



# CHILD CARE

Spring 2008

*News*

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## *President's Message* by Jerry Cook, SCCCA President



This is my first message to you since assuming the position of president, so I would like to take this opportunity to first congratulate my predecessor,

Representative Shannon Erickson on her election to the House of Representatives last November. Shannon, we all are very proud of you and your accomplishments both as president of the SCCCA and the efforts you have already demonstrated in the House, especially your genuine concerns for the equitable regulation of small business in South Carolina. You are surely going to be a tough act to follow!

2008 must be a year of change for the licensed versus unlicensed child care providers in our state. It is time to level the playing field in the child care industry. Small business thrives on healthy competition, but cannot survive when undermined by inequitable regulations rendering special favor, whether intentional or not, to some who are categorically excluded from the same level of regulations. It will be my agenda as your president, to make a concerted effort to keep this challenge before our Legislators until favorable change is accomplished.

The SCCCA annual conference in February was a fantastic success. We all owe so much to Marie Darstein and Karen Boyce for their assiduous efforts in making this 21<sup>st</sup> annual conference the best ever. Many others were involved in the making of this enterprise and to all of them a very special kudos! Over 425 attendees experienced such worthwhile and comprehensive programs ... all of which was made possible by so many volunteers and experts in the field of ECD.

The legislative luncheon was also a total success achieved through Karen Boyce, Nancy Pryor, Becky Croft, Cindy Walton-McCawley, Marie Darstein and so many other members of the SCCCA. I will not try to name them all because I will leave someone out for sure. But to all of them we are so grateful for your hard work and dedication to our cause. Many members of the House and Senate visited with us, and this is a good example of what your Association is doing to keep your issues up front.

I am so enthusiastic about the final report of the SC Task Force on Early Childhood Quality Standards submitted to Governor Sanford and the SC General Assembly in February. If you have not had the opportunity to familiarize yourself with it, please take the time to do so because this is an extremely important work of collaboration by SC First Steps and United Way for the recommendations of a rating system that will go forward with bringing about equal opportunities for parents and child care providers through an already existing program through the ABC Tiered Quality Reimbursement Levels.

Increasing membership will be a focus of my attention during my tenure as president. I will be traveling to visit with prospective members and give them a first-hand presentation of what the SC Child Care Association is doing for THEM. Many issues face us. Our efforts and level of success in achieving the changes needed to create a superb child care industry in our state relies greatly on the willingness of all licensed providers. We must join together to create the number of members that will make the difference when negotiating with the lawmakers and regulators. Numbers are impressive. If you (Con't to page 6)

# Legislative Update

## Spring 2008

**Jeffrey N. Thordahl and Hope Lanier**

A number of issues critical to the child care industry have been front and center at the State House throughout the first half of this legislative session. With elections pending for all 170 members of the House and Senate (less the 16 who have opted not to seek re-election this year), being “for the children” is a very popular political move – one that stands to benefit children and child care providers alike in what has otherwise been a difficult budget year.

Perhaps the most widely touted and sweeping child care legislative initiative is a bipartisan Senate bill (S. 815) creating a blueprint for the statewide expansion of the current 4-year-old Kindergarten program for at-risk children. While a similar bill came into play in the House during the 2007 session, it was shelved because of both financial concerns and efforts to weight it down with a controversial school voucher program. While there has been little discussion of vouchers this year, financial times are certainly tighter than they have been, and those tightly knotted purse strings have led to a creative “fix” that should bode well for a number of years to come.

Rather than defeating the bill because of the high price tag, Senators have opted for a “pay as you go” approach that not only allows the proposal to move forward as a long term blueprint for at-risk 4-K, it protects the state from lawsuits - similar to those recently filed in Florida alleging lawmakers fell short of their duty to adequately fund education programs. Rather than promising full funding – this year or in future years – this approach grants lawmakers the latitude to prioritize needs based on budget availability with options to address only the so-called “Plaintiff’s districts” that are served by the current pilot program or to grow the program to include needy children in underserved districts on up to full

statewide implementation. While the decisions made one year will certainly have

political implications for budget writers, there is no mandate that the program must be funded at the highest level during years when the requisite \$100 Million plus is not available to underpin the initiative.

Where does the bill go from here? After having received approval from both the Education and Finance Committees, the bill is set for consideration by the full Senate prior to moving to the House where it will be fully vetted once again. The SC Department of Education, First Steps, the Child Care Association and others continue to work together encouraging passage of this important legislation.

A number of other important issues are also on the table for consideration. Among them are two proposals addressing regulation and registration of child care facilities.

H. 4090 is a bill by Representative Nikki Haley that would require the Department of Social Services to license and inspect all child care centers – including after-school programs and activity centers and summer or holiday camps that operate for more than five days. While the price tag is high enough to make passage unlikely this year, Representative Haley’s bill would take the critical step of ensuring that care givers undergo background checks, that facilities are licensed and that our state does not inadvertently provide a “safe haven” for predators in the places parents trust their children will be the most protected.

