



Lisa Musielewicz

Bill Analysis
Legislative Service Commission

H.B. 383

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(As Introduced)

Reps. Fessler, Schaffer, J. McGregor, Seitz, Reidelbach, Chandler, Barrett, Yuko

BILL SUMMARY

- Requires the Ohio Department of Job and Family Services (ODJFS) to inspect and investigate any unlicensed child day-care provider suspected of being in violation of the requirement that the provider be licensed as a child day-care center or type A family day-care home.
- Specifies that the prohibition against operating a day-care center or type A home without a license applies and must be enforced, regardless of the manner in which the day-care provider represents itself to the public.
- Prohibits a person or government entity from interfering with an inspection or investigation being conducted by any state or local official performing duties to determine whether day-care licensing requirements are being violated.
- Requires ODJFS, at the conclusion of an inspection, to give the day-care provider a verbal explanation of any violations found during the inspection.
- Requires ODJFS to offer a licensee an opportunity to dispute any findings in a written inspection report and to conduct the dispute resolution process in accordance with rules it adopts.
- Provides that the dispute resolution process does not apply when there is a finding of serious threat to the health and safety of the children receiving day-care services.
- Prohibits ODJFS from making inspection findings available to the public until the dispute resolution process has been completed.

- Requires ODJFS to make inspection findings immediately available to the public if there is a finding of the presence of an immediate and serious threat to the health and safety of children receiving day-care services.
- Specifies that a court may issue an order prohibiting a day-care provider from providing day-care in any capacity, including as a type B home, if the provider has been found in violation of a court order to discontinue operating without a license.
- Clarifies that a licensed day-care provider must notify ODJFS when there is a change in the maximum number of children that may receive care (the licensed capacity) and that ODJFS must make a determination of whether the change in licensed capacity is appropriate.
- Requires ODJFS to modify its rules requiring a day-care center to check the references of an applicant for employment as an administrator by specifying procedures to be followed in obtaining a statement from the applicant as to whether the applicant has been the administrator of a day-care center or type A home that ceased to operate because its license was revoked.
- Establishes that ODJFS may impose the following additional licensing sanctions: (1) a fine of \$50 to \$500 and (2) a requirement that all employees undergo at least two hours of training on the child day-care laws.
- Requires ODJFS to take into consideration the scope and severity of the violation, presence or absence of a threat to the children, and the history of compliance or noncompliance with previously imposed sanctions before imposing a sanction or determining a fine.
- Requires that any fines collected be deposited into the Child Care Enforcement Fund created by the bill and be used in the same manner as federal funds received under the Child Care Block Grant Act.
- Reorganizes the provisions of existing law that specify the authority of ODJFS to impose licensing sanctions.
- Requires ODJFS to maintain a toll-free telephone number for purposes of accepting complaints about child day-care providers, and requires ODJFS

to offer consumer information on child day-care through the toll-free line.

- Specifies the circumstances under which ODJFS must conduct an on-site investigation of a complaint it receives.
- Requires each public children services agency to file with ODJFS a copy of the agency's "memorandum of understanding," which details the procedures to be used by officials who deal with cases of child abuse and neglect, requires the agency to review the memorandum at least once every five years, and requires the agency to provide to the public on request a copy of the memorandum.
- Requires ODJFS to prepare an annual report regarding inspections and investigations of day-care providers.
- Eliminates ODJFS authority to adopt child day-care rules on matters not expressly described in statute.
- Eliminates a provision of law designating the Director of ODJFS as the person who determines which areas in a day-care center are available for the care of children.
- Prohibits ODJFS from adopting rules that permit a day-care center, type A home, type B home, or in-home aide to perform a physical examination on or to provide immunizations to a child without the informed consent of the child's parent or legal guardian.
- Increases to every five years (from every seven years) the frequency with which the Director of Job and Family Services is required to review all child day-care rules.
- Delays the effective date of the bill's provisions for one year.

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CONTENT AND OPERATION

Background

There are several different types of child day-care providers in Ohio, including child day-care centers, type A family day-care homes, and type B family day-care homes.

Child day-care centers

A child day-care center is 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 child day-care is provided for seven to twelve children at one time.¹ In general, no one may operate a child day-care

¹ "Child day-care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home (Ohio Revised Code section 5104.01(K) (not in the bill)).

"Publicly funded child day-care" means administering to the needs of infants, toddlers, preschool children, and school children under age 13 during any part of the 24-hour day by persons other than their caretaker parents for remuneration wholly or in part with federal or state funds, including Child Care Block Grant Act funds, distributed by the Department of Job and Family Services (R.C. 5104.01(JJ))--not in the bill).

"Administrator" means the person responsible for the daily operation of a center or type A home. The administrator and the owner may be the same person. (R.C. 5104.01(A) (not in the bill).)

center without obtaining a license from the Director of Job and Family Services. (R.C. §§ 5104.01(L) (*not in the bill*) and 5104.02.)

Type A family day-care home

A type A family day-care home is the permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for seven to twelve children at one time or for four to twelve children at one time if four or more of the children cared for at one time are under age two. As is the case with child day-care centers, a person wishing to operate a type A home must obtain a license from the Director of Job and Family Services. (R.C. §§ 5104.01(QQ) (*not in the bill*) and 5104.02.)

Type B family day-care home

A type B family day-care home is the permanent residence of the provider in which child day-care is provided for fewer than seven children at one time and in which no more than three of the children are under age two. A type B family day-care home is not required to be licensed or certified unless it participates in the publicly funded child day-care program administered by the Ohio Department of Job and Family Services (ODJFS). County departments of job and family services are responsible for the certification of type B homes that provide publicly funded child day-care. (R.C. §§ 5104.01(RR) (*not in the bill*), 5104.011(G), and 5104.11.)

The bill

Prohibition against operating a child day-care center or type A home without a license

(R.C. 5104.02)

With certain exceptions, under current law no person or government entity is permitted to operate, establish, manage, conduct, or maintain a child day-care center or type A home without a license from ODJFS.

The bill specifies that the prohibition against operating a day-care center or type A home without a license applies and must be enforced by ODJFS, regardless of the manner in which the day-care provider represents itself to the public. For example, a type B home that cares for more children than authorized is no longer a type B home; instead, it is operating as an unlicensed type A home, regardless of whether it continues to represent itself as a type B home.

Inspection and investigation of unlicensed child day-care providers

(R.C. 5104.04, 5104.043, and 5104.011(A)(10) and (F)(10))

Under current law, ODJFS must establish procedures for investigating, inspecting, and licensing child day-care centers and type A homes.

The bill requires ODJFS to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) for investigating and inspecting providers of child day-care who are suspected of operating in violation of child day-care licensing requirements.

Current law requires the Director of Job and Family Services to adopt rules governing the operation of child day-care centers, reflecting the various forms of child day-care and the needs of children receiving child day-care or publicly funded child day-care. Current law specifies certain rules that must be adopted by the Director.

The bill requires the Director to adopt rules that include procedures for conducting inspections and investigations, when applicable, of applicants, licensed centers, and child day-care providers allegedly operating without an appropriate license.

Under the bill, at the conclusion of an inspection, ODJFS must give the day-care provider, or the person responsible for the care of the children at the time of the inspection if the provider is not available, a verbal explanation of any violations of child day-care requirements found during the inspection.

The bill also requires ODJFS to maintain statistics regarding the individuals who conduct inspections and investigations, the number of inspections and investigations conducted by each individual, the reasons for which the inspections and investigations were initiated, and the findings from the inspections and investigations. ODJFS must prepare an annual report on those statistics and submit it to the Speaker of the House of Representatives and President of the Senate.

The bill also prohibits a person or government entity from interfering with an investigation or inspection being conducted by any state or local official engaged in performing duties to determine whether child day-care licensing requirements are being violated.

Under current law, if it determines that a center or type A home is operating without a license, ODJFS must give notice that the center or home is operating without a license to the Attorney General, the prosecuting attorney of the county in which the center or home is located, or the chief legal officer of the municipal

corporation in which the center or home is located. On receipt of the notice, the designated legal officer must file a complaint in the court of common pleas requesting that the court grant an order enjoining the owner from operating the center or home. The court must grant the order on a showing that the respondent is operating a center or home without a license. Also, a fine of not less than \$100 and not more than \$500 must be imposed on anyone who operates a child day-care center or type A home in Ohio without a license.

The bill specifies that if a court of common pleas finds that a center or home is operating in violation of licensure requirements and the respondent has been found in violation of an order enjoining the operation of a home or center, the court may include in any subsequent order in the same or a subsequent case involving the respondent an order prohibiting the day-care provider from providing day-care in any capacity, including as a type B home.

Current law requires ODJFS to prepare an annual report of its inspections of child day-care centers and homes. The report must include the number of inspections, the numbers and types of violations found, and the steps taken to address the violations. Copies of the report are to be filed with the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives on or before January 1.

