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Introduction

The business of caring for children can be risky and expensive. Although you can never eliminate all of the risks that come with your business, you can significantly reduce them and use insurance to protect yourself against the remaining risks.

This book will explain the strategies that you can use to reduce your business risks by working closely with your licensor and the parents of the children in your care and purchasing adequate insurance to manage the remaining risks to you and your family. It will explain the key features that you should look for in business liability insurance, business property insurance, car insurance, homeowners insurance, workers' compensation insurance, umbrella liability insurance, health insurance, disability income insurance, life insurance, and long-term care insurance.

Although family child care providers regularly make decisions that can have significant legal and financial consequences, most don't have adequate insurance, and few ever consult an attorney. This book will educate you about the significant legal and insurance issues that you face every day in running your business, and explain how to

- Minimize the risks that you face in operating your business
- Defend yourself against allegations of child abuse
- Handle custody disputes between parents
- Protect the confidentiality and privacy of your clients
- Comply with the Americans with Disabilities Act
- Avoid violating the price fixing laws
- Overcome zoning and deed barriers to your business
- Find legal services at a reasonable cost
- Select the best structure for your business

Many family child care providers consider legal and insurance matters to be worrisome, intimidating, or simply boring. We understand that these are not your favorite topics. We wrote this book to offer you practical information about how to reduce your business risks and protect yourself, your family, and your business. Despite the fear and anxiety that often accompany the topics covered in this book, we believe that you will benefit greatly by

spending some time learning how to manage your risks. We hope that we have written this book in a way that is easy to understand and that you will find it helpful.

If you have any questions about the issues raised in this book, you can call us at 651-641-6675, or send an e-mail to rni@redleafinstitute.org. For more information, updates, and any corrections or additions to this book, see the Business Library at www.redleafinstitute.org.

Disclaimer

This publication discusses general legal, insurance, and tax issues and is designed to provide accurate and authoritative information on those topics. It is made available with the understanding that neither the authors nor the publisher are engaged in rendering legal, insurance, tax, or other professional advice. If you require legal, insurance, or tax assistance, you should engage the services of a competent professional. Your insurance coverage is based on your insurance contracts, and you should discuss your specific insurance needs with your insurance agent.

Many of the rules and regulations discussed in this book are based on state laws, which vary greatly from state to state. Before taking any action you may want to consult an attorney or tax professional to learn about the specific laws in your state. Also, as with any publication, be sure to check whether the information in this book is still current.

Understanding Insurance

Chapter Summary

This chapter introduces the four major types of business insurance that every family child care provider should have, and the most important features that these policies should include.

This chapter explains the general principles involved in using insurance to protect yourself from major financial risks. As explained in chapter 1, you don't need insurance to protect yourself from minor risks. If you were to lose your contact lens, or your pet were to get sick, this wouldn't be a financially devastating event—and it isn't worthwhile to purchase insurance to manage those kinds of risks. (See pages 2–4 for an explanation of the five strategies for managing risk.)

Since you can't afford to insure yourself against every risk that you face, you should focus on protecting the things that will make a significant difference to the long-term well-being of your family and yourself. By entering into the family child care business you are exposing your family to serious new financial risks, and the best way to manage these new risks is through insurance.

Before you became a family child care provider you probably had insurance to protect you and your family against personal major risks. This insurance probably included the following:

- Health insurance to protect your family against serious accidents and illnesses
- Homeowners or renter's insurance to protect your home and your property
- Car insurance to protect your car and to cover the cost of any injuries to your family or other people in a car accident
- Life insurance to provide financial security to your family if you were to die

None of this personal insurance is designed to protect you against the new risks that you assume once you begin caring for children. As a business operator, you face a completely new set of risks that you must manage. These new risks include, but are not limited to the following:

Financial Damages

The risk that money damages will be awarded against you in a lawsuit. For example:

- A parent falsely accuses you of child abuse and sues you for a million dollars.
- A child breaks her arm in your program, and the parents sue you for negligent supervision because you left her alone for one minute.

