and safety of the children they will serve.²² A provisional license or registration may also not be issued unless the child care provider complies with the applicable background screening requirements for all child care personnel.²³ Child care personnel includes all owners, operators, employees, and volunteers working in a child care facility. For purposes of screening, child care personnel includes any member over the age of 12 years of a family day care homes operator's family or residing in the home. Those between the ages of 12 and 18 years are not be required to be fingerprinted. However, they must be screened for delinquency records.

Military-Operated Child Care Programs

The Department of Defense (DoD) certifies four types of child care programs:²⁴

- **Child Development Centers:** Are centers located on military installations/base that provide child care services for infants, pretoddlers, toddlers, and preschoolers. They operate Monday through Friday during standard work hours, and depending on the location offer full-day, part-day, and hourly care.
- **Family Child Care (FCC):** Are provided by qualified child care professionals in their homes. Designed for infants through school agers, each FCC provider determines what care they offer, which may include full-day, part-day, school year, summer camp, 24/7, and extended care. Some FCC providers offer flexible operating hours, and are able to adjust their hours to accommodate requests from parents.
- **24/7 Centers:** Provide child care for infants through school age children in a home-like setting during both traditional and non-traditional hours on a regular basis. The program is designed to support watch standers or shift workers who work rotating or non-traditional schedules (i.e., evenings, overnights, and weekends). While other families may use a 24/7 Center if space is available, priority is given to sponsors who require 24/7 care.
- **School Age Care (SAC)** — Are facility-based care for children from the start of kindergarten through the end of the summer after seventh grade. This program type operates Monday through Friday during standard work hours. SAC programs provide both School Year Care and Summer Camp.

The DoD FCC homes are comparable to Florida's family day care homes. All military certified FCC home providers must be certified professionals who are licensed, have obtained favorable background checks, and maintain a DoD Certificate to Operate. Each installation's FCC program ensures all providers complete a comprehensive training program that promotes developmentally appropriate intellectual, social, emotional, and physical learning.²⁵

DoD FCC certification and screening standards are typically more stringent than state standards, making it easier for applicants who are required to be both state and military certified. Required screenings, inspections, and checks for FCC homes include:²⁶

- Criminal history background checks for the applicant and all residents over 18 years old;
- Health screening and proof of immunizations for the provider and residents;

²⁰ S. 402.309, F.S.

²¹ S. 402.309(3), F.S.

²² S. 402.309(2), F.S.

²³ Id.

²⁴ Military Childcare, *Military-Operated Child Care Programs*, at <https://public.militarychildcare.csd.disa.mil/mcc-central/mcchome/military-operated-child-care-programs> (last visited March 9, 2023).

²⁵ Id.

²⁶ Id.

- Home inspections for fire, safety, sanitation, and preventative medicine;
- Monthly visits by an FCC staff member to observe, mentor and provide support
- Pet certificate if the provider has a pet to show that it has the appropriate vaccinations and is safe to be around children; and
- Proof of liability insurance.

In addition to meeting the DoD certification standards, FCC home providers that are located off military bases must also meet any additional state licensing and registration requirements.

Training Requirements

DCF Training Requirements

DCF requires family day care home providers and child care personnel to complete 30 hours of mandated introductory training by passage of a competency exam or educational exemption. The training includes the following:²⁷

- Family Child Care Home Rules and Regulations (6 hours)
- Health, Safety and Nutrition (8 hours)
- Identifying and Reporting Child Abuse and Neglect (4 hours)
- Child Growth and Development (6 hours)
- Behavioral Observation and Screening (6 hours)

Operators of large family child care homes must successfully complete an approved 40-clock hour introductory course in group child care, as evidenced by passage of a competency examination. This includes the courses within the 30-hour mandated introductory training along with 10 hours as achieved by one of the following options:²⁸

- Understanding Developmentally Appropriate Practice (5 hours) and one of the following:
 - Infant and Toddler Appropriate Practice (5 hours)
 - Preschool Appropriate Practice (5 hours)
 - School-Age-Appropriate Practice (5 hours)
- Special Needs Appropriate Practice (10 hours)

For home-based providers, DCF mandatory introductory training must be completed prior to licensure and caring for children.

Additional training requirements that must be completed include:²⁹

- Annual In-service Training³⁰
- Early Literacy;
- First Aid and Pediatric CPR;
- Universal Precautions/Exposure Plan;
- Fire Extinguisher Training;
- Safe Sleep/Shaken Baby Syndrome Training; and
- Medication Administration

DoD Training Requirements

²⁷ S. 402.313(1)(a)6, F.S.

