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Bill Analysis
Legislative Service Commission

H.B. 32*

126th General Assembly
(As Reported by H. Health)

Reps. Trakas, Fessler, Reidelbach, Peterson, Collier

BILL SUMMARY

- Prohibits certain persons who provide child 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 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 exceptions described 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 having received 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 child care² to a child, except that this term does *not*

* *This analysis was prepared before the report of the House Health Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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

² *The bill defines "child care" as 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.*

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) sibling, (3) aunt, uncle, nephew, or niece, including such relatives with the prefix "great," "great-great," "grand," or "great-grand," (4) first cousin or first cousin once removed, (5) stepparent or stepsibling, (6) spouse or former spouse of a person included in (1) or (2), (7) legal guardian, or (8) 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 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, not in the bill).⁴

³ See **COMMENT 2**, 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.

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. The bill specifies that this is a strict liability offense, which means that the caregiver's mental state is not relevant to determining whether the caregiver is guilty of the offense. 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 child care center, type A family day-care home, or certified type B family day-care home

(R.C. 3301.561 and 5104.016; R.C. 5104.04 and 5104.11, not in the bill)

The bill does not specify a penalty for violation by a child care center or day-care home. However, the Department of Job and Family Services is authorized by current law to revoke the license of a licensed child care center or Type A family day-care home if it is determined that the center or home is in violation of the child care law or rules adopted under it. The Department may revoke the center or home's license after notice and opportunity for hearing in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.). A county director of job and family services is authorized under current law to revoke the certification of a Type B family day-care home after determining that revocation is necessary.

The bill states that the sections dealing with preschools, child care centers and family day-care homes do not preclude criminal prosecution under the bill's criminal law section.

COMMENT

1. The bill defines "medication" as any of the following that is not a controlled substance:⁵

(a) Articles recognized in the United States pharmacopoeia and national formulary, or any supplement to them.

⁵ The bill excludes "controlled substances" from the definition. Existing law (R.C. 2925.02, not in the bill), already prohibits furnishing or administering a controlled substance to a juvenile.

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans.

(c) Articles, other than food, intended to affect the structure or function of the body of humans.

(d) Articles intended for use as a component of (a), (b), or (c), above, but not including devices or their components, parts, or accessories.

(e) Any drug to which either of the following applies:

(i) 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 on a prescription.

(ii) Under Ohio pure food and drug and controlled substances law (R.C. Chapters 3715. and 3719., respectively), the drug may be dispensed only on a prescription.

(f) Any drug intended for administration by injection into the human body other than through a natural orifice.

2. Current law defines the following terms related to child day-care:

(a) "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.) (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).)

(b) "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.) (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).)

(c) "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.) (To participate in the publicly funded child day-care program

administered by the Department of Job and Family Services a home must receive a certificate from a county department of job and family services. (R.C. 5104.11.)

HISTORY

ACTION	DATE
Introduced	02-01-05
Reported, H. Health	---

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