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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 7*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 7's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. White and Humphrey

Impacted Profession: Doulas

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

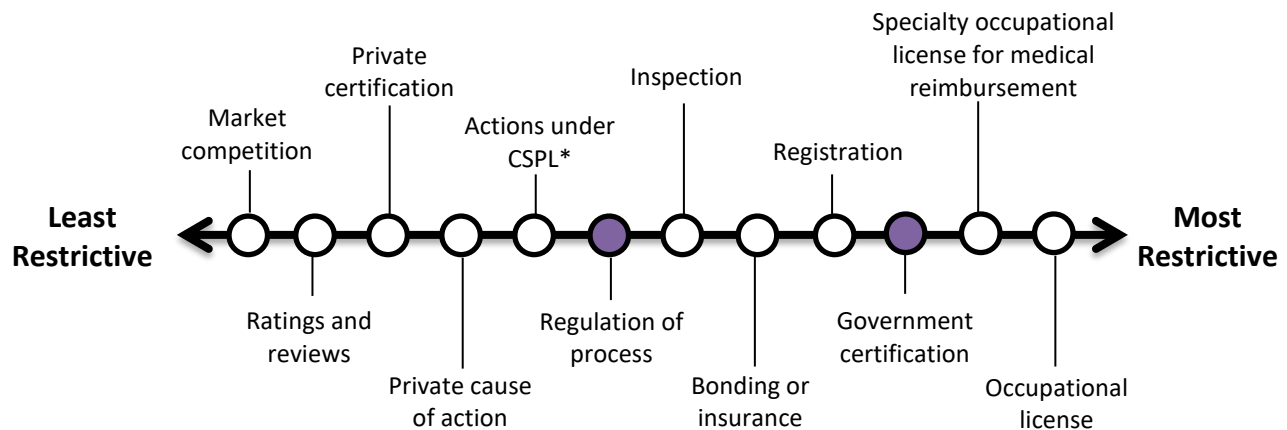
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."²

* This report addresses the "I_135_0633-4" substitute version of H.B. 7. It does not account for changes that may have been adopted after that version.

¹ R.C. 103.26, not in the bill.

² R.C. 4798.01 and 4798.02, neither in the bill.

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



*CSPL – The Consumer Sales Practices Law

S.B. 7 creates a voluntary state certification for doulas. The bill, beginning one year after its effective date, prohibits a person from using the title “certified doula” unless the person holds a certificate issued under the bill by the Board of Nursing. The bill defines “doula” as a trained, nonmedical professional who advocates for, and provides continuous physical, emotional, and informational support to, a pregnant woman before, during, or after the birth.³

In addition, the bill regulates certain aspects of the process of practicing as a doula. It establishes a program in the Department of Medicaid through which certified doulas with a Medicaid provider agreement can be reimbursed for doula services.⁴ It also establishes a program in the Department of Rehabilitation and Correction through which certified doulas can provide doula services to inmates participating in a prison nursery program.⁵

Necessity of regulations

Representative Andrea White and Representative Latyna Humphrey are the primary sponsors of the bill, which is named the Strong Foundations Act. They both testified that the bill’s purpose is to address Ohio’s infant and maternal mortality rate, which exceeds that of other states. They said that another goal of the bill is to improve mental and physical health outcomes for mothers and children by expanding prenatal, postnatal, and early childhood services and supports. Representative White highlighted that, to help achieve these improvements, the bill

³ R.C. 4723.89.

⁴ R.C. 5164.071.

⁵ R.C. 5120.658.

increases access to doula services and develops a pathway for Medicaid reimbursement for doulas.⁶

Restrictiveness of regulations

Certification

The state's policy defines "certification" as a voluntary program in which a private organization or the state grants nontransferable recognition to an individual who meets personal qualifications established by the private organization or state law.⁷ Under the state policy, voluntary certification is the appropriate means to protect consumers against asymmetrical information between the seller and buyer unless suitable, privately offered voluntary certification for the relevant occupation is offered.⁸

To determine whether the bill satisfies this state policy, the first question is whether the relationship between a doula and client involves "asymmetrical information between the seller and buyer." It appears that the answer to this question may be yes; professional doulas are a relatively new medical occupation, and knowledge about doulas may not be widespread. Midwives, friends, and family members have assisted at births throughout history, but professional doulas did not emerge until the 1970s or 1980s.⁹ Consequently, consumers might lack the expertise needed to differentiate between qualified and unqualified persons engaged in that field.

