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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 647*
136th General Assembly

Occupational Regulation Report

[Click here for H.B. 647's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Plummer and Young

Impacted Profession: Providers of publicly funded child care

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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

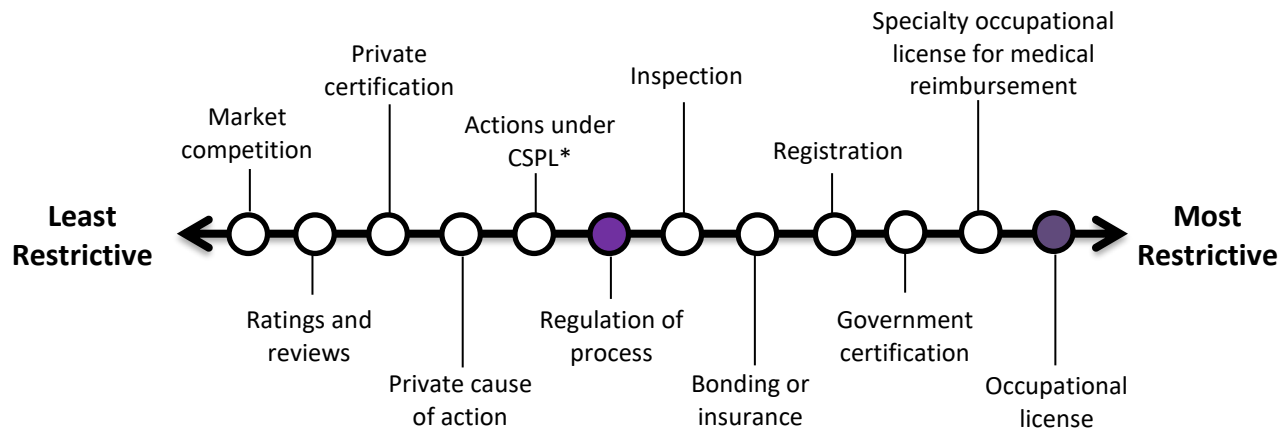
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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

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:

* This report addresses the "As Introduced" version of H.B. 647. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

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



*CSPL – The Consumer Sales Practices Law

With respect to a child care center, type A family child care home, or licensed type B family child care home (a “child care provider”³), the bill allows the Department of Children and Youth (DCY) to do both of the following if it has reason to suspect that the child care provider has misused public dollars or acted with intent to commit fraud against the publicly funded child care (PFCC) program:

- Suspend the provider’s license without a prior hearing; and
- Suspend or terminate the provider’s contract to provide PFCC.

The bill also subjects child care providers that commit certain violations to specified actions by the Attorney General.

Additionally, for child care providers participating in the PFCC program’s automated child care system, the bill prohibits knowingly seeking or accepting a PFCC payment for a child not in attendance with the provider, rather than for a child not enrolled with the provider as under current law.⁴ (It is unclear whether this results in a change in practice because the existing deadline for switching to enrollment-based payments is July 9, 2028.⁵)

Under continuing law governing occupational regulation reports, a report must discuss a bill’s substantial impacts on the following: (1) an individual’s occupation; or (2) a business that must obtain a license for which the applicant must satisfy a personal qualification.⁶ Because the child care providers affected by the bill are businesses that must be licensed, and because applicants for the licenses must satisfy personal qualifications by completing training and passing

³ See R.C. 5104.31, not in the bill.

⁴ R.C. 109.44, 5104.042, and 5104.32(C) and (D).

⁵ R.C. 5104.32(C).

⁶ R.C. 103.26, 103.27, and 4798.01, not in the bill.

a criminal records check, this report discusses the bill's substantial impacts on those child care providers.⁷

Necessity of regulations

Representative Phil Plummer, one of the bill's joint sponsors, testified that Ohio's PFCC program is a lifeline for working families. He explained that it allows parents to stay in the workforce, supports vulnerable children, and strengthens our state economy. He pointed out, however, that with that investment comes a responsibility: to protect both children and taxpayer dollars. Further, he asserted that when public funds are misused, there must be tools to respond quickly and effectively.

Representative Tom Young, the bill's other joint sponsor, testified that the bill is a proactive step toward ensuring that Ohio's PFCC program remains a responsible and accountable steward of taxpayer dollars. He explained that authorizing DCY to immediately suspend a license when fraudulent activity is suspected "ensures that bad actors cannot continue to access public funds while an investigation is pending." In addition, he indicated that the bill is necessary to ensure that Ohio's child care system supports working families while maintaining the highest standards of fiscal responsibility.⁸

Restrictiveness of regulations

Licensure

Licensure is the most restrictive of all regulatory options identified within the state's continuum of regulations. Accordingly, the state's policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all the following circumstances are present:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and
- The licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.⁹

It appears that licensure of child care providers satisfies the state policy's first criterion because child care is regulated by state and federal law. Federal law requires a state, as a condition of receiving federal funding for child care, to ensure that all licensed child care

⁷ R.C. 5104.02, not in the bill; Ohio Administrative Code 5101:2-12-02, 5101:2-12-09, and 5101:2-13-02. See also the DCY [Child Care](#) webpage, which may be accessed by conducting a keyword "child care" search on the DCY website: childrenandyouth.ohio.gov.

