Jeffery A. Bernard *Legislative Service Commission*

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127th General Assembly
(As Reported by S. Health, Human Services & Aging)

Sens. Stivers, Smith, Mason

BILL SUMMARY

REGULATION OF CHILD CARE

- Limits the relatives who may provide child care without being subject to regulation to the following individuals who are related by blood, marriage, or adoption to the child receiving care: parents, step-parents, grandparents, siblings, step-siblings, half-siblings, aunts, uncles, or first cousins.

- Reduces to two from six the number of children who may be cared for in a home-based child care setting without a license by requiring type B homes providing child care to three to six children to be licensed by the Ohio Department of Job and Family Services (ODJFS) beginning three years after the bill's effective date.

- Exempts the following from the licensing requirement: (1) persons under age 18, (2) persons who do not charge for providing child care, (3) persons providing child care for less than ten hours per week and less than four weeks per year, and (4) persons holding a limited certification from a county director of job and family services for a type B home.

- Eliminates the authority of county directors of job and family services to issue full certification to type B homes.

- Provides for the ODJFS Director to issue a type B home license to a person who desires to provide publicly funded child care in a type B

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

home unless a county director of job and family services has issued a limited certificate to the type B home provider.

- Requires that license fees for child-care centers, type A homes, and type B homes be paid into a new fund created in the state treasury named the Child Care Regulatory Fund and requires ODJFS to use money in the fund to pay for ODJFS's administrative expenses in licensing centers and homes.

- Requires the ODJFS Director to complete an investigation and inspection of a type B home and issue a provisional license not later than 60 days after receiving the completed application.

- Requires the ODJFS Director to establish a dispute resolution process for complaints that persons seeking or holding a type B home license have regarding licensure.

- Requires the ODJFS Director to establish a child-care ombudsperson program as part of the dispute resolution process.

- Requires the ODJFS Director to establish an ongoing public awareness program regarding the licensure of type B homes that is aimed at child-care providers and caretaker parents of children in need of child care.

- Requires a county department of job and family services, public children services agency, and child care resource and referral services organization that receives a complaint that a child-care center, type A home, or type B home is not in compliance with licensing requirements to refer the complaint to ODJFS unless the complaint concerns a type B home with limited certification.

- Requires a county department of job and family services or child care resource and referral services organization to notify a public children services agency if the complaint alleges an immediate threat of harm to a child.

- Requires ODJFS to initiate an investigation of a child-care center, type A home, or type B home not later than 24 hours after receiving a complaint if the complaint alleges an immediate threat of harm to a child.

- Revises the law governing the limited certification of type B homes.

- Provides county directors of job and family services discretion to either cause a type B home with limited certification to be inspected or obtain written verification from the provider and caretaker parents of children receiving publicly funded child care from the provider that the type B home meets the standards for limited certification.

- Provides that the reimbursement ceiling for publicly funded child care a type B home with limited certification provides is based on whether the provider has undergone an inspection not more than one year earlier.

- Provides that a child on the premises of a facility or home is to be counted for purposes of determining whether the facility or home is a child-care center, type A home, or type B home if the child is under age 15 and the care is provided for remuneration.

CRIMINAL RECORDS CHECKS

- Revises the child-care law regarding criminal records checks.

- Expressly prohibits the issuance or renewal of a license for a child-care center, type A home, or type B home or issuance or renewal of a limited certificate for a type B home or certificate for an in-home aide if the provider or an adult resident has had a child removed from his or her home pursuant to an abuse, neglect, or dependency adjudication or if a minor resident has been adjudicated a delinquent child for committing a disqualifying offense unless the minor meets rehabilitation standards.

- Expressly prohibits a child-care center or type A home from employing an individual in a position in which the individual is responsible for the care, custody, or control of a child at the center or home if the individual has had a child removed from his or her home pursuant to an abuse, neglect, or dependency adjudication.

- Expressly requires a child-care center or type A home to request a criminal records check of each job applicant who is under final consideration for employment in any position at the center or type A home and each employee who is employed in any position at the center or type A home rather than just a position in which the job applicant would have or employee has responsibility for the care, custody, or control of a child.