The next question regarding whether the bill satisfies the state policy is if private voluntary doula certification is offered. The answer is yes; numerous private organizations currently offer doula certification, and their training and standards vary.¹⁰ (The bill defines "doula certification organization" as organizations that are recognized, at an international, national, state, or local level, for training and certifying doulas.)

The final question concerning whether the bill satisfies the state policy is if this privately offered voluntary doula certification is "suitable." It appears that the answer may be yes because the bill establishes such private certification as one way to qualify for state certification. By recognizing private certification in this manner, the bill implies that it is suitable. Therefore, since suitable private doula certification appears to exist, it seems that the bill's creation of state

⁶ See [Representative Andrea White Sponsor Testimony](#) and [Representative Latyna Humphrey Sponsor Testimony](#), available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 7" and looking under the "Committee Activity" tab.

⁷ R.C. 4798.01, not in the bill.

⁸ R.C. 4798.02(B), not in the bill.

⁹ See [Doulas: Exploring a Tradition of Support](#) (July 14, 2011), which may be accessed by searching "Doulas: Exploring" on the NPR website: www.npr.org.

¹⁰ See, for example, [DONA International](#), [International Doula Institute](#), and [Madriella Doula Network](#).

certification may not be appropriate under the state policy. However, this is somewhat unclear because determining suitability is ultimately a policy decision.¹¹

Prohibition and fine

It appears that the bill increases restrictiveness by creating a state certification for doulas that is issued by the Board of Nursing. Beginning one year after the bill's effective date, a person who does not hold the state certification cannot use the title "certified doula." For a violation of the prohibition, the Board, in an adjudication under the Administrative Procedure Act¹² may impose a fine in an amount that the Board establishes by rule, and the Attorney General may sue to collect an unpaid fine.¹³

Please note that doulas, many of whom are certified by private organizations, currently practice in Ohio. The bill would not prohibit them from continuing to do so; it merely would prohibit them from holding themselves out as being certified.

Regulation of process

The state's general policy does not specify when a process regulation is the appropriate means of protecting consumers. Presumably, process regulations are preferred when market competition, ratings and reviews, private certifications, private causes of action, and actions under the Consumer Sales Practice Act are not sufficient to achieve the intent of the regulation.¹⁴

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. Thus, it is unclear whether the bill satisfies this state policy criterion. However, process regulations for holders of health-related certifications are common under current Ohio law. For example, a holder of a community health worker certificate issued by the Board of Nursing must follow multiple specified procedures when practicing.¹⁵

Programs regarding Medicaid and prisons

Beginning one year after the bill's effective date the Departments of Medicaid and Rehabilitation and Correction must operate certified doula programs. For doulas who obtain state certification to participate in these programs, the bill could be viewed as decreasing restrictiveness by doing both of the following:

- Creating a new means by which they may receive payment by authorizing them to obtain Medicaid reimbursement for doula services if they have a valid provider agreement;¹⁶ and

¹¹ R.C. 4723.89(A) and (D).

¹² R.C. Chapter 119.

¹³ R.C. 4723.89.

¹⁴ R.C. 4798.01, not in the bill.

¹⁵ R.C. 4723.81 to 4723.88; Ohio Administrative Code 4723-26-10.

¹⁶ R.C. 5164.071.

- Expanding their scope of practice to include providing doula services to inmates participating in a prison nursery program.¹⁷

However, it also is possible that the programs may require doulas to comply with new requirements and procedures established in rules adopted by the Medicaid Director and the Department of Rehabilitation and Correction, respectively.¹⁸ Depending on the content of the rules, the bill could be viewed as increasing restrictiveness.

IMPACT STATEMENT

Opportunities for employment

For doulas who are willing and able to obtain certification, the bill is expected to increase opportunities for employment due to the programs created by the bill which will allow for payment of certified doulas providing services to individuals covered by Medicaid and those participating in a prison nursery program. Because the bill does not prohibit a doula lacking certification from working as a doula, it does not directly decrease opportunities for employment. However, opportunities for employment may decrease for those doulas who are ineligible for or elect to not obtain certification from the Ohio Board of Nursing under the certification program created by the bill.

Consumer choice and market competition

By allowing Medicaid patients and incarcerated individuals to obtain doula services, the bill is likely to increase consumer choice, by making a new category of caregiver eligible to be included in a Medicaid patient or incarcerated individual's pregnancy care. The bill is additionally likely to increase market competition, by broadening the population of patients outside of these pilot programs who might seek out doulas, and potentially increasing the number of doulas working in the state.

Cost to government

For information about costs to government, refer to [H.B. 7's fiscal note](#).

