

SESSION OF 2010

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 447**

As Amended by Senate Committee of the Whole

Brief*

Sub. for SB 447 would create new law, to be known as Lexie's Law, and amend current law concerning the supervision, licensing and inspection requirements for child care facilities. New law would be created defining "competent supervision" for children in child care homes or day care homes as regulated by the Kansas Department of Health and Environment. It would eliminate the category of registered "family day care home" and replace it with licensed "family child care home." The new category of "family child care home" would be included in the existing general definition of a "child care facility" and the new category would be required to be inspected.

The bill would remove specific reference to "family day care home" or "registered family day care home" from statutes where language already exists referring to a child care facility. The bill would repeal statutes solely relating to family day care homes, as those facilities would no longer exist. The bill also 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 complaints. (Section 11)

Supervision Requirements (Section 1)

The bill would require competent supervision of children in child care homes or day care homes to include:

*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>

- For children less than five years of age who are awake, the care provider must:
 - Be in proximity to the child, watching and directing activities of the children;
 - Respond immediately to emergencies and the needs of children; and
 - Provide direct visual supervision.

- Exceptions to these requirements would be allowed when a care provider is temporarily unable to provide direct visual supervision in order to attend to personal hygiene needs or to engage in other provider duties. In those situations, the care provider would be required to:
 - First ensure the safety of each child; and
 - Be able to respond immediately to any child in distress.

- For children who are napping or sleeping, the applicant who holds a temporary permit or the licensee must ensure supervision is provided by:
 - Maintaining each child within direct visual supervision or within hearing distance; and
 - By visually checking on each child at least once every fifteen minutes.

None of the requirements listed above would be construed as preventing a person who is blind or visually impaired, or who is deaf or hearing impaired, when otherwise qualified, from being a licensed day care provider, or an employee of such a provider.

**Denial of New License or
Employment as Child Care
Provider (Section 5)**

The bill would prevent child care providers from applying for a new license to provide child care or to seek employment under another child care provider if they have:

- Had their license revoked or their 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 their care.

Inspection Requirements (Section 7)

The bill would change the inspection requirements for a maternity or a child care facility to at least once every fifteen months, instead of the current twelve months. Additionally, the bill would require that:

- The inspections of family child care homes would begin on or before January 1, 2011;
- The Secretary of Health and Environment, on or before July 1, 2013, would develop and implement a risk-based system for use in determining the frequency of inspections by adopting rules and regulations necessary to meet the inspection requirements. Risk criteria would include:
 - Ages of children under authorized care;
 - Hours of operation;
 - Complaint history;
 - Compliance history;
 - Other factors the Secretary deems necessary to assess risk in all child care facilities; and

- Child care facilities be inspected more frequently than at least once every fifteen months if:
 - Risk criteria indicate the inspection should occur more frequently;
 - 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;
 - The child care facility has a record of repeated complaints or serious violations; or
 - The child care facility provides services to military families receiving military assistance, in which case an inspection is required every twelve months.

Annual Self-Evaluation Report (Section 7)

Any child care facility, in compliance on the effective date of this act, would be required to submit a self-evaluation report annually to the Secretary of Health and Environment based on a checklist provided by the Secretary. Categories of child care facilities subject to the annual self-evaluation report, as defined by Kansas Administrative Regulations would be:

- Day care homes;
- Group day care homes;
- Child care centers;
- Preschools;
- School-age programs; and
- Drop-in programs.

Fund savings from implementing the annual self-evaluation report procedure would be used for expenditures for inspection of family child care homes which would begin on or before January 1, 2011. The annual self-evaluation report requirement provisions would expire on July 1, 2013.

Release of Certain Facility Information (Section 11)

The bill would allow the Department of Health and Environment or its agents to release from records in its possession, individual names of licensees, applicants, facilities and maternity centers. It would require the establishment of an online information dissemination system on or before September 1, 2010, which would be accessible to the public and would provide the names of licensees, applicants and the history of citations and complaints.

The bill would change 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 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 (Section 13)

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.

Change of Status of Registered Family Day Care Homes (Section 15)

On the effective date of this act, a family day care home registered under present law would be construed to be licensed as a family child care home until an inspection is conducted and a license issued.

The bill would take effect upon publication in the *Kansas Register*.

Background

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 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. 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 (Section 11).

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.

The fiscal note on 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*.