²⁸ S. 402.3131(3), F.S.

²⁹ DCF, *Family Day Care Home Training Requirements*, at <https://www.myflfamilies.com/services/child-and-family-services/child-care/family-day-care-home-40-hours> (last visited March 9, 2023).

³⁰ Once licensed the operator must complete 10-clock-hours or 1 Continuing Education Unit (CEU) of annual in-service training during the licensure year. See Florida Department of Health, *Opening a Licensed Family Day Care Home*, at https://www.floridahealth.gov/environmental-health/radon/documents/HowToBecomeAFamilyChildCareHome_201912.pdf (last visited March 11, 2023).

DoD requires all FCC providers and direct care personnel to complete 40 hours of orientation prior to working with children, with the full 40 hours completed within the first 90 days of employment. The orientation includes:³¹

- Working with children of different ages, including developmentally appropriate activities and environmental observations;
- Age-appropriate guidance and discipline techniques;
- Applicable regulations, policies, and procedures;
- Child safety and fire prevention;
- Child abuse prevention, identification, and reporting;
- Parent and family relations;
- Health and sanitation procedures, including blood-borne pathogens, occupational health hazards for direct care personnel, and recognizing symptoms of illness;
- Emergency health and safety procedures, including pediatric cardiopulmonary resuscitation (CPR) and first aid;
- Safe infant sleep practices and Sudden Infant Death Syndrome (SIDS) prevention;
- Nutrition, obesity prevention, and meal service;
- Working with children with special needs;
- Accountability and child supervision training;
- For FCC providers only, infant and child (pediatric) CPR and first aid must be completed prior to accepting children for care. Training shall be updated as necessary to maintain current certifications; and
- Training in business operations.

Background Screening Requirement

Florida Background Screening

All child care personnel must meet certain background screening requirements. Elements of background screening include:³²

- FDLE criminal history background check
- FBI criminal history background check
- Criminal background check of any prior states resided within the past five years
- Sex Offender Registry check (in Florida & any prior states resided within past five years)
- Child Abuse & Neglect check (in Florida & any prior states resided within past five years)
- Attestation of Good Moral Character
- Previous five-year employment history check

Current law establishes standard procedures for criminal history background screening for prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: “level 1” employment screening (s. 435.03, F.S.) and “level 2” employment screening (s. 435.04, F.S.).

Level 1: Is a state only name-based check through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,³³ and may include criminal records checks through local law enforcement agencies.³⁴

Level 2: Is a state and national fingerprint-based check through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.³⁵

³¹ Washington Headquarters Services, *Department of Defense Instruction*, at <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodi/606002p.pdf> (last visited March 9, 2023).

³² S. 402.302(15), F.S.

³³ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited March 9, 2022).

³⁴ S. 435.03(1), F.S.

³⁵ Section 435.04, F.S.

For both level 1 and 2 screenings any person required by law to be screened must not have an arrest awaiting final disposition, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under s. 435.04(2), F.S., or similar law of another jurisdiction.³⁶

Care Provider Background Screening Clearinghouse

All child care licenses and registrations are required to have a Level 2 background screening through Florida's Care Provider Background Screening Clearinghouse (Clearinghouse). The Clearinghouse is administered by the Agency for Health Care Administration and provides a single data source for background screening results of persons required to be screened by law for employment in positions that provide services to children, the elderly, and disabled individuals.³⁷ The clearinghouse allows the results of a criminal history check to be shared among specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check.³⁸ The Clearinghouse also allows for the retention of fingerprint data and participation in the FBI's Next Generation Identification (NGI) continuous evaluation or "Rap Back" Service.

Next Generation Identification (NGI) Rap Back Service

Rap Back (Record of Arrest and Prosecution Back) is an FBI service that allows authorized government agencies to receive notifications based on changes in criminal history record information on individuals who hold positions of trust (e.g. school teachers, daycare workers, police officers, etc.) or who are under criminal justice monitoring.³⁹

An authorized agency may submit fingerprints of applicants, licensees, and other individuals in positions of public trust on a periodic basis for National Crime Information Center (NCIC) checks to determine if the individuals have engaged in criminal conduct that would prohibit the holding of such positions or licenses.⁴⁰ With implementation of NGI, an authorized agency may submit fingerprints for retention and subscription into the Rap Back service. This will result in an ongoing review or continuous evaluation of the criminal history status of each individual as long as the individual remains in a position of trust.⁴¹

The Rap Back Service retains the fingerprint records and continuously evaluates them. This, eliminates the need for the authorized agency to periodically resubmit fingerprints for evaluation.⁴² The Rap Back Service provides timely, close to real-time, notifications of any arrest or criminal activity associated with individuals identified in NGI, such as warrants or sex offender updates, subsequent to the initial criminal history records search. This helps to remove any gaps in review caused by the periodic submission and screening of fingerprints.⁴³

DoD Background Screening for FCC Providers

DoD policy dictates that all individuals who have regular contact with children under 18 years of age in DoD sanctioned child care services programs must undergo a criminal history background check, an

³⁶ Ss. 435.03 and 435.04, F.S.