- Provides that a child-care center or type A home is not required to request a criminal records check for a job applicant or employee if the job applicant or employee is from a contracting entity and certain requirements are met.

- Requires an individual who has been convicted of or pleaded guilty to a disqualifying offense but meets rehabilitation standards to sign a statement attesting to that fact.

- Requires the provider of a type A home or type B home to sign a statement attesting to the fact that a minor resident of the home has been adjudicated a delinquent child for committing a disqualifying offense but meets rehabilitation standards.

PUBLICLY FUNDED CHILD CARE

- Requires ODJFS, beginning three years after the bill's effective date, to contract with child-care centers, type A homes, licensed type B homes, child day camps, preschool programs, school child programs, and border state child care providers and requires county departments of job and family services to contract only with type B homes with limited certification and in-home aides once ODJFS begins to contract with the other providers.

- Expands the voluntary quality-rating program in which participants may receive grants, technical assistance, training, and other assistance and become eligible for unrestricted monetary awards for maintaining a quality rating to type A homes and type B homes.

- Requires a county department of job and family services to approve or deny an application for publicly funded child care no later than 30 days from the date it receives the application regardless of whether the application is complete.

OTHER CHILD CARE PROVISIONS

- Requires the ODJFS Director to provide copies of adopted rules to licensees in electronic form only and applies provisions regarding provider access to proposed and adopted rules to the new licensed type B homes.

- Renames "child *day*-care centers" "child-care centers," "type A family *day*-care homes" "type A family *child*-care homes," and "type B family *day*-care homes" "type B family *child*-care homes."

- Relocates, but does not substantively change, numerous provisions of child care law.

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CONTENT AND OPERATION

REGULATION OF CHILD CARE

"Child care" defined

With certain exceptions, the Ohio Department of Job and Family Services (ODJFS) and county departments of job and family services (county JFS departments) are responsible for regulation of child-care providers that are required to be licensed or certified.[1] A person or entity engages in child care when 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 a child's own home.

Under current law, child care provided to a child by the child's parent, guardian, custodian, or a relative by blood, marriage, or adoption is not subject to regulation. The bill limits the relatives who may provide child care without being subject to regulation to individuals related to the child by blood, marriage, or adoption as a parent, step-parent, grandparent, sibling, step-sibling, half-sibling, aunt, uncle, or first cousin (R.C. 5104.01(J)(1)).[2]

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[1] Some activities that meet the definition of "child care" are nonetheless not regulated by ODJFS or county JFS departments. For example, a program of child care that operates for two or fewer consecutive weeks is not subject to regulation by ODJFS or the county JFS departments. Another example is that the Ohio Department of Education, rather than ODJFS, licenses preschool programs and school child programs. (R.C. 5104.02(B).)

[2] Care provided by a guardian or custodian continues to be excluded from the definition of "child care."

Licensing type B homes

Background

There are different types of providers of child care. Differences among providers include where the child care is provided and the number of children to whom a provider provides child care at one time. Child care can be provided in a facility, the home of the provider, or the child's home.

Generally, facility-based child care is provided in a child-care center. A child-care center is any place that is not the permanent residence of the licensee or administrator in which child care is provided for 7 to 12 children at one time. However, any place in which child care is provided for 13 or more children at one time, including the permanent residence of the licensee or administrator, is also treated as a child-care center (R.C. 5104.01(K)).

Besides child-care centers providing child care to 13 or more children at one time, there are two types of providers who provide child care at the provider's home: type A family child-care homes (type A homes) and type B family child-care homes (type B homes). The difference between a type A home and type B home is the number of children who receive child care at the provider's home at one time. A type A home is the permanent residence of an administrator in which child care is provided for 7 to 12 children at one time or the permanent residence of an administrator in which child care is provided for 4 to 12 children at one time if four or more of the children at one time are under age two (R.C. 5104.01(WW)). A type B home is the permanent residence of a provider in which child care is provided for 1 to 6 children at one time and in which no more than three children at one time are under age two (R.C. 5104.01(XX)).[3]

For purposes of child care law, a provider of child care who provides the care in the child's home is known as an in-home aide. Continuing law defines "in-home aide" as a person who does not reside with the child but provides care in the child's home and is certified by a county director of job and family services to provide publicly funded child care[4] to a child in a child's own home (R.C. 5104.01(Y)).

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[3] Existing law uses the terms "child day-care center," "type A family day-care home," and "type B family day-care home." The bill changes these terms to "child-care center," "type A family child-care home," and "type B family child-care home." (See "***Name of child care providers***" below.)

[4] "Publicly funded child care" is defined by continuing law as administering to the needs of infants, toddlers, preschool children, and school children under age 13 during any part

Need for type B home license

ODJFS licenses child-care centers and type A homes. Generally, operation of a child-care center or type A home without an ODJFS license is prohibited (R.C. 5104.02).[5]

Under current law, county JFS departments certify type B homes that provide publicly funded child care and a type B home that does not provide publicly funded child care is not required to be licensed or certified.

The bill requires certain type B homes to obtain a license regardless of whether they provide publicly funded child care. The license is to be obtained from ODJFS, not a county JFS department. With certain exceptions, under the bill, a type B home is prohibited from operating without an ODJFS license if child care is provided for 3 to 6 children at one time in the home. The prohibition goes into effect three years after the bill's effective date. (R.C. 5104.02(B).)

The following are not subject to the prohibition (R.C. 5104.022):

- Persons under age 18;
- Persons who do not charge for providing the child care;
- Persons who provide the child care for less than ten hours per week and less than four weeks per year;
- Persons who hold a limited certificate from a county JFS director for a type B home.[6]

The bill establishes penalties for persons who provide child care without the proper license. For each offense, the offender must be fined not less than $100 nor more than $500 multiplied by the number of children receiving child care at the home that exceeds two (the number of children to which a type B home may provide child care without a license). A person licensed as a type B home that

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of the 24-hour day by persons other than their caretaker parents for remuneration wholly or in part with federal or state funds distributed by ODJFS (R.C. 5104.01(NN)).

[5] As discussed in the first footnote, not all child care is regulated by ODJFS or a county JFS department. Certain providers of child care technically meet the definition of "child-care center" or "type A home" but are nonetheless exempt from ODJFS licensure (R.C. 5104.021).

[6] See "***Limited certification of type B homes***" below.

provides child care to more than six children at one time is to be fined, for each offense, not less than $100 nor more than $500 multiplied by the number of children receiving child care at the type B home that exceeds the license capacity of the type B home. The court also must order the offender to reduce the number of children to which it provides child care to the number of children permitted under its license, if licensed, or to the number that may be cared for without a license. (R.C. 5104.99.)

The bill also increases the penalty the provider of a type A home or child-care center would be required to pay if the provider does not have the proper license for the home or center. For each offense, the provider is to pay a fine of not less than $100 nor more than $500 multiplied by the number of children receiving child care at the home or center that exceeds a certain number. Under current law that number is six, the maximum number of children to which a type B home can provide child care. Under the bill, that number is two, the maximum number of children to which a type B home may provide child care without a license (R.C. 5104.99). As an example, a provider providing child care to eight children without the appropriate license would be subject to a fine ranging from $600 [$100 x (8-2)] to $3,000 [$500 x (8-2)] rather than a fine ranging from $200 [$100 x (8-6)] to $1,000 [$500 x (8-6)].

The bill eliminates the authority of county JFS directors to issue full certification to type B homes beginning three years after the bill's effective date and instead provides the ODJFS Director to issue a type B home license to a person who desires to provide publicly funded child care in a type B home. The exception is that a county JFS director may issue a limited certificate to certain type B home providers.[7]

Standards for licensed type B homes

The bill requires the ODJFS Director to adopt rules governing the licensure of type B homes, including part-time licensed type B homes.[8] The Director must make proposed rules available to each licensee, give each licensee at least 30 days' notice of public hearings on the proposed rules, and provide a copy of those rules, in electronic form, to each licensee at least 30 days before the rule takes effect (R.C. 5104.0114). The rules must provide for safeguarding the health, safety, and welfare of children receiving child care or publicly funded child care in a licensed type B home. The rules must include all of the following (R.C. 5104.015):

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[7] See "***Limited certification of type B homes***" below.