S. 1004, sponsored by Senator Joel Lourie - and the House Companion (H. 4567) offered by



Representative Wallace Scarborough - would bring family child care homes under the umbrella of the Department of Social Services. The bill would require licensure of some family centers and registration of others, and require inspection of home child care facilities at least once every three years. The bill would also provide for additional staff at the Department of Social Services to undertake such inspections in addition to establishing a system of fines for infractions of a number of DSS regulations. In addition, the bill calls for changes to the Governor's Child Care Advisory Board. Changes include: adding one more parent representative by decreasing one of the provider representatives; eliminating the "consent" language from statute that says the Board will "give advice and consent" to DSS; and opening eligibility to chair the Board to any member of the Board, not just parents and providers as is currently in the law. Hearings have been held in the House in addition to a number of meetings conducted in the Senate.

While members of the Child Care Association believe both efforts are warranted, they also feel strongly that the efforts to cast a wider net in ensuring the safe care of children – as addressed in Representative Haley's bill – should be a higher priority than the imposition of a system of fines upon those who already fall under the purview of - and are largely compliant with - existing laws and regulations.

The Association does agree that fines are absolutely warranted in many cases – even including the imposition of criminal penalties for the most egregious offenses – but also feels strongly that efforts to put such a system in place need to go hand in hand with better training for inspectors and greater consistency in enforcement of regulations. With regard to the Advisory Board changes, the SCCCA believes that the issue of "consent" has never been utilized by the Advisory Board members, but that changes in the make-up and chairmanship warrant further discussion. We will continue to work with members of the House and Senate to effectively address all of these concerns and look forward to encouraging passage of this important legislation once the issues have been fully vetted.

In other news from the State House, lawmakers are working conscientiously on passage of a \$7 Billion state budget package. The nationwide economic downturn – in addition to tax cuts adopted by the General Assembly last year – has led to a lean budget year for our state. As part of resulting across-the-board cuts required of most state agencies, the initial DSS House-passed budget included a significant reduction in funding for ABC vouchers, leading to calls for a "fix" from media, legislators and child care providers alike. The Department of Social Services has worked quickly and diligently with the Administration and Senate leaders to redirect funds and ensure that the program will continue to provide much needed child care to some of our neediest youngsters.

The other hot topic on the minds of all lawmakers is the upcoming election for House and Senate members. With a number of party primaries and general election battles brewing, lawmakers are more tuned-in than ever to the needs and concerns of voters in their districts, providing a perfect opportunity for you to connect with your elected officials. Please take the time to find out who is running for office in your area, learn about their voting record and support for issues important to you and your business. If you are inclined to be supportive of a particular candidate, be sure to contact their campaign and offer to help – whether you are able to lend financial assistance, volunteer some time, or just provide the use of your yard for a campaign sign. Getting involved is a great way to build a good relationship with your Senators and Representatives – and to ensure that they will recognize your name when you contact them about key issues in the future.

As we continue to be your "eyes and ears" in Columbia, please do not hesitate to contact us with your questions and concerns about these and other issues related to the General Assembly in Columbia. In the meantime, we will continue to work closely with the Child Care Association Board and keep you posted as issues of importance arise.



## **“To Test or Not to Test”**

**By Kris Cato, Esquire  
and  
Edward Rawl, Esquire  
McAngus Goudelock & Courie**

### **Drug Testing in the South Carolina Workplace**

South Carolina employers are statutorily permitted to implement substance abuse prevention programs and test employees for use of illegal drugs, or illegal use of legal drugs.

The negative effects of substance abuse in the workplace are well documented, and include decreased productivity, increased liability exposure, increased medical insurance costs, increased workers' compensation insurance premiums, increased employee absenteeism and increased employee theft. As a result, the South Carolina General Assembly enacted legislation which provides guidance to employers for establishing workplace drug prevention programs. Because of these legislative efforts, employee drug testing has become commonplace in the South Carolina workplace.

#### **I. South Carolina Law**

In 1997, the state passed legislation to further the goals of achieving drug-free workplaces in South Carolina. Specifically, the law permits the implementation of drug prevention programs in the private sector workplace, including random drug testing. It requires an employer to implement a substance abuse policy statement and provide notification of random drug testing to employees, as well as ensuring confidentiality of test results.

It also allows for a reduction of workers' compensation premiums for employers complying with the statutory testing requirements.

Also, the law specifically provides that the information, interviews, reports, statements, memoranda and test results received by the employer are considered confidential communications. However, these documents and test results may be

used or received in evidence, obtained in discovery or disclosed in civil or administrative proceedings.

