



Liabilities and Lullabies

On-site childcare facilities are a risky but important business

by Pamela V. Rothenberg

The operation of an on-site childcare facility is riddled with potential liabilities. Risks relate to the physical condition of the facility itself as well as the manner in which the facility is managed. While the possible exposures can never be totally eliminated, steps can be taken to minimize potential liabilities.

Assessing Risks

First, evaluate the physical condition of the proposed facility to determine the potential costs of preparing it for use as a childcare center. Guidelines suggest a minimum of approximately 60 square feet of ground floor indoor space per child and approximately 75 square feet of outdoor playground space per child. Also, consider the program hours, ages of children served and whether the center is located in a residential or non-residential development. Are the parking and traffic circulation areas at the development configured to permit the safe transportation of children to and from the facility?

The National Association for the Education of Young Children has established an acceptable ratio of caregivers to children, based on the age and number of children supervised. According to one recognized insurance company, playground injuries and inadequate supervision generate the most losses. Playground equip-

ment safety and adequate supervision should be a top priority to minimize risk of loss.

Childcare centers require a significant investment, particularly for the substantial costs associated with certification, licensing and training of caregivers.

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Managing Risks

An owner should document its relationship with the facility's operator. The agreement must obligate the operator to maintain a full range of insurance coverages, including liability, excess liability, property damage and auto, if needed. The owner should consider requiring other endorsements, including those covering teachers' liability, child abuse and molestation.

Childcare centers are required to be licensed by local and/or state authorities. In addition, all states require certain professionals and institutions to report suspected child abuse, including childcare providers. The agreement should obligate the opera-

tor to obtain all requisite licenses, permits and approvals and comply with all applicable local, state and federal laws, including applicable zoning regulations, ADA and applicable reporting requirements. All risks associated with any compliance failure should be allocated to the operator. The agreement should also require the operator to maintain staffing ratios and to adhere to recruiting and hiring practices consistent with the highest childcare industry standards.

Key Advantages

In commercial properties, on-site childcare facilities assist building tenants in attracting and retaining quality employees, therefore making the building more attractive to prospective tenants. In multifamily communities, the establishment of an on-site childcare facility can provide owners and managers with a significant "differentiator" from competitive developments that do not offer similar amenities. The availability of often critically needed childcare services within any type of development demonstrates a perceptible "customer service" orientation on the part of real estate professionals and often is an additional selling point to prospective tenants or residents. □

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