



Obligations and expectations of Family Day Care educators

1. Overview

A Family Day Care (FDC) service that is approved under the Family Assistance Law to administer Child Care Benefit (CCB) and Child Care Rebate (CCR) delivers child care to families by engaging educators to provide education and care in a residence (the educator's own home) while they are working, studying or training.

As an educator, you are engaged by a service and the care that you provide is provided on behalf of that service. This is true regardless of whether you are, for example, employed by the service or if you are self-employed and engaged under a contract with the service. You are part of a FDC service and, as such, there are a number of important requirements that you must meet to ensure that you and the service remain compliant with your respective obligations under the law.

Details on where you can find more comprehensive information on your responsibilities are provided at the end of this fact sheet.

2. Operating as a FDC educator

a) Insurance

The *Education and Care Services National Regulations* (National Regulations) require every FDC educator to have public liability insurance of a minimum of \$10 million for the FDC residence, if applicable. You must be able to produce evidence of this insurance for inspection by the Regulatory Authority or an authorised officer under the Education and Care Services National Law (National Law).

b) Suitability of educators

As an educator, you must be, and continue to be, a suitable person to provide approved child care.

Under the National Law, you, and if applicable, your assistant, must have an approved first aid qualification. You must also have undertaken approved anaphylaxis management training and emergency asthma management training.

All jurisdictions have laws regarding persons working with children or working with vulnerable people. You must comply with these laws by having a current Working with Children Check clearance. These laws apply not only to you but also to anyone regularly in contact with the children you care for. This includes people who share the premises where you provide care (e.g. your family members, etc).

Under the National Quality Framework in the National Law, you are also required to have (or be actively working towards) at least an approved Certificate III in Education and Care qualification. Educators are also expected to participate in professional development and training workshops.

You should note that the Australian Government has committed to working closely with the states and territories, as well as the child care and early learning sector, to find practical ways to improve the National Quality Framework without compromising the standard of quality provided.

c) Quality of care

As an educator, you must meet the minimum standards identified in the National Law and National Regulations. These standards require that children have a safe, nurturing and developmental experience.

They address, among other things, facilities, health and safety, programs and administration, and the suitability of the people providing the care.

You should be familiar with the Early Years Learning Framework and Framework for School Age Care, as these are essential resources for the National Quality Standards.

You must ensure your home where you are providing care meets the required standards for home-based care, including health and safety requirements for children.

Each state and territory may have additional or slightly different requirements. Further details about this can be accessed via the Australian Children's Education and Care Quality Authority (ACECQA) website: www.acecqa.gov.au

d) Number of children in care

The National Law limits the number of children you may care for at any one time. You may not provide care for more than seven children at a time—including your own children—with no more than four children under school age.

If your own children or other children in the premises are present during the periods you are providing care, these children count towards the limit of seven if they are under the age of 13 and there is no other adult caring for these children.

When on an excursion, you must meet the requirements in the National Law about the number of children for which you are allowed to care. You must also consider if you will need extra people to provide adequate supervision at all times. A risk assessment should be completed before an excursion. A template excursion risk management plan is available on the ACECQA website at: www.acecqa.gov.au

You must abide by the Priority of Access Guidelines when filling vacant places.

e) Keeping records

Your service has an obligation to keep a range of records relating to the care provided within the service, under both the Family Assistance Law and the National Law. This includes enrolment forms, evidence of insurance and, most importantly for you, the educator, sign-in sheets or attendance records.

Every day when parents drop their children off for care, you must have each parent/guardian sign the attendance record showing that the child attended.

The National Law and Regulations require that attendance records:

- record the full name of each child being educated and cared for and the date and time each child arrives and leaves
- are signed by the person who delivers/collects the child at the time this occurs, or where the signature of this person cannot be reasonably attained, by you.

You must not ask families to sign attendance records for days their child would not normally have attended, for days before their child starts care or after they cease attending care.

You should be regularly providing copies of your attendance records to your service. You should also be providing copies of all records you keep to your service. This is because your service is required to provide copies of any records to the Department of Education and Training, if they are asked.

f) Privacy

Information you collect or obtain through the delivery of education and care may be considered 'protected information' under the Family Assistance Law and/or 'personal information' under the Commonwealth's *Privacy Act 1988*. In handling such information, you are required to comply with these laws.

As an example, information you have about a child in your care, such as their name, date of birth or Customer Reference Number must not be disclosed to others except where required under the law. The Family Assistance Law has penalties for unauthorised use or disclosure of protected information.

g) Making a care arrangement with a family

The Family Assistance Law requires the service to make a care arrangement with each family using the service.

As an educator, you do not have any legal right to enter into a care arrangement for CCB approved care independently from the service. However, service operators may authorise educators (acting as an agent for their service) to enter into care arrangements on their behalf. In order to be eligible for Australian Government fee assistance (e.g. CCB and CCR), the care arrangement and all associated invoices, receipts and statements must make clear that the care is being provided by the service and that the fees are being paid to the service.

3. Money arrangements

a) Charging fees

Under the Family Assistance Law, parents must be charged fees by the CCB approved service and not by the educator in order to be eligible for Australian Government fee assistance (e.g. CCB and CCR). In order for CCB to be payable, there must be a direct commercial relationship between the family that is paying for the care, and the service that is providing the care.

Therefore, your service operator is responsible for setting a fee charging schedule and establishing fee charging policies.

Your service operator is legally entitled to require you, and all of the service's educators, to comply with the service's fee charging schedule and policies, irrespective of whether you are an employee or an independent contractor.