Legal Expenses

The risk that you will have to pay legal expenses associated with a lawsuit. For example:

- A child is bitten by your cat, and fifteen years later the child sues you. Even if you win the lawsuit, you may have attorney’s fees to pay.
- A parent falsely accuses your teenage son of abusing one of the children in your care, and you have to hire a lawyer to defend him in a lawsuit.

Medical Expenses

The risk that you will have to pay someone else’s medical expenses. For example:

- A child gets food poisoning while in your care, and her parents incur a \$3,000 emergency room bill.
- You’re driving the children to the park when a drunken and uninsured driver hits your car. The medical bills for you and the children total \$20,000.
- Your helper falls down your front stairs and injures her back.

Property Damage

The risk that there will be damage to property that you use in your business. For example:

- Your house is damaged in a fire, and all your business equipment is destroyed.
- You can’t reopen your business for six weeks after the fire.
- During that time you incur \$5,000 in hotel and restaurant bills.

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Consult Your Insurance Agent

This chapter is intended to introduce the most important general principles of insurance. However, the topic of insurance is complicated, and you shouldn’t rely on this book for the final word. Insurance policies can change over time, and the rules governing insurance coverage vary from state to state. We urge you to talk with your insurance agent about your specific insurance needs.

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Your personal insurance doesn't protect you from the risks of running your business. Also, it doesn't matter how your business is structured—you will still need to buy the same business insurance to protect yourself and your family whether your business is a sole proprietorship, a partnership, a limited liability company, or a corporation (see chapters 16 and 17).

Despite this, most family child care providers don't have any business insurance at all. When you think of all the disasters that can happen to the children in your care, and the large money settlements that juries have awarded, it's amazing that so many providers haven't tried to protect themselves against these risks. Statistics show that the average cost of a lawyer to defend you in one lawsuit is higher than paying the cost of business liability insurance premiums for 20 years. Once a problem occurs, it will be too late to buy insurance to cover it.

Many providers probably don't get adequate insurance because they don't think that they can afford it—but trying to save a few dollars this way could cost you much, much more down the road. (See chapter 11 for some ideas about how to pay for your insurance and contain your insurance costs.)

If you don't currently have any business insurance, this chapter can help you understand what types of insurance you should purchase. Most states don't require family child care providers to have business liability insurance, but some do, and some require providers without insurance to inform the parents, or have the parents sign an affidavit acknowledging that they know the provider is not covered. However, none of these steps would prevent you from being sued if an accident were to occur.

If you do have business insurance, use this chapter to review your current policies to see if they are adequate and appropriate for your needs. For example, although some states and branches of the military require family child care providers to purchase business liability insurance, the required coverage is usually very small. In this case, it may be a good idea to purchase more coverage than you are required to have.



The Most Important Insurance Policy

With so much to think about in protecting yourself against the risks associated with your business, what's most important? Although it's true that you would suffer a setback if your property were damaged or destroyed, the most serious risk to you as a business owner is a lawsuit that finds you liable. You can replace your property and still stay in business, but it's extremely difficult to recover from a lawsuit that awards tens or hundreds of thousands of dollars in damages against you.

This means that the most important insurance you need to protect yourself and your business is an *adequate business liability policy*. This is true even if you care for only one child or are unregulated.

We cannot state too strongly how important it is for all family child care providers to have adequate business liability coverage.



What Business Insurance Should You Have?

There are four major business insurance policies that most family child care providers need to have. Here's an introduction to each one, with the most important features that each policy should include. The next two chapters provide more information about each of these kinds of insurance, as well as some other kinds of insurance that apply in specific situations.

1. Business (or Commercial) Liability Insurance

This is the most important insurance policy that every family child care provider should have. It should include the following:

- General liability coverage for accidents and lawsuits against your business
- Professional liability coverage to protect yourself in case you fail to adequately supervise the children in your care
- Legal defense coverage, ideally with limits in excess of the general liability limits
- Child abuse—including sexual and physical abuse—coverage for you, your family, residents of your household, and your employees, with separate liability limits
- Medical (“primary”) coverage that pays regardless of insurance coverage by the parent’s medical insurance for medical expenses if a child were injured in your care
- Coverage for personal injury caused by you, residents of your household, your employees, and volunteers, for wrongful discharge, kidnapping, libel, slander, wrongful detention, invasion of privacy, and malicious prosecution
- Bodily injury coverage for food illnesses, dispensing medications, and allegations of corporal punishment
- Coverage for accidents when you are away from your home or on field trips with the children

We recommend that your business liability insurance company be an admitted carrier in your state and have an “A” rating for financial strength from the A.M. Best Company (see page 77). The company and the agent should understand your business and have experience insuring family child care programs. The policy should be an “occurrence” rather than a “claims made” type of policy (see page 76).