[8] A "part-time licensed type B home" means a licensed type B home that provides child care for no more than four hours a day for any child (R.C. 5104.01(II)).

(1) Standards for ensuring that the type B home and the physical surroundings of the home are safe and sanitary, including, but not limited to, physical environment, physical plant, and equipment;

(2) Standards for the supervision, care, and discipline of children receiving child care or publicly funded child care in the home;

(3) Standards for a program of activities, and for play equipment, materials, and supplies to enhance the development of each child. However, any educational curricula, philosophies, and methodologies that are developmentally appropriate and that enhance the social, emotional, intellectual, and physical development of each child must be permissible;

(4) Admission policies and procedures, health care, first aid, and emergency procedures, procedures for the care of sick children, procedures for discipline and supervision of children, nutritional standards, and procedures for screening children and licensed providers,[9] including, but not limited to, any necessary physical examinations and immunizations;

(5) Methods of encouraging parental participation and ensuring that the rights of children, parents, and licensed providers are protected and the responsibilities of parents and licensed providers are met;

(6) Standards for the safe transport of children when under the care of licensed providers;

(7) Procedures and standards for implementing the bill's provisions regarding the licensing of type B homes, including provisions regarding: issuing, renewing, denying, and revoking a license that are not otherwise provided for in the Administrative Procedure Act (R.C. Chapter 119.); investigations and inspections; setting initial and renewal license application fees; and receiving, recording, and responding to complaints;

(8) Procedures for record keeping and evaluation;

(9) Standards providing for the special needs of children who are handicapped or who receive treatment for health conditions while the child is receiving child care or publicly funded child care in the home;

(10) Requirements for the amount of useable indoor floor space for each child;

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[9] A "licensed provider" means a person authorized by a license issued by the Director of Job and Family Services to operate a licensed type B home (R.C. 5104.01(EE)).

(11) Requirements for safe outdoor play space;

(12) Qualification and training requirements for licensed providers;

(13) Procedures for granting a parent who is the residential parent and legal custodian, or a guardian or custodian access to the home during its hours of operation;

(14) Any other procedures and standards necessary to carry out the child care law regarding licensed type B homes.

The bill requires that rules regarding training be consistent with provisions that:

(1) Require a person seeking a type B home license to complete not less than four hours of training that includes an overview of specified issues;

(2) Require a licensed type B home provider, during the first year of licensure, to complete not less than six hours of training on health and safety issues and complete training on cardiopulmonary resuscitation and first aid;

(3) Require a licensed type B home provider, during the second and each subsequent year of licensure, to complete not less than 12 hours of training on issues specified in the rules, including issues regarding child nutrition, and complete training on cardiopulmonary resuscitation and first aid, child abuse and neglect recognition and reporting, and communicable diseases. (R.C. 5104.015(L), 5104.17, 5104.18, and 5104.19.)

Application and licensing process

Any person who desires to operate a type B home that cannot be operated without a license must apply to the ODJFS Director for a type B home license. Any person desiring to provide publicly funded child care in a type B home must also apply to the ODJFS Director for a type B home license unless a county JFS director has issued a limited certificate for the type B home. The application must be made on a form prescribed by the Director. (R.C. 5104.03.)

The Director must provide at no charge to each applicant for licensure a copy of the applicable child care license requirements of the child care law and of the rules adopted under that law. The Director must mail application forms for license renewal at least 120 days prior to the date the license expires, and the renewal application must be filed with the Director at least 60 days before the license expires. The Director is required to set fees, which must be paid at the time of the license or renewal application. Required fees are to be paid into a new fund created in the state treasury named the Child Care Regulatory Fund. The bill

provides that fees paid by child-care centers and type A homes are also to be deposited into the fund.[10] (R.C. 5104.031, 5104.034, and 5104.036.)

On filing of the application for a license, the Director must investigate and inspect the type B home to determine the license capacity for each age category of children of the type B home and to determine whether the type B home complies with the child care law and rules adopted under that law. When, after investigation and inspection, the Director is satisfied that the laws and rules are complied with, a provisional license must be issued in such form and manner as the Director prescribes. The Director must complete the investigation and inspection, make the determination, and if the type B home meets the license requirements, issue the provisional license not later than 60 days after receiving the completed application. The provisional license is valid for six months from the date of issuance unless revoked earlier. (R.C. 5104.032.)