⁸ See [testimony of Phil Plummer \(PDF\)](#) and [testimony of Tom Young \(PDF\)](#) which is available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 647" and looking under the "Committee Activity" tab.

⁹ R.C. 4798.02, not in the bill.

programs meet minimum health and safety requirements to operate. State law establishes licensing systems that incorporate the minimum federal requirements. In addition to the federal requirements, a state may expand standards in its law.¹⁰

The licensure of child care providers does not appear to meet the state policy's second criterion. The licensing framework for them requires disclosures related to, and an inspection of, the physical location where they will be located.¹¹ Because licensure partially depends on the physical structure where they will be located, it does not appear possible to grant an Ohio license based on a license in another state.

It also does not appear the licensure requirement for child care providers satisfies the state policy's third criterion because there are no uniform national laws governing child care provider licensure. Rather, requirements vary by state.¹²

Additional grounds for license suspension without prior hearing

The bill appears to increase restrictiveness by establishing an additional reason for which a child care provider's license may be suspended without a prior hearing. Specifically, the bill allows DCY to do so when it has reason to suspect that an owner, licensee, administrator, or employee of the provider has misused public dollars or acted with intent to commit fraud against the PFCC program. Continuing law authorizes DCY to suspend a license, without a prior hearing, under five other circumstances directly related to child safety, including when a child dies or suffers serious injury while receiving care or DCY determines a center or home created a serious risk to the child.¹³

Process regulations

The state's policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state's Consumer Sales Practices Law do not provide sufficient protection.¹⁴ Whether these mechanisms are a sufficient means of protecting consumers is a policy decision.

¹⁰ See 42 United States Code 9857 et seq; see also [How is Child Care Regulated to Ensure Children's Health and Safety](#), which is available by conducting a keyword "how is it regulated" search on the Administration for Children and Families' website: childcare.gov.

¹¹ See R.C. 5104.016, 5104.017, 5104.018, and 5104.03, not in the bill.

¹² See [National Database of Child Care Licensing Regulations](#), which is available on a website maintained by the U.S. Department of Health and Human Services Administration for Children and Families at: licensingregulations.acf.hhs.gov.

¹³ R.C. 5104.042(A).

¹⁴ R.C. 4798.01, not in the bill.

Additional sanctions for specified violations

The bill appears to increase restrictiveness by subjecting a child care provider to potential contract-related consequences if DCY has reason to suspect the provider engaged in the misuse of public funds or acted with intent to commit fraud against the PFCC program. Specifically, in that case, DCY may suspend or terminate the provider's contract to provide PFCC.¹⁵

In addition, the bill appears to increase restrictiveness by subjecting child care providers to specified actions by the Attorney General. The bill requires the Attorney General, under certain circumstances, to investigate any criminal or civil violation of the child care law generally or the PFCC program specifically and, where there is cause to prosecute a criminal violation or pursue a civil remedy, authorizes the Attorney General to do so.¹⁶

Payments based on attendance not enrollment

The bill prohibits a child care provider participating in the PFCC program's automated child care system from knowingly seeking or accepting a PFCC payment for a child not in attendance with the provider, rather than for a child not enrolled with the provider as under current law.¹⁷ It appears possible that confirming attendance may be slightly more burdensome for a provider than confirming enrollment; in that case, the change may increase restrictiveness somewhat. It is not clear that this change increases restrictiveness in practice, however. Currently DCY has until July 9, 2028, to switch from making payments based on attendance to payments based on enrollment. Thus, while the bill bans seeking or accepting a payment based on a child not in attendance, it is not clear that the bill changes the level of restrictiveness that is currently in place because of how payments appear to be currently calculated.

For a more complete explanation of the bill, see the [LSC bill analysis \(PDF\)](#).

IMPACT STATEMENT

Opportunities for employment

H.B. 647 does not alter the requirements for licensure of a child care provider. The bill adds a new circumstance under which DCY may suspend a license without a prior hearing. This new circumstance is when DCY has reason to suspect that an owner, licensee, administrator, or employee of such a provider has engaged in misuse of public dollars or acted with intent to commit fraud. Proscribing criminal behavior for those receiving state licensure cannot be considered a meaningful reduction in opportunities for employment.

Consumer choice and market competition

Consumer choice theory would allow clients of child care providers to choose which business to support based on the bundle of services provided. Misuse of public dollars or intent

¹⁵ R.C. 5104.32(D).

¹⁶ R.C. 109.44.

¹⁷ R.C. 5104.32(C).

to commit fraud is not a legitimate child care service option, so prohibiting providers from engaging in those practices would not violate the consumer choice principle.

By allowing DCY to act more quickly against providers engaged in serious violations, the bill reduces the ability of noncompliant providers to continue operating while enforcement actions are pending. In the short term, this may temporarily reduce the number of active providers, but it also removes unfair competitive advantages gained through unlawful practices. Over time, the market is likely to shift toward providers that comply with regulations, improving overall quality and strengthening trust in the child care sector.