The bill requires ODJFS to include in the report information on investigations it conducts of centers and homes.

Dispute resolution process

(R.C. 5104.04(B))

The bill maintains the existing requirements that ODJFS provide a written inspection report to a licensee within a reasonable time after each inspection and offer the licensee an opportunity to dispute any of the findings in the report. Under the bill, any request from a licensee to dispute inspection findings must be reviewed by two ODJFS employees and two child day-care providers appointed by the existing Child Day-Care Advisory Council² in accordance with rules

² Created in ODJFS to advise and assist the Director in the administration and development of child day-care, the Child Day-Care Advisory Council consists of 18 members appointed by the Director of Job and Family Services with the approval of the Governor. The Director, Superintendent of Public Instruction, Director of Health, Director of Commerce, and State Fire Marshal serve as nonvoting members of the Council. The other members of the Council are: (a) six members who are representatives of child day-care centers subject to licensing and who represent a variety of centers from different geographical areas of the state, (b) at least three persons who are parents, guardians, or custodians of children enrolled in a Head Start program or

adopted by ODJFS. ODJFS is required to conduct the dispute resolution process in accordance with rules it adopts, including rules that establish timelines for making requests to dispute inspection findings and for responding to the requests.

Under the bill, ODJFS is prohibited from making inspection findings available to the public until the dispute resolution process has been completed. If the process results in a finding that one or more citations in the written inspection report should not have been included, ODJFS is required to issue a corrected report without reference to the incorrect citations. ODJFS is not required to give the licensee the opportunity to dispute the findings if there is a finding of the presence of an immediate and serious threat to the health and safety of the children receiving day-care services. ODJFS is required to make those findings immediately available to the public.

Rules for child day-care centers and type A and B homes

(R.C. 5104.011)

Current law requires the Director to adopt rules regarding health care policies and procedures for the isolation of children with communicable diseases, first aid and emergency procedures, procedures for discipline and supervision of children, standards for the provision of nutritious meals and snacks, and procedures for screening children and employees, including any necessary physical examinations. The bill prohibits ODJFS from adopting rules pertaining to health care policies and procedures that permit a center, type A home, type B home, or in-home aide to perform a physical examination on or to provide immunizations to a child unless the center, type A home, type B home, or in-home aide obtains the informed consent of the child's parent or legal guardian.

Current law requires that a child day-care center have for each child for whom the center is licensed at least 35 square feet of usable indoor floor space regularly available for the child day-care operation. The minimum 35 square feet

receiving child day-care or publicly funded child day-care in the child's home, a center, type A home, certified type B home, or type B home, (c) three members who are representatives of in-home aides, type A homes, certified type B homes, type B homes, or Head Start program, (d) at least two members who represent county departments of job and family services, (e) remaining members who are representatives of teaching, child development, health professions, and other individuals interested in the welfare of children. At least six members of the Council must not be employees or licensees of a child day-care center or type A home or providers operating a certified type B home or type B home, or in-home aides. The Council is required to advise the Director on matters affecting the licensing of centers and type A homes, the certification of type B homes, and in-home aides.

of usable indoor floor space cannot include any parts of the structure in which the care of children is prohibited by law, by rules adopted by the Board of Building Standards hallways, kitchens, storage areas, or any other areas that are not available for the care of children as determined by the Director. The bill eliminates the provision designating the Director as the person who determines that an area is not available for the care of children.

Current law requires the Director to review all child day-care rules every seven years. The bill increases the frequency of review of the rules to every five years.

Notification of change license capacity of center or home

(R.C. 5104.03)

Current law specifies that the license capacity of a center or home is the maximum number of children in each age category that may be cared for in the center or type A home at one time. The Director of ODFJS is permitted to amend a current or provisional license if the Director determines that there has been a change in license capacity for any age category of children cared for in the center or home.

The bill specifies that the license or provisional license holder is not permitted to provide child day-care to more than its maximum license capacity as indicated on the license or provisional license. The center or home is required to notify the Director when circumstances arise that require a change in the license capacity. Under the bill, the Director must amend the current license or provisional license to reflect the change in license capacity if the Director determines that the center or home meets the necessary requirements to provide care under the new capacity.

Reference checks for child day-care center or type A home administrators

(R.C. 5104.011(A)(15))

Current law requires the Director of Job and Family Services to adopt certain rules governing the operation of child day-care centers, including rules governing the procedures to be used by licensees for checking the references of potential employees of centers and applicants for licenses to operate centers.