³⁷ S. 435.12, F.S.

³⁸ Id. Also see Agency for Health Care Administration, *Care Provider Background Screening Clearinghouse*, at https://ahca.myflorida.com/mchg/central_services/background_screening/bgs_results.shtml (last visited March 9, 2023).

³⁹ U.S. Department of Energy, *RAP BACK FAQs for Covered Individuals*, at <https://www.energy.gov/sites/default/files/2021-08/RAP%20BACK%20FAQs%20for%20Covered%20Individuals.pdf> (last visited March 9, 2023).

⁴⁰ See Federal Bureau of Investigation, Privacy Impact Assessment, *Next Generation Identification Rap Back Service*, December 15, 2016, available at <https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf> (last visited March 9, 2023).

⁴¹ Id.

⁴² Id.

⁴³ Id.

Installation Records Check (IRC), and annually self-report changes to their criminal histories.⁴⁴ DoD also conducts an FBI fingerprint criminal history background check.

DoD initiates a Tier 1 Investigation (Child Care National Agency Check and Inquiry (CNACI)). Elements of the investigation include:

- FBI criminal history background check
- State criminal history repository check of any former states of prospective employee
- State child abuse and neglect repository check
- State sex offender registry check

An IRC reviews the applicant's relevant and accessible past records, with a minimum coverage of 2 years prior to the date of application, and includes:

- Installation law enforcement or security records;
- Family Advocacy Program (FAP) records; and⁴⁵
- Alcohol, drug, and substance abuse records (including pre-employment records and the results of any random drug testing).

Comparison of DCF and DoD Child Care Requirements

The DoD certification and training requirements for FCC providers regarding training and background screening is substantially similar to DCF's licensure and registration requirements for family day care homes. Both require introductory training focusing on child development, health and safety, behavioral health, and abuse and neglect. Both DoD and DCF also require ongoing annual in-service training updates as well as training in first aid, CPR, fire prevention, and safe sleep/SIDS.

The background screening requirements are also very similar. Both entities require:

- Federal fingerprint-based NCIC criminal history check;
- Federal fingerprint-based NCIC Sex Offender Registry check;
- A state criminal records search for all states in which the person has resided in the previous five years;
- A state sex-offender registry or repository check for all states in which the person has resided in the previous five years; and
- A state child abuse and neglect registry and database check for all states in which the person has resided in the previous five years.

However, Florida requires all family day care home providers to receive a level 2 background screen using the Clearinghouse. Processing through the Clearinghouse is not required by DoD.

Effect of the Bill

The bill requires DCF or the local licensing agency to issue a provisional license or registration to operate a family day care home when the operator provides evidence of the completion of training and background screening that meets the requirements of the DOD for a family child care home.

This will allow the family day care home operator to operate under the provisional license or registration until the provider is able to come into compliance with all minimum standards required for a non-provisional license or registration.

⁴⁴ Washington Headquarter Services, *DoD Manual 1402.05 Background Checks on Individuals in Department of Defense Child Development and Youth Programs*, January 24, 2017, at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/140205_dodm_2017b.pdf (last visited March 9, 2023).

⁴⁵ FAP is a DoD program designated to address domestic abuse, child abuse and neglect, and problematic sexual behavior in children and youth. FAP works on every military installation where families are assigned, and supports service members and their spouses, partners and families to prevent abuse, promote victim safety and offer treatment and rehabilitation for healing after a traumatic event has occurred. See Washington Headquarter Services, *DoD Instructions 6400.01 Family Advocacy Program (FAP)*, May 1, 2019, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640001p.pdf> (last visited March 9, 2023).

The bill does not require that a family child care home serve only military families, or any military families, to be allowed a provisional license pursuant to this new exception.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.309, F.S.; relating to provisional license or registration.

Section 2: Provides that the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides DCF with sufficient rulemaking authority to execute the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES