



# Ohio Legislative Service Commission

## Bill Analysis

Laurel Mannion

### H.B. 530

131st General Assembly  
(As Introduced)

Rep. Retherford

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## BILL SUMMARY

- Exempts sick-child care centers from existing law governing the licensing and regulation of child day-care centers.
- Requires the Director of Job and Family Services to license sick-child care centers.
- Specifies standards for the licensure and operation of sick-child care centers.
- Requires the Director of Job and Family Services, in consultation with the Director of Health, to adopt rules governing the operation of sick-child care centers.
- Requires that rules governing child day-care centers include procedures for discharging children to sick-child care centers.

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## CONTENT AND OPERATION

### Regulation of child care

The Ohio Department of Job and Family Services (ODJFS) and county departments of job and family services are responsible for the regulation of child care providers other than preschool programs and school child programs, which are regulated by the Ohio Department of Education.<sup>1</sup> Child care can be provided in a facility, the provider's home, or the child's home. Not all child care providers are subject to regulation, but a provider must be licensed or certified to be eligible to provide publicly funded child care.

### Sick-child care centers exempt from child day-care center licensure

All child day-care centers must be licensed by ODJFS, unless exempt.<sup>2</sup> The bill exempts sick-child care centers from licensure as child day-care centers.<sup>3</sup> A "sick-child care center" is defined by the bill as a place that provides child care (including administering to the needs of school-age children during school hours) for children with short-term illnesses or other medical conditions on a temporary, irregular basis.<sup>4</sup> The bill makes a conforming change eliminating a requirement that ODJFS adopt rules pertaining to child day-care centers that include standards for licensing child day-care centers for children with short-term illnesses and other temporary medical conditions.<sup>5</sup> It does not appear that ODJFS has adopted these rules.

The bill does not affect the status of child care located in and operated by a hospital in which the needs of children are administered to if (1) all the children are monitored under the on-site supervision of a physician or a registered nurse and (2) the services are provided only for children who are exhibiting symptoms of a communicable disease or other illness or are injured. Such facilities are exempt from licensure as a child day-care center under current law and are excluded from the definition of "sick-child care center" under the bill.<sup>6</sup>

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<sup>1</sup> R.C. Chapter 5104.

<sup>2</sup> R.C. 5104.02, not in the bill.

<sup>3</sup> R.C. 5104.01(K).

<sup>4</sup> R.C. 5104.01(OO).

<sup>5</sup> R.C. 5104.015(X).

<sup>6</sup> R.C. 5104.01(K)(1) and (OO).

## Licensure process for sick-child care centers

The bill makes the Director of Job and Family Services responsible for licensing sick-child care centers. It prohibits any person, firm, organization, institution, or agency from operating, establishing, managing, conducting, or maintaining a sick-child care center without a license. The center must post its current license in a conspicuous place that is accessible to parents, custodians, or guardians and employees of the center at all times when it is in operation.<sup>7</sup>

### Application

Under the bill, any person, firm, organization, institution, or agency seeking to establish a sick-child care center must apply for a license to the Director on a form prescribed by the Director. The application must include all of the following:

- (1) A site plan and proposal describing how the center proposes to satisfy the requirements governing sick-child care centers;
- (2) The maximum number of children served by the sick-child care center at one time;
- (3) The number of adults providing sick-child care for the children;
- (4) An admissions policy that meets the bill's requirements (*see* "**Admissions policies for sick-child care centers**," below);
- (5) Any other information the Director considers necessary.

The applicant must pay an application fee set by the Director at the time of application. All fees are to be credited to the General Revenue Fund.<sup>8</sup>

Upon application, the Director may investigate and inspect the center to determine whether it meets the requirements governing sick-child care centers. When the Director is so satisfied, a license must be issued as soon as practicable in a form and manner prescribed by the Director. Each center license must state the licensee's name, the administrator's name, and the address of the sick-child care center. The license is valid until it is surrendered to the Director or revoked.<sup>9</sup>

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<sup>7</sup> R.C. 5104.15(B).