SUMMARY OF PROPOSED REGULATIONS

Rulemaking: doula certification standards and procedures

The bill requires the Board of Nursing to establish standards and procedures for issuing a doula certification. The Board must do so by adopting rules that include all of the following:

- Requirements for certification as a doula, including a requirement that a doula either be certified by a doula certification organization or, if not certified, have education and experience that the Board considers appropriate, as specified in the rules;

¹⁷ R.C. 5120.658.

¹⁸ R.C. 5120.658(C) and 5164.071(D).

- Requirements for certificate renewal and continuing education;
- Requirements for training on racial bias, health disparities, and cultural competency as a condition of initial certification and certificate renewal;
- Certificate application and renewal fees, as well as a waiver of those fee for applicants with a family income not exceeding 300% of the federal poverty level;
- Requirements and standards of practice for certified doulas; and
- Any other standards or procedures the Board considers necessary to implement doula certification under the bill.¹⁹

Doula Advisory Board

The bill establishes the Doula Advisory Board, consisting of 16 members, within the Board of Nursing. In appointing members, a good faith effort must be made to select members who represent counties with higher rates of infant and maternal mortality, particularly those counties with the highest disparities. Priority must be given to individuals with direct service experience providing care to infants and pregnant and postpartum women.

The Doula Advisory Board must do all of the following:

- Provide advice, guidance, and recommendations to the Board of Nursing regarding doula certification;
- Advise the Board of Nursing regarding certified doulas seeking to be eligible for Medicaid reimbursement;
- Provide general advice, guidance, and recommendations to the Department of Medicaid regarding the bill's program to cover doula services provided by a certified doula with a Medicaid provider agreement; and
- Make recommendations to the Medicaid Director regarding rule adoption for that program.²⁰

Doula registry

The bill requires the Board of Nursing to develop and regularly update a registry of doulas who hold Board-issued certificates. The registry must be made available to the public on a website that the Board maintains.²¹

¹⁹ R.C. 4723.89.

²⁰ R.C. 4723.90.

²¹ R.C. 4723.89(E).

Medicaid program benchmarks and annual report

The bill requires outcome measurements and incentives for the Medicaid program to cover doula services to be consistent with Ohio's Medicare-Medicaid plan quality withhold methodology and benchmarks. The Medicaid Director must complete an annual report regarding the program outcome, including maternal health and morbidity information and an estimated fiscal impact. The Director must provide a copy of the annual report to the Joint Medicaid Oversight Committee.²²

For a complete explanation of the bill, please see the [LSC substitute bill comparative synopsis \(PDF\)](#).

²² R.C. 5164.071(C).

COMPARISON TO OTHER STATES

Of the five surrounding states, only Indiana addresses doula services by statute or rule.

Michigan, beginning in 2023, has administratively authorized (through the Governor’s Healthy Moms, Healthy Babies Initiative) Medicaid coverage for certain doula services that are recommended by a licensed health care provider. To qualify for Medicaid reimbursement, a doula must be age 18 or older, possess a high school diploma or equivalent, complete training by an approved entity, and be a Medicaid-enrolled provider. Michigan has established a registry of such qualified doulas.²³

The table below summarizes doula regulations in Indiana as well as in two states (Minnesota and Oregon) that have established a doula registry and two others (New Jersey and Washington) that regulate doulas in some other capacity.

Doula Regulations				
State	State Certification	Medicaid Coverage	Doula Registry	Other
Ohio (under the bill)	Yes; requires Ohio certification to use the title “certified doula” Requires either certification by a doula certification organization or education and experience that the Board of Nursing approves	Yes; requires reimbursement for certain services provided by a doula with an Ohio certification and a valid provider agreement <i>(R.C. 5164.071)</i>	Yes; requires the Board to make the registry of Ohio-certified doulas available on its website <i>(R.C. 4723.89(E))</i>	Authorizes Ohio-certified doulas to provide doula services to inmates participating in a prison nursery program <i>(R.C. 5120.658)</i> Establishes the Doula Advisory Board within the Board of Nursing to advise

²³ See [Michigan Medicaid Policy Bulletin: MMP 22-47: Medicaid Coverage of Doula Services](#) and [MDHHS Doula Initiative](#), which may be accessed by conducting a keyword “doula” search on the Michigan Department of Health and Human Services website: michigan.gov/mdhhs. See also [Gov. Whitmer’s Healthy Moms, Healthy Babies Initiative Expands to Include Doula Services for Medicaid Recipients](#), which may be accessed by clicking on “News” then “Press Releases” and searching “doula” on the Governor’s website: michigan.gov/whitmer.