Further, the law requires that the testing procedures established by the insurer, employer, or his designee, or approved by the director of insurance, include a provision for random sampling of all persons who receive wages and compensation in any form from the employer. This procedure must provide for a second test to be administered within thirty (30) minutes of the administration of the first test. In the event the test results are positive, they must be provided in writing to the employee within twenty-four (24) hours of the time the employer receives the test results. Employers are required to maintain records of all tests for up to one (1) year.

Private sector employers have broad discretion in implementing drug testing policies. For example, employers may legally terminate employees for failing a required drug test. Conversely, they may suggest or require that the employee enter a drug assistance or treatment program. Regardless, employers should establish an unambiguous drug testing policy that articulates the consequences of failed tests.

#### **II. Disqualification of Unemployment Benefits**

In May 2005, the General Assembly passed a law which provided for an employee's disqualification for unemployment benefits due to a positive drug test. If an employer complies with the specific procedures set forth under the statute, the employee should be disqualified from receiving unemployment benefits. To ensure disqualification of benefits to an employee terminated for drug use, an employer should have communicated a policy prohibiting illegal drug use, and notified employees that a

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violation of the policy may result in termination, and that they may be ineligible for unemployment compensation if they fail to provide a sample or test positive for illegal drugs.

Further, the individual collecting the sample, the laboratory performing the test and the type of confirmation testing used must satisfy the statutory requirements. Specifically, the drug test must be administered by a licensed health care professional or an authorized individual (law enforcement personnel) and analyzed by a certified laboratory.

Finally, positive test results must be confirmed using methods approved by the National Institute on Drug Abuse.

#### III. Reduction in Workers’ Compensation Insurance Premium

The good news is that employers who establish a drug prevention program in accordance with the statutory requirement may receive a credit of at least five (5) percent in their workers’ compensation insurance premiums. Make sure you contact your workers’ compensation carrier to receive this credit.

#### IV. Conclusion

Employers who want to implement a drug prevention program may do so, but should ensure they are complying with all applicable statutes. Public employers should be cautious of constitutional issues. Private employers should seek legal assistance to create a program, a policy, and ensure statutory compliance.

# ALERT!

## Update on Requests for Social Security Numbers by DSS

Many of you have been asked by your licensing specialist to supply the social security numbers of your staff members. The Department of Social Services had planned to use this information to track employees of licensed and regulated child day care providers. This information is confidential and is not required by any regulation. In fact, there is very real liability for employers who do provide this information to Department of Social Services. If you have a licensing specialist who misunderstands this, please contact Leigh Bolick at (803) 898-7134.

Social Security numbers may not be used for tracking purposes. While the Department of Social Services is entitled to a Social Security number for the purposes of conducting SLED, FBI and Child Protective Services' Central Registry background checks, they are not permitted to use the numbers for a tracking system. Their recent request for your employees' Social Security numbers leaves you open for a potential lawsuit. If you provide the information to them for anything other than background checks,

you have been complicit in providing confidential employee information for whatever purposes they might wish to use the information. Once you provide the information to them, it becomes your legal nightmare, not theirs.

As a safety precaution, when you are putting your staff files together for announced and unannounced inspection, be careful to white out any occurrence of a staff member's social security number. When you receive the results of SLED, FBI and Central Registry of Abuse and Neglect background checks, make a copy and then white out the employee's social security number. Place that copy in the files that will be inspected by DSS to ensure that you have the required paperwork for your employees. The most recent staff/caregiver checklist from DSS mistakenly requests Social Security numbers. Leave that section blank. Neither you nor the Department of Social Services may use that number for a tracking system.

-- Cindy Walton-McCawley

### *In loving memory...*

**Paula "Moosie" Rhodes** -- "Moosie" provided many years of childcare both in Hartland, Michigan, and in Greer, South Carolina. Before opening her childcare center, Precious People, in 1991, she opened her home to love and teach those entrusted to her care. Paula was a devout Catholic and a 12-year breast cancer survivor. She enjoyed reading, watching romantic and comedic movies and playing computer solitaire. Online condolences may be made at [www.thewoodmortuary.com](http://www.thewoodmortuary.com)

**Boyce Franklin Rogers** -- Boyce Franklin Rogers, of Taylors, South Carolina, died Saturday, December 29, 2007. He was the Owner and President of Classy Kids Child Development Centers, Inc., of Greenville and Simpsonville. He also owned Rogers Properties LLC, Commercial Property Management. He was Teacher of the Year at Tri-County Tech and a past board member of the SC Child Care Association.

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are aware of licensed centers in your area that you would like for me to call on, please let Karen Boyce know and she will comprise a plan of strategy to canvas that area as soon as possible. I don't want to drive 100 miles to call on just one or two centers. Let's build a list and we will go from there. Well, as you can see, this is going to be a very interesting year. Counting on all of you for your support, prayers and continued dedication to the well-being and education of the little children in our great state. If I can be of service in any way, you can reach me at (803) 796-8388 or [xorano@bellsouth.net](mailto:xorano@bellsouth.net).



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