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PARENT PROVIDER CONTRACTS

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This presentation is intended as a general overview of the issues involved in operating child care businesses, and is not intended to provide you with specific legal advice. This presentation should not be construed as all-inclusive, nor as the provision of legal services to any individual or entity. Attending this presentation does not create any lawyer client relationship.

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Introduction

- Public Counsel's ECE Law Unit provides free legal services to qualifying child care providers in Los Angeles County.
- The focus is on improving the quality of care provided and increasing the quantity of child care facilities.

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Today's Presentation

- What is a contract?
- Why does a child care provider need a contract?
- Explanation of important contract terms
- Creating your own contract and policies

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What is a contract?

- A contract is an agreement between two or more parties creating legal obligations.
- Verbal agreements are sufficient to form a contract, but having the agreement in writing helps if a dispute arises.



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What is a breach?

- You breach a contract by failing to perform your own promise.
- Every breach gives rise to a claim for damages.



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Why do you need a contract?

- A written contract makes everyone's life easier!
- Child care is a business situation—its good business practice.
- Clear evidence of expectations on both sides.
- Helpful as a tool to discuss all key program rules and policies.

Hypotheticals

- **Scenario One:** No written contract exists, and a dispute arises between the provider and the parent. Child care fees are \$800 per month, parent had verbally stated she wanted care everyday on a monthly basis. However, the parent wants to pay \$600 for care because the child only went to three weeks of child care that particular month.
- **Scenario Two:** What if we have the same situation as scenario one, but now there's a contract, which says the full fee will be charged for all absences? No refund, credit or makeup day is provided for children who are absent for any reason.

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Key Contract Terms

- Name of program
- Hours of Operation
- Fees
- Absence Policy
- Child Illness Policy
- Cancellation by Parent
- Cancellation by Provider
- Holiday, Sick Time, Vacation
- Duties to Report Child Abuse
- Guidelines for Releasing Children

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Additional Considerations

- Waiver
- Modification
- Entire Agreement
- Invalid Provisions
- Signatures

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Name of Your Program

- Make sure you include the name of your program at the top of the first page of the contract.
- If the name of your program is not one that includes your own name (ie: "Play & Learn") then make sure your personal name is on the contract elsewhere, clearly identifying you as a party to the contract.

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Hours of Operation



- Indicate the exact hours and days that you will be caring for the children.
- Balance your desire to get business by going beyond the standard workday versus meeting your own personal needs.
 - Include rules on drop off and pick up times;
 - Note: CA Law affords parents the right to visit the home anytime without advance notice.

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Hypothetical

Jenny is licensed to operate a large family child care (12 children) and runs her program from 6 a.m. to 6 p.m. A family signed a contract for child care from 8 a.m. to 5 p.m. Monday through Friday.

A few weeks later, happy with the service, the parents request that their pick up time be changed to:

- 5:45 p.m.
- 6:30 p.m.

What might Jenny do in this situation?

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Fees



- Payment problems are one of the most common issues faced by child care providers.
- It is important that you specify what your rate is AND when the fee is due.
- For assistance in determining your fee, you can contact your local Resource & Referral Agency for information on the average rate charged in your community.

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Fees continued....

- Payment Schedule
 - Specify when payment is due.
 - Indicate whether you will require a weekly, bi-weekly or monthly payment, and exactly what day you expect payment.
 - Decide whether you will require advance payment to avoid having to recover payment for past services. *We recommend requiring payment the Friday prior to the week that care will be provided.

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Fees continued...

- Part Time Care
 - If you provide both full & part time care, list them separately.
 - Specify important program policies related to part-time care:
 - For instance, whether you allow a parent to substitute one day for another, whether you require advance notice for substitutions, etc.

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Fees continued...

- **Potentially refundable fees**
 - Enrollment Fee
 - Deposit
- **Additional Charges**
 - Include a provision about whether a fee will be charged for late pick-up or early drop-off.
 - Include whether there is a penalty for late fee payments.
 - Indicate whether late payment of fees numerous times is grounds for terminating the contract.

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Hypothetical

Susie's child is enrolled in Smith's family child care and Susie recently lost her job. Ms. Smith, realizing that Susie is down on her luck, tells Susie that she only needs to pay 50% of the child care fees that she agreed to pay until she gets a new job.

Is this permitted?

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Discounts & Exceptions

- It is recommended that the provider not give any discounts or make exceptions to the rules in the contract.
- Unless: these same discounts or exceptions are applied to everyone.
 - Include any available "discounts" in the contract.
 - Discounts must be based on objective criteria such as:
 - Educational background of child's parent
 - Sibling discount
 - Child of a single parent
 - Child whose family resides in certain low-income geographic areas

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Absence Policy

- Payment for Absences
 - Most providers require parents to pay the full fee when their child is absent, whether the child is ill or on vacation.
 - The reason for the full fee is that parents pay for the space in the child care whether or not they use it on a given day.
 - Ask parents to provide reasonable notice of absences.



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Child Illness Policy

- You must protect all children in your care from illness whenever possible.
- Parents need to know that you may not be able to accept a child if they are sick, or that you may send the child home if they become sick.
- Consider including an additional fee in your contract for "isolated care" if a parent cannot pick up a sick child.