2. Business Property Insurance

This is the second most important policy that all family child care providers should have. Depending on the insurance company, this coverage may be either an endorsement on your homeowners insurance policy or a completely separate policy. In addition, some companies offer a “business owners insurance policy” that includes both business liability and business property coverage in one policy. However, regardless of the form they take, your policies should include the following:

- Coverage for the cost of all property used in your business (equipment, furniture, appliances, toys, and so on)

- Business interruption coverage for the loss of your business income if your business is shut down because of a fire, windstorm, burst pipes, and so on

3. Automobile Insurance

You will need this kind of policy if you ever use your car to transport the children in your care or if you use it for any other business purposes.

- Coverage for injuries and damages suffered in a car accident while your car (or another car used by your employee or unpaid helper) is being used for business purposes

4. Workers' Compensation Insurance

You may need this kind of insurance if you have paid workers (check with your state).

- Coverage for the medical expenses of any employee who suffers an injury while working for you

Business Liability Insurance or a Business Liability Endorsement on Your Homeowners Policy?

Although homeowners insurance is primarily intended to protect your home and its contents (see chapter 9), it also provides some coverage for *personal* liability and medical expenses. For example, it would protect you if your neighbor were to trip on your garden hose, or your child were to throw a ball through your neighbor's window. However, your homeowners insurance policy cannot protect you from the risks of running a business. Most homeowners insurance policies specifically exclude coverage for businesses operated out of the home, and often specifically exclude child care businesses.

If you would like to have more personal liability protection, you can purchase an umbrella insurance policy (see page 85) that will increase the liability limits of your homeowners or car insurance coverage. However, most umbrella insurance policies also exclude coverage for any injuries sustained in the course of running a business.

Some homeowners insurance companies offer a business liability endorsement (an amendment to the policy) for family child care providers. Many providers believe that they have adequate liability insurance if they have this endorsement. This is a major mistake. There is a big difference between business liability insurance and a homeowners liability endorsement.

Homeowners liability endorsements are very narrow in coverage, usually covering only a small amount of medical expenses and liability coverage, and you probably won't be able to purchase an umbrella policy to increase these limits. Although these amendments vary, they don't offer the broad coverage that all family child care providers need. Specifically, they usually exclude the essential coverage that you need for professional liability (see page 71), child abuse (see page 72), corporal punishment, dispensing medications, and accidents away from your home, among other areas.

In addition, these endorsements may limit the number of children in your care that are covered and may reduce some of the personal liability limits in your original homeowners policy. (In other words, these endorsements provide less coverage for any accidents that may happen outside of business hours when friends or neighbors come to your home.) If you have this kind of policy, compare its coverage with the features listed on page 78, and you will see how limited it is.

All family child care providers need a separate business liability insurance policy that provides broad coverage for major business risks. Although homeowners liability endorsements may seem like a good deal because they are cheaper, you get what you pay for. These policies are cheaper because they offer less coverage.



What if You Are Providing Care in a Home You Don't Own?

Some family child care providers operate their business out of a home that's owned by their boyfriend or a relative. Regardless of who owns the home, if it's being used for a family child care business, the homeowner will need insurance for property damage as well as medical expenses and lawsuits associated with injuries to children. It doesn't matter whether the homeowner is charging you rent. Getting an umbrella policy (see page 85) won't protect the homeowner from these new risks.

To protect the homeowner from liability, you should list that person as an "additional insured" on your business liability insurance policy (see page 68). The homeowner should also check with his homeowners insurance policy to see if it will cover a home that is being used for a business. If it won't, he should seek coverage from another company.

If your boyfriend or relative rents the property in which you are doing business, you should make sure that they have proper renter's insurance to cover damage to the property (see page 83).