<sup>8</sup> R.C. 5104.15(C).

<sup>9</sup> R.C. 5104.15(D).

## **Denial and revocation**

The Director may deny an application or revoke a license of a sick-child care center if it does not comply with the laws governing those centers.<sup>10</sup> If the Director finds, after notice and hearing under the Administrative Procedure Act, that any applicant, person, firm, organization, institution, or agency applying for licensure or licensed as a sick-child care center is in violation of the laws governing these centers, the Director may issue an order of denial to the applicant or an order of revocation to the center revoking the license previously issued by the Director. The person whose application is denied or whose license is revoked may appeal in accordance with the Administrative Procedure Act. The surrender of a license to the Director or the withdrawal of an application for licensure does not prohibit the Director from taking action.<sup>11</sup>

## **Operating a sick-child care center without a license**

If the Director determines that a center is operating without a license, the Director is required to notify the Attorney General, the prosecuting attorney of the county in which the center is located, or the city attorney, village solicitor, or other chief legal officer of the municipal corporation in which the center is located. The person notified must file a complaint in the court of common pleas of the county in which the center is located requesting that the court grant an order enjoining the owner from operating the center. The bill requires the court to grant injunctive relief upon proof that the respondent is operating a center without a license.<sup>12</sup>

The bill also imposes penalties for operating a sick-child care center without a license.<sup>13</sup> For each offense, the offender is to be fined \$100-\$500 multiplied by the average number of children per day receiving child care at the center. In addition to the fine (unless the offender has previously been convicted of operating a sick-child care center without a license), the court must order the offender to reduce the number of children to which it provides child care to a number that does not exceed the number of children to which a type B family day-care home may provide child care.<sup>14</sup> If the offender previously has been convicted of or pleaded guilty to operating a sick-child

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<sup>10</sup> R.C. 5104.15(E).

<sup>11</sup> R.C. 5104.15(F) and (G), by reference to R.C. 119.12, not in the bill.

<sup>12</sup> R.C. 5104.15(H).

<sup>13</sup> R.C. 5104.99(D).

<sup>14</sup> R.C. 5104.99(D)(2)(a). Type B family day-care homes need not be licensed unless they provide publicly funded child care.

care center without a license one time, the court must order the offender to stop providing child care to any person until it obtains a sick-child care center license.<sup>15</sup>

If the offender previously has been convicted of or pleaded guilty to operating a sick-child care center without a license two times, the offender is guilty of a first degree misdemeanor, and the court must order the offender to stop providing child care to any person until it obtains a sick-child care center license. The court may impose an additional fine to the one described above, provided that the total amount of the fines does not exceed \$1,000.<sup>16</sup> If the offender previously has been convicted of or pleaded guilty to operating an unlicensed sick-child care center three or more times, the offender is guilty of a fifth degree felony and the court must order the offender to stop providing child care to any person until it obtains a sick-child care center license. The court may impose an additional fine to the one described above, provided that the total amount of the fines does not exceed \$2,500.<sup>17</sup>

### **Operating standards for sick-child care centers**

The bill requires that a sick-child care center satisfy all of the following requirements:

- Have a physician, certified nurse practitioner, or registered nurse on the premises whenever children are in care;
- Have a licensed practical nurse or nurse aide on the premises whenever children are in care;
- Have a maximum staff to child ratio per room of 1:4;
- Have a maximum number of children age three or older per room of two to one (the bill does not specify a per room maximum for children under age three);
- Provide a separate room for evaluating children before admission;
- Provide a separate room for children recovering from illness who are no longer contagious;

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<sup>15</sup> R.C. 5104.99(D)(2)(b).

<sup>16</sup> R.C. 5104.99(D)(2)(c), by reference to R.C. 2929.28, not in the bill.

<sup>17</sup> R.C. 5104.99(D)(2)(d), by reference to R.C. 2929.18, not in the bill.