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COVID-19 Illness Policy



- Having a COVID-19 Illness policy is helpful for protecting you, your staff, and children in your program.
- You can include specific requirements, informed by public health guidelines, for when a child is exposed or becomes ill with COVID-19.
- Having such a provision also allows you to terminate care or make adjustments as needed.

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Cancellation by Parent

- Most providers require a two week written notice before a parent withdraws their child from the program.
- Your contract should include a provision requiring the parent to pay for two weeks of care if notice is not given.
- We recommend that you require a deposit that is equal to the amount of time you're asking people to give you notice of termination.



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Cancellation by Provider

- It is important that you reserve the right to cancel the contract.
- If you require a two week notice from parents, out of courtesy, you should also give parents a two weeks notice of cancellation.



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Hypothetical

Johnny Jr. has just turned two years old and with the terrible twos came some terrible behavior. Not only is he loud and disobeys all instruction, but today he bit another child.

What are the provider's options?

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Immediate Termination by Provider

- It is important that you also reserve the right to "immediate" termination without notice in certain circumstances.
- You should separately list the conditions under which enrollment may be terminated immediately (ie: failure to pay, failure to pick up child, failure to follow COVID-19 rules, etc.) and those under which notice will be given.

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Holidays & Vacation



- List in the contract all the holidays that you will not be providing child care.
- Indicate in the contract that you reserve certain days for vacation time.
- If you don't know the exact dates of your vacation, indicate in your contract that you will give parents a reasonable amount of notice.
- Indicate whether or not you must be paid for your vacation time.

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Closures Due to COVID-19

- It is possible that you might need to close your child care beyond the holidays and vacations you listed, including for COVID-19.
- Having a policy for unforeseen circumstances, including the pandemic, public health emergencies, or natural disasters will prepare the parents for these kind of situations.
- You can also specify that refunds will not be made in these types of emergency circumstances.

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Sick Time

- Make sure to reserve "sick time" or "personal days" in case you or a loved one require medical attention.
- Make sure there is a pro-rata reimbursement clause for parents if you go over the days allotted in the contract.



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Guidelines for Releasing Children

- It is important that parents are aware that you will only release their child to the child's legal parents/legal guardians or to persons specifically authorized in writing, in advance, by parents.
- Difficulties may arise when parents are separated or divorced.
- Providers can only comply with court orders (e.g. custody or restraining orders) that are current, signed by a judge or officer of the court, and which they have a copy of.

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Drop-off and Pick-up Procedures

- In compliance with public health recommendations, parents can be asked to follow certain procedures to prevent the spread of COVID-19.
- This may include requirements such as wearing a mask when dropping-off/picking-up their child, bringing their own pen to sign their child in and out, maintaining physical distance, etc.

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Duty to Report Abuse

- Licensed child care providers and staff are "mandated child abuse reporters."
- Licensing provides a form that you are required to give to parents.
- Notify parents of your responsibility to report child abuse by including it in your contract.
- Large penalties for not reporting: 6 months jail, \$1000 fine or both.

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Additional considerations

- Discipline Policy?
- Fee for placement on waiting list?
- Policy on prescription medication?
- Immunization requirements?



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Modification/Amendment

- Retain the right to modify or amend your agreement with parent by including a modification/amendment clause in your contract;
- It is good practice to make any changes apply to all contracts.

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Entire Agreement Provision

- An "Entire Agreement" provision will prevent either party from asserting that, at the time the contract was entered into, the other party made verbal or other written representation that somehow altered the written obligations of the parties.



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Invalid Provisions Statement

- This statement means that if for some reason a court finds any provisions of the contract to be legally unenforceable, the rest of the contract will still be enforced.



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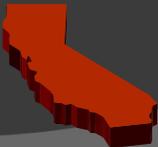
Waiver

- A "Waiver" clause puts the parents on notice that even if the provider does not always enforce all provisions in the contract (e.g. allows parent to once in a while pick up child late without paying late fee), the provider still retains the right to enforce all of the provisions of the contract.
- However, we recommend that providers always enforce all provisions in their contract and not make exceptions for certain families because a judge could interpret consistent failure to enforce certain contract provisions as evidence that parent was not required to comply with those provisions.

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Governing Law

- A "Governing Law" provision ensures that California Law will govern any dispute over the Parent-Provider contract, even if, for example, a parent later moves to another state.



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Signatures

- It is very important that the parent(s) have an opportunity to read the contract carefully before signing it.
- You should always try to get both parents to sign the contract, regardless of whether the parents are separated, divorced, or have never been married.
- Both you and the parent(s) should have a copy of the signed contract, but you should keep the original.
- It may be worthwhile to have the parent initial next to each clause or after each page as well.

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Creating Your Own Contract

- Each provider is different. Create a contract that meets the needs of your specific program.
- See our sample contract for recommended language.
- Consider asking a lawyer to review your contract before using it with any parents.

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Conclusion

- Parents of every child in your care should sign the same basic contract.
- If you are already providing care without a written contract, you should ask current parents to sign a contract and use the same one with new parents.
- If you have questions regarding this topic or any topic related to operating a child care facility, please call Public Counsel's client intake line at 213-385-2977, extension 300.
