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Bill Analysis
Legislative Service Commission

H.B. 387

125th General Assembly
(As Introduced)

Reps. Trakas, Jerse, Fessler, Aslanides, Collier, Reidelbach, Seaver, Peterson

BILL SUMMARY

- Prohibits certain persons who provide child day-care from administering medication to a child without the written authorization of the parent, guardian, or other person responsible for the child.
- Provides emergency exceptions to the prohibition.
- Specifies penalties for individual caregivers and for entities employing caregivers who violate the prohibition.

CONTENT AND OPERATION

Prohibition

(R.C. 2919.221(A) and (B), 3301.561(A) and (B), and 5104.016(A) and (B))

Subject to certain exceptions (see "Exceptions to prohibition," below), the bill prohibits the following persons from administering any medication¹ to a child under age 18, or a mentally or physically handicapped child under age 21, without first receiving written authorization to do so from the child's parent, guardian, or other person responsible for the child:

- Caregivers (the bill defines a "caregiver" as an individual age 18 or older who provides day-care² to a child, except that this term does *not* include a person who is any of the following to the child: (1) a grandparent (including a grandparent with the prefix "great," "great-great," or "great-great-great"), (2) a sibling, (3) an aunt, uncle, nephew,

¹ See **COMMENT 1**, below, for definition of "medication."

² See **COMMENT 2**, below, for the definition of "day-care."

or niece, including such relatives with the prefix "great," "great-great," "grand," or "great-grand," (4) a first cousin or first cousin once removed, (5) a stepparent or stepsibling, (6) a spouse or former spouse of a person included in (1) or (2), (7) a legal guardian, or (8) a legal custodian.)

- Directors, staff members, non-teaching employees, and any other persons associated with a school district preschool program.
- Employees, owners, household members, volunteers, operators or other persons associated with a child day-care center, type A family day-care home, or certified type B family day-care home.³

Exceptions to prohibition

(R.C. 2919.221(C) and (D), 3301.561(C) and (D), and 5104.016(C) and (D))

The bill's prohibition against administering a medication to a child without written authorization does not prohibit the following:

- The administration of a medication to a child if any of the persons subject to the bill has reasonable cause to believe that administration of the medication is necessitated by a medical emergency affecting the child.
- The administration of emergency medical care or treatment to a child in accordance with Ohio's good samaritan statutes (R.C. 2305.23 and 2305.231).⁴

³ See **COMMENT 3**, below, for definitions of "child day-care center," "type A family day-care home," and "certified type B family day-care home."

⁴ Under the general good samaritan statute (R.C. 2305.23), a person is not liable in civil damages for the administration of emergency care or treatment at the scene of an emergency, outside of a hospital, doctor's office, or other place having proper medical equipment, unless the administration of the care or treatment constitutes willful or wanton misconduct. With the exception of law enforcement officers and fire fighters, this immunity does not attach if care or treatment is rendered for remuneration, or with the expectation of remuneration.

Under the good samaritan statute applicable to school athletic program volunteers (R.C. 2305.231), physicians, dentists, and registered nurses who volunteer services as team health professionals are not liable in civil damages for the administration of

Violations by individual caregivers

(R.C. 2919.221(E))

The bill provides that a caregiver who violates the prohibition is guilty of unlawful administration of medication to a child. In general, this offense is a misdemeanor of the first degree. However, if the violation results in serious physical harm to the child, the offense is a felony of the fourth degree.

Violations by a day-care center, type A family day-care home, or certified type B family day-care home

(R.C. 5104.041)

The bill requires the Department of Job and Family Services (ODJFS) to revoke the license of a child day-care center or type A family day-care home if it determines that an employee, owner, household member, volunteer, operator, or other person associated with the center or home has been convicted of, or pleaded guilty or no contest to, a violation of the bill's prohibition.

Violations by person associated with a certified type B family day-care home

(R.C. 5104.111)

The bill requires a county department of job and family services to revoke the certificate of a type B family day-care home if it determines that an employee, owner, household member, volunteer, operator, or other person associated with the home has been convicted of, or pleaded guilty to, a violation of the bill's prohibition.

COMMENT

1. The bill defines "medication" as any of the following:
 - (1) Articles recognized in the United States pharmacopoeia and national formulary, or any supplement to them.
 - (2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans.

emergency care or treatment to participants in athletic events involving the school at which they volunteer unless their actions constitute willful or wanton misconduct.

- (3) Articles, other than food, intended to affect the structure or function of the body of humans.
- (4) Articles intended for use as a component of (1), (2), or (3), above, but not including devices or their components, parts, or accessories.
- (5) Any drug to which either of the following applies:
 - (a) Under the Federal Food, Drug, and Cosmetic Act, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or any similar restrictive statement, or the drug may be dispensed only upon a prescription.
 - (b) Under Ohio pure food and drug and controlled substances law (R.C. Chapters 3715. and 3719., respectively), the drug may be dispensed only upon a prescription.
- (6) Any drug that contains a Schedule V controlled substance and exempt from Ohio controlled substances law.
- (7) Any drug intended for administration by injection into the human body other than through a natural orifice.

2. The bill defines the following terms related to child day-care: "day-care"--administering to the needs of infants, toddlers, preschool children, and school children outside of school hours for any part of the 24-hour day in a place or residence other than the child's own home.

3. "Child day-care center"--any place in which child day-care is provided for 13 or more children at one time or a place that is not the permanent residence of the licensee or administrator in which day-care is provided for seven to twelve children at one time. (R.C. 5104.01(L).) (Typically, no one may operate a child day-care center without obtaining a license from the Director of the Department of Job and Family Services. (R.C. 5104.02).)

4. "Type A family day-care home"--the permanent residence of the administrator in which child day-care is provided to seven to twelve children at one time or the permanent residence of the administrator in which child day-care is provided for four to twelve children at one time if four or more children cared for at one time are under age two. (R.C. 5104.01(QQ).) (A person wishing to operate a type A family day-care home must obtain a license from the Director of the Department of Job and Family Services. (R.C. 5104.02).)

5. "Type B family day-care home"--the permanent residence of the provider in which child day-care is provided for one to six children at one time and in which no more than three children are under age two at one time. (R.C. 5104.01(RR).) (It must be "certified" if it participates in the publicly funded child day-care program administered by the Department of Job and Family Services. County departments of job and family services are responsible for the certification of these day-care homes. (R.C. 5104.11).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-04	p. 1563

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