- If the center admits children exhibiting symptoms of or diagnosed with chicken pox, provide a separate room for the care of those children that is ventilated separately from the rest of the center;
- Provide a separate room for children exhibiting symptoms of gastrointestinal illnesses;
- For each room where child care is provided, include within the room or immediately adjacent to the room at least one toilet and one sink;
- Have an area set aside for play, entertainment, education, and other activities;
- Provide each child with a crib, bed, or cot, depending upon the child's age or physical size, and appropriate bed linens for the child's own use while at the sick-child care center;
- Install electrical outlet covers or plates, childproof window locks and door latches, corner and edge bumpers for sharp edges, and nonslip, easily maintained floor surfaces;
- Meet the Guidelines for Hand Hygiene in Healthcare Settings developed by the federal Centers for Disease Control and Prevention;<sup>18</sup>
- Meet the standards regarding Bloodborne Pathogens in Healthcare Settings developed by the federal Occupational Safety and Health Administration;<sup>19</sup>
- Have a referral network that provides for timely consultation with pediatric subspecialists and, when necessary, transfer of children to a hospital that offers more advanced pediatric care, including access to an air and ground transportation system that is responsive and appropriately equipped and staffed to care for children of all ages.<sup>20</sup>

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<sup>18</sup> Centers for Disease Control and Prevention, "Hand Hygiene in Healthcare Settings," <http://www.cdc.gov/handhygiene/providers/guideline.html> (accessed May 9, 2016).

<sup>19</sup> 29 Code of Federal Regulations Part 1910; U.S. Department of Labor, Occupational Safety and Health Administration, [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=10051](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10051) (accessed May 9, 2016).

<sup>20</sup> R.C. 5104.16.

Each center's health care policies and procedures must be reviewed quarterly by a physician, certified nurse practitioner, or registered nurse.

The bill prohibits a center from providing child care for any child who is not sick or does not have another short-term medical condition. Rooms used to provide child care for sick children cannot be used for any other child care purpose at any time.<sup>21</sup>

### **Admissions policies for sick-child care centers**

The bill requires each sick-child care center to develop a written policy governing the admission of children to receive child care. The admissions policy must include a description of the types of illnesses and injuries for which a child may be admitted to the center and the types for which a child may be excluded.<sup>22</sup>

#### **Review by a physician**

At the following intervals, the bill requires that the admissions policy be reviewed and approved by a physician who is board-certified in family medicine or general pediatrics, in consultation with a physician, certified nurse practitioner, or registered nurse affiliated with the center who evaluates or will evaluate children for admission to the center:

- At the time of initial application for licensure;
- After the first six months of operation;
- Annually thereafter.<sup>23</sup>

An applicant for a sick-child care center license must include a report of the reviewing physician's findings and the approved admissions policy with the application. Subsequent reports must be kept on file at the center and made available for inspection.<sup>24</sup>

#### **Evaluations of children**

The bill requires a sick-child care center to evaluate each child before admitting the child to the center. A physician, certified nurse practitioner, or registered nurse

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<sup>21</sup> R.C. 5104.16(B) and (C).

<sup>22</sup> R.C. 5104.17(A)(1).

<sup>23</sup> R.C. 5104.17(A)(2).

<sup>24</sup> R.C. 5104.17(A)(3).

affiliated with the center must perform the evaluation, and an evaluation must be performed for each day that the child seeks admission. The evaluation must be based on all of the following:

- The child's symptoms;
- The likelihood of contagion;
- The health risks presented to other individuals;
- The center's ability to provide adequate care;
- The center's admissions policy.

The center is required to conduct a preliminary evaluation over the telephone or Internet before the caretaker parent brings the child to the center. Based on the preliminary evaluation, the physician, certified nurse practitioner, or registered nurse must notify the caretaker parent whether the caretaker parent may bring the child to the center for further evaluation.