Cost to government

For costs to government, please see the [LSC fiscal note \(PDF\)](#).

COMPARISON TO OTHER STATES

As previously noted, regulation of child care providers varies from state to state. While all the states surrounding Ohio require some type of authorization to provide services, there are variations in how facilities are categorized, the types of care they can provide, the requirements they must meet, and the reasons for suspending or revoking their authorizations. The following table identifies licenses issued in the surrounding states that appear most closely analogous to the licenses affected by the bill. It also summarizes the circumstances under which a license may be suspended, or a facility may be closed without a prior hearing.

State	Applicable Licenses	Covered Facility	Reasons to Suspend License or Operations without a Prior Hearing
Ohio (under the bill)	Child care center license Type A family child care home license Type B family child care home license (R.C. 5104.02, not in the bill, and 5104.042(A))	Any place that is not the permanent residence of the licensee or administrator in which child care or PFCC is provided simultaneously for seven or more children The administrator's permanent residence in which child care or PFCC is provided simultaneously for four to 14 children, depending on age The provider's permanent residence in which care is provided simultaneously for one to seven children, depending on age (R.C. 5104.01, not in the bill)	Licenses may be suspended without a prior hearing for: (1) specified reasons involving child safety, (2) commission of certain crimes by a licensee or facility's owner, or (3) reasonable suspicion by DCY that specified facility-related personnel has misused public dollars or acted with intent to commit fraud against the PFCC program. (R.C. 5104.042(A))

State	Applicable Licenses	Covered Facility	Reasons to Suspend License or Operations without a Prior Hearing
Indiana	<p>Child care center license</p> <p>Child care home license (class I and class II) (Ind. Code 12-17.2-4-1 and 12-17.2-5-7.5)</p>	<p>A nonresidential building where at least one child receives care from a provider</p> <p>A residential structure in which at least eight children, or at least four children under 12-months old receive care from a provider (Ind. Code 12-7-2-28.4 and 12-7-2-28.6)</p>	<p>A temporary order to immediately cease operations must be issued without a prior hearing for any violation identified as posing an immediate threat to the life or well-being of a child in the care of a licensee. (Ind. Code 12-17.2-5-18.7 and 470 Ind. Admin. Code 3-4.8-1)</p>
Kentucky	<p>Child care center license</p> <p>Family child care home license (Ky. Rev. Stat. 199.896 and 199.8982)</p>	<p>A nonresidential building where at least four children receive care from a provider</p> <p>A private home that is the primary residence of an individual who provides care for six or fewer children (Ky. Rev. Stat. 199.894)</p>	<p>An emergency order to cease a child care center's operations or to suspend a family child care home's license may be issued without a prior hearing where there is probable cause to believe that an immediate threat to public health, safety, or welfare exists. (Ky. Rev. Stat. 199.896(4) and 199.8982(1)(f))</p>
Michigan	<p>Child care organization license (Mich. Comp. Laws 722.111 and 722.115)</p>	<p>Any organization that receives minor children for care, maintenance, training, and supervision, including organizations commonly described as child care centers and child care homes (a license is issued for a specific location) (Mich. Comp. Laws 722.111 and 722.118c)</p>	<p>Licenses may be revoked without written notice and appeal only if the licensee waives the right to notice and an appeal. Otherwise, an emergency injunction may be issued without prior notice or hearing to prevent the licensee from acting in a manner that threatens public health, safety, or welfare.</p>

State	Applicable Licenses	Covered Facility	Reasons to Suspend License or Operations without a Prior Hearing
			(Mich. Comp. Laws 722.121(7) and 722.123)
Pennsylvania	Child care center license Family child care home license (62 Pa. Cons. Stat. 1001 and 1002)	Any premises where seven or more children receive care from a provider Any home where a caregiver provides care for no less than four and no more than six children (62 Pa Cons. Stat. 1001 and 1002)	Licenses may temporarily be suspended without a prior hearing under circumstances determined to be an immediate and clear danger to public health and safety (63 Pa. Cons. Stat. 3106)
West Virginia	Child care center license Family child care facility license Family child care home license (W. Va. Code 49-1-206; W.Va. Code R. 78-1-4, 78-18-4, and 78-19-4)	Any facility maintained by a public or private entity for the care of 13 or more children in any setting Any facility used to provide nonresidential child care services for 7 to 12 children Any facility used to provide nonresidential child care services for four to six children (W. Va. Code 49-1-206; W.Va. Code R. 78-1-4, 78-18-4, and 78-19-4)	When a child care center's, family child care facility's, or family child care home's violation of law may result in serious harm to children under care, an injunction to enjoin the violation may be issued Any child care center or family child care facility that constitutes an immediate danger of serious harm to the children served may immediately be closed without a prior hearing. A family child care home may immediately be closed without a prior hearing for a rule violation (W. Va. Code 49-2-120; W. Va. Code R. 78-1-4, 78-18-4, and 78-20-17)