If you have a family receiving Jobs, Education and Training Child Care Fee Assistance (JETCCFA), Special Child Care Benefit (SCCB) or Grandparent Child Care Benefit (GCCB), the service (including you acting on behalf the service) must not charge a higher fee than the service would have charged this family if they were not eligible to receive one of these payments. It is an offence to charge a family a lower fee, for example, if the service (or you acting on behalf the service) claims that a family simply couldn't afford the service's usual fee, and then to charge a higher fee once SCCB, GCCB or JETCCFA is approved.

b) Your remuneration

Your remuneration arrangements should be set out in a written agreement between you and the service operator, irrespective of whether you are an employee or a contractor.

Your remuneration arrangements are different to the fees families are charged by the service operator (or by you on behalf of the service).

It is important to understand that families for whom you provide care, on behalf of the service, make payments to the service and not to you personally. Many educators collect money from families; however, when doing so they are collecting on behalf of the service. How this money is handled (i.e. passed to the service operator and/or offset against remuneration the service owes the educator, etc.) is a matter to be negotiated and agreed between the service operator and each educator.

As outlined above, under the Family Assistance Law, it is the service, not the educators that charge families for care. Also, after CCB is calculated, if there is an outstanding gap fee for a family, legally the family owes that money to the service, not to you personally.

c) Statements and receipts

Your service is required, at a minimum, to provide families with a statement at least once every three months. This statement tells them what care has been provided, the fees that have been charged and the CCB that has been paid. All statements must be issued on behalf of the service and include the service name and related details.

As an educator, it is also good practice to provide receipts whenever you receive payments from families and provide a record of those receipts to your service. Under Australian Consumer Law, a receipt must be provided if the payment is for more than \$75.00. Please note that receipts provided by educators to families must make clear that the care is being provided by the service and that the fees are being paid to the service.

4. Reporting attendance

Your service is responsible for submitting the attendance reports from all of its educators to the Child Care Management System (CCMS). These reports determine how much CCB, CCR or JETCCFA is paid by the Australian Government for eligible families, so the accuracy of these reports is essential.

As an educator, you should be giving attendance reports to your service about the care you provide each week. You must make sure you report attendance correctly. This means only reporting attendance for sessions that the child **actually attended**. You can report absences, but *only if the child would otherwise have been in care and only if the family was charged a fee for that care*.

Your service is ultimately responsible, under the Family Assistance Law, for the accuracy of the attendance reports it submits to the CCMS, and it is reasonable for them to contact you if your attendance records need clarification. Accordingly, if you, as an educator, submit attendance reports that are inaccurate, the service may decide not to submit the information to the CCMS until they are satisfied the report is correct. They do not have to submit exactly what you provide to them, indeed it is their responsibility to check and verify attendances before they are submitted for the payment of Commonwealth funds.

Your service is responsible for the accuracy of the attendance reports, particularly in relation to the calculation of CCB and CCR. You should note, however, if you provide false attendance records to your service and gained a financial advantage, this could be a crime and you could be subject to criminal prosecution for fraud.

5. Providing care for the full session

If you are reporting a session of care, you must be able to provide care for that whole session. For example, you cannot report sessions of 8 hours per day, unless you are actually able to provide care for the full 8 hours. A child may not actually attend for the full 8 hours, but you must be able to provide care for the whole period of 8 hours, if the family requires it.

If you cannot provide care for the full session, for example when you are not available for the full session, you must reduce the length of the sessions you claim to reflect the period in which care was able to be provided.

6. Reporting suspicious or fraudulent behaviour

Fraud against the Commonwealth is an extremely serious matter and may constitute a criminal offence. Making false statements and/or providing misleading information has serious consequences, such as criminal investigation.

If you find or have suspicions that a service or another educator is behaving fraudulently, you should contact the Child Care Support Line on 1800 664 231 or email tipoffline@education.gov.au

7. Changes to the Family Assistance Law from 10 October 2016

Changes have recently been made to the Family Assistance Law to strengthen the integrity of the child care payments Compliance Framework to ensure the delivery of high quality, flexible and affordable child care.

Family Day Care educators should be aware of these changes, which are outlined on the department's website at: www.education.gov.au/ccpc

8. More information

The main laws governing your FDC service's obligations are set out below.

The Commonwealth Family Assistance Law:

- A New Tax System (Family Assistance) Act 1999
- A New Tax System (Family Assistance) (Administration) Act 1999
- Child Care Benefit (Eligibility for Approval and Continued Approval) Determination 2000 and other legislative instruments made under the two acts above.

All these are available at: www.education.gov.au/family-assistance-law

The National Law (administered by your state or territory):

- Education and Care Services National Law Act: www.acecqa.gov.au/national-law
- Education and Care Services National Regulations: www.acecqa.gov.au/national-regulations

Further general information on your obligations can be found in the ***Child Care Service Handbook***, located on the Department of Education and Training website at:

www.education.gov.au/child-care-service-handbook

Other

For further information on the following items, visit the ACECQA website at: www.acecqa.gov.au

- National Quality Framework
- Quality Improvement Plans
- Early Years Learning Framework
- State and Territory licensing, including the details for your state or territory

DISCLAIMER

This fact sheet is a general guide to some of the legal obligations of FDC educators when providing education and care to children. This fact sheet is not a complete description of your legal obligations. This fact sheet also does not cover all the legal obligations of FDC educators. You should consult the relevant legislation for full details of your legal obligations. You may also wish to obtain your own independent legal advice.