Doula Regulations				
State	State Certification	Medicaid Coverage	Doula Registry	Other
	Requires other certification standards and requirements to be established by Board rule <i>(R.C. 4723.89)</i>			on doula certification and Medicaid reimbursement <i>(R.C. 4723.90)</i>
Indiana	No equivalent	Yes; authorizes reimbursement for doula services (Rules to implement reimbursement have not yet been adopted.) ²⁴ <i>(Ind. Code 12-15-5-7)</i>	N/A	Establishes the Doula Reimbursement Advisory Board to make recommendations on Medicaid reimbursement methodologies for doula services <i>(Ind. Code 12-8-6.5-14)</i>
Minnesota	No; recognizes certification by specified private organizations <i>(Minn. Stat. 148.995 and 148.9965)</i>	Yes; requires reimbursement in specified amounts for services provided by a certified doula <i>(Minn. Stat. 256B.758)</i>	Yes; requires the Commissioner of Health to make a registry of certified doulas available via website Requires, to be included on the registry, a doula to hold a valid certificate issued by an approved	Requires correctional facilities to ensure that an incarcerated woman who is pregnant or has given birth in the past six weeks has access to certified doula services that are without charge to the

²⁴ See [Current State of Doula Medicaid Implementation Efforts in November 2022](#), which may be accessed by conducting a keyword “doula care” search on the National Health Law Program website: healthlaw.org.

Doula Regulations				
State	State Certification	Medicaid Coverage	Doula Registry	Other
			<p>organization, pass a criminal background check, and pay a \$185 application fee plus a \$15 background check fee</p> <p>Makes inclusion on the registry valid for three years and authorizes renewal</p> <p><i>(Minn. Stat. 148.996 and 148.997)</i></p>	<p>facility or are paid for by the inmate</p> <p><i>(Minn. Stat. 241.89)</i></p> <p>Requires the Commissioner of Health to: (1) identify barriers to obtaining doula services for groups with the most disparities in maternal and infant mortality and morbidity and (2) to enhance doula availability, diversity, and services for those groups</p> <p><i>(Minn. Stat. 144.1461)</i></p>
New Jersey	No equivalent	<p>Yes; authorizes Medicaid coverage of doula care provided by a “trained professional”</p> <p><i>(N.J. Stat. Ann. 30:4D-6)</i></p>	N/A	N/A
Oregon	<p>Yes, for birth doulas; requires completion of specified training, certification in CPR, documentation of attendance at no less than three births and three</p>	<p>Yes; requires Medicaid reimbursement for birth doula services for any woman whose benefit package covers labor and delivery</p>	<p>Yes; requires registry to be maintained by the Oregon Health Authority</p> <p>Requires an included birth doula to be age 18 or older, to not be listed on</p>	N/A

Doula Regulations				
State	State Certification	Medicaid Coverage	Doula Registry	Other
	<p>postpartum visits, and acceptance into the state registry</p> <p>Authorizes extending reciprocity to individuals holding national or non-Oregon state certifications</p> <p><i>(Or. Admin. Rules 950-060-0040)</i></p>	<p>Requires the doula services to have been recommended by a physician or other licensed provider</p> <p>Requires birth doulas seeking reimbursement to be enrolled with the Oregon Health Authority as a traditional health worker, certified as a birth doula, and registered with the Authority</p> <p><i>(Or. Rev. Stat. 414.669; Or. Admin. Rules 410-130-0015)</i></p>	<p>the Medicaid provider exclusion list, to have passed a background check, to submit a letter of recommendation, and to have attended at least ten births and provided at least 500 hours of birth doula-related services</p> <p>Makes inclusion on the registry is valid for three years and authorizes renewal</p> <p><i>(Or. Admin. Rules 950-060-0060)</i></p>	
Washington	<p>Yes; requires, beginning October 1, 2023, Washington certification to use the title “state-certified birth doula”</p> <p>Requires the Secretary of Health to adopt rules establishing competency-based requirements and fees for certification</p> <p>Requires completion of competency-based</p>	No equivalent	N/A	<p>Requires jails to make reasonable accommodations for doula access</p> <p><i>(Wash. Rev. Code 70.48.135)</i></p>

Doula Regulations				
State	State Certification	Medicaid Coverage	Doula Registry	Other
	requirements, lack of engagement in unprofessional conduct or involvement in disciplinary proceedings, and payment of certification fee <i>(Wash. Rev. Code 18.41.010 to 18.47.040 – Effective October 1, 2023)</i>			