If the physician, certified nurse practitioner, or registered nurse determines that the caretaker parent may bring the child to the center and the child is brought to the center, a second evaluation must be performed before admission. This evaluation must include a physical examination of the child, an assessment of the child's symptoms, and the taking of a medical history.<sup>25</sup>

The bill provides that the decision of a physician, certified nurse practitioner, or registered nurse not to admit a child to the center is final.<sup>26</sup>

### **Copy of policies provided to caretaker parent**

Upon admission, a sick-child care center must provide to the child's caretaker parent a summary of its policies and procedures, including its procedures for notifying the caretaker parent in the event of an emergency.<sup>27</sup>

### **Rulemaking**

The bill requires the Director of Job and Family Services, in consultation with the Director of Health, to adopt rules in accordance with the Administrative Procedure Act

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<sup>25</sup> R.C. 5104.17(B).

<sup>26</sup> R.C. 5104.17(C).

<sup>27</sup> R.C. 5104.17(D).



governing the operation of sick-child care centers.<sup>28</sup> The rules must be consistent with the bill's provisions governing the licensure and operation of such centers and must reflect the needs of children with short-term illnesses and other temporary medical conditions. The rules must include all of the following:

- Standards ensuring that the physical environment and equipment of the center are safe and sanitary;
- Standards for the supervision, care, and discipline of children receiving child care in the center;
- Standards for qualifications and screening of staff members;
- Standards for training and continuing education of staff members, including recognizing the signs and symptoms of illnesses, administering medications, making referrals to pediatric specialists or facilities, and communicating with caretaker parents;
- Admissions policies and procedures;
- Health care policies and procedures, including:
  - Medical protocols for specific illnesses or symptoms, developed by a physician who is board-certified in family medicine or general pediatrics;
  - Infection control, including universal and standard precautions used by each staff member regarding appropriate use of hand washing; disinfection and sterilization of equipment, linens, furniture, walls, flooring, toilets, and other objects; handling and disposal of needles and other sharp instruments; and wearing and disposal of gloves and other protective garments and devices.
- Emergency procedures, including procedures for making referrals or transfers to pediatric specialists or facilities;
- Standards for recordkeeping;
- Procedures for issuing, denying, and revoking a license that are not otherwise provided for in the Administrative Procedure Act;

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<sup>28</sup> R.C. 5104.0113.

- Inspection procedures;
- Procedures and standards for setting initial license application fees;
- Procedures for receiving, recording, and responding to complaints about sick-child care centers;
- Any other standards and procedures necessary to implement the laws governing sick-child care centers.

### **Discharge from a child day-care center to a sick-child care center**

Current law requires that rules governing the operation of child day-care centers include health care policies and procedures, including procedures for the isolation of children with communicable diseases. The bill requires instead that the rules include procedures for isolating a child with a communicable disease and discharging that child to a parent or guardian or to a person or sick-child care center designated by the parent or guardian.<sup>29</sup>

### **Background – management of illness in child day-care centers under current law**

Rules adopted by ODJFS that govern the operation of a child day-care center require that a child with any of the following signs or symptoms be isolated immediately and discharged to the child's parent or guardian or a person designated by the child's parent or guardian:

- Temperature of at least 100 degrees Fahrenheit when in combination with any other sign or symptom of illness;
- Diarrhea;
- Severe coughing, causing the child to become red or blue in the face or to make a whooping sound;
- Difficult or rapid breathing;
- Yellowish skin or eyes;
- Redness of the eye or eyelid, thick discharge, matted eyelashes, burning, itching, or eye pain;

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<sup>29</sup> R.C. 5104.015(F).

- Untreated infected skin patches, unusual spots, or rashes;
- Unusually dark urine and/or gray or white stool;
- Stiff neck with an elevated temperature;
- Evidence of untreated lice, scabies, or other parasitic infestations;
- Sore throat or difficulty in swallowing;
- Vomiting more than one time or when accompanied by any other sign or symptom of illness.<sup>30</sup>

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## HISTORY

ACTION	DATE
Introduced	04-25-16

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<sup>30</sup> Ohio Administrative Code 5101:2-12-33.