The bill adds that, for cases in which the licensee of the center is not the center's administrator, the rules must specify procedures to be followed in obtaining a statement from an applicant for employment as an administrator as to whether the applicant has been the administrator of a day-care center or type A

home that ceased to operate because its license was revoked while the applicant was the administrator.

Licensing sanctions imposed by ODJFS

(R.C. 5104.03, 5104.04, and 5104.041)

Current law authorizes the Director of Job and Family Services to revoke or refuse to renew a license to operate a child day-care center or type A home. Current law also specifies ODJFS's duties when it determines that a licensed center or type A home is out of compliance with state requirements or ODJFS rules and when a licensee has knowingly made a false statement on a license application.

The bill reorganizes the provisions of existing law that specify ODJFS's authority to impose licensing sanctions. The bill also establishes the following additional sanctions if a licensee or applicant for a day-care center or type A home license is not in compliance with child day-care requirements and rules:

- A fine of \$50 to \$500;
- A requirement that all employees undergo at least two hours of training on child day-care laws.

The bill requires ODJFS to choose the sanction to be imposed according to the scope of the violation, severity of the violation, presence or absence of an immediate and serious threat to the health and safety of the children in the care of the licensee or applicant, whether previous sanctions have been imposed for the same or other violations and the licensee's or applicant's history of noncompliance or compliance with previously imposed sanctions for the same or other violations.

Child Care Enforcement Fund

(R.C. 5104.042)

If ODJFS imposes a fine on a licensee or applicant for noncompliance with the law regulating child day-care, the bill requires the Department to deposit any fines collected into the Child Care Enforcement Fund, which is created by the bill. The bill requires that ODJFS use amounts deposited in the Fund in the same manner as federal funds received under the Child Care Block Grant.³ The bill also

³ *The Child Care Development Block Grant Act of 1990 is a federal law that provides funds distributed by ODJFS for providers of publicly funded child day-care to supplement federal, state, and local funds available for publicly funded child day-care and related programs (R.C. 5104.30 and 5104.301 both not in the bill).*

specifies that any fine imposed by ODJFS is subject to appeal under the Administrative Procedure Act.

Toll-free telephone number to receive complaints

(R.C. 5104.03 and 5104.14)

Current law requires the Director of Job and Family Service to adopt rules that require the inclusion of a toll-free telephone number on each center's provisional license or license. The number is to be provided on the license to be used by any person who wants to report a suspected violation by the center of any state requirements.

The bill specifically requires ODJFS to maintain a toll-free telephone number for the purposes of receiving complaints regarding providers of child day-care. The Department is also required to use the toll-free line to provide consumer information on child day-care.

With regard to any complaints received by ODJFS concerning child day-care providers, including complaints regarding persons providing child day-care without a license, the bill specifies that all of the following apply:

- (1) If the complaint alleges that care is being provided without a license for more than ten children, ODJFS must conduct an on-site investigation.
- (2) ODJFS must conduct an on-site investigation of at least every fifth complaint of an alleged violation it receives.
- (3) For all other complaints, ODJFS must send a letter requiring a written response and provide a follow-up response as the Department determines necessary for resolution of the alleged violation.

Requirements for filing memoranda of understanding

(R.C. 2151.421)

Current law requires each public children services agency to prepare a "memorandum of understanding," a document that sets forth the procedures to be used by officials who deal with cases of child abuse and neglect.⁴ Existing law specifies the contents of the memorandum and the officials who are required to sign it.

⁴ A public children services agency is a county agency that provides services for children who are abused or neglected.

The bill requires each public children services agency to file with ODJFS a copy of the agency's memorandum of understanding. The agency is also required to review the memorandum at least once every five years, make any necessary revisions, and file the revised memorandum with the Department. Further, the agency must provide to the public on request a copy of the agency's memorandum.

Rulemaking authority

(R.C. 5104.011)

Current law gives the Department the authority to adopt certain rules pertaining to the operation of child day-care centers and type A family day-care homes and specifies that the Department's rulemaking authority is not limited to matters listed in statute. The bill deletes the language that expressly provides that the Department's authority is not limited to the matters specified in statute, but does not change the Department's underlying authority to adopt rules governing the operation of child day-care centers and type A family day-care homes.

Delayed effective date

(Section 3)

The effective date of the bill's provisions is delayed until one year after the bill takes effect.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-18-05	p. 1725

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