The Director is required to investigate and inspect the type B home at least once during operation under the provisional license. If after the investigation and inspection the Director determines that the requirements of the child care law and the rules adopted under that law are met, the Director must issue a license, which will be effective for two years from the date the provisional license was issued unless revoked earlier. A similar inspection must be performed on the filing of an application for a renewal of a license; if the requirements for the renewal are met, the Director must renew the license for two years from the expiration date of the previous license. (R.C. 5104.033, 5104.034, and 5104.035.)

The license or provisional license is required to state the name of the licensee, the address of the type B home, and the license capacity for each category of children. A license or provisional license is only valid for the licensee, address, and license capacity for each age category of child specified on the license. (R.C. 5104.037 and 5104.0310.)

If the ODJFS Director revokes a license or refuses to renew a license, the Director must not issue a license to the owner of the type B home within two years from the date of the license revocation or refusal to renew the license. If the Director determines, during the application process, that the license of the owner has been revoked or a renewal has been denied, the investigation of the type B home must cease, and does not constitute denial of the application. All actions of the Director with respect to licensing type B homes, renewing licenses, refusal to license or renew a license, and license revocations must be conducted in

[10] Current law provides for child-care center and type A home licensing fees to be deposited into the General Revenue Fund (R.C. 5104.03(A)).

accordance with the Administrative Procedure Act (R.C. Chapter 119.). (R.C. 5104.0317 and 5104.0319.)

The bill provides that in no case is the Director permitted to issue a provisional license or license or renew a license if the Director, based on documentation provided by the appropriate county department, determines all of the following apply (R.C. 5104.0320):

- The applicant previously had been certified as a type B home;
- The county department revoked the applicant's previous certification;
- The revocation was based on the applicant's refusal or inability to comply with the certification criteria;
- The refusal or inability to comply with the certification criteria resulted in a risk to the health or safety of children.

Inspection of licensed type B homes

The bill requires ODJFS to inspect licensed type B homes at least twice during every 12-month period of operation. A part-time type B home must be inspected at least once during every 12-month period of operation. ODJFS must provide a written inspection report to the licensee within a reasonable time after each inspection. The licensee must display all written reports of inspections conducted during the current licensing period in a conspicuous place in the licensed type B home. (R.C. 5104.039.)

At least one inspection must be unannounced, and all inspections may be unannounced. No person is permitted to interfere with the inspection of a type B home, including reviewing records or interviewing licensees, employees, children, or caretaker parents, by a state or local official under the child care law or rules adopted under that law. (R.C. 5104.039.)

Disciplinary actions against licensed type B homes

If a licensed type B home is determined to be out of compliance with the child care law or the rules adopted under that law, ODJFS must notify the licensee of the home in writing of all of the following:

(1) The nature of the violation;

(2) What must be done to correct the violation;

(3) By what date the correction must be made.

If the correction is not made by the specified date, ODJFS is permitted to commence action under the Administrative Procedure Act to revoke the home's license. (R.C. 5104.0314.)

ODJFS may deny or revoke a license or refuse to renew a license of a licensed type B home if the applicant or licensee does not comply with the requirements of the child care law or the rules adopted under that law, or if the applicant or licensee violates a prohibition of the child care law. Surrendering a license to the ODJFS or withdrawing an application for a license does not prohibit ODJFS from instituting any action against the licensee or proposed licensee. (R.C. 5104.0317 and 5104.0318.)

Dispute resolution process and child-care ombudsperson program

The bill requires the ODJFS Director to establish a dispute resolution process for complaints that persons seeking or holding a type B home license have regarding the licensure. The bill also requires the ODJFS Director to establish a child-care ombudsperson program under which the Director appoints a statewide child-care ombudsperson, regional child-care ombudspersons, or both to (1) utilize the dispute resolution process to accept complaints from persons seeking or holding a type B home license regarding licensure and attempt to settle the complaints informally and (2) ensure that the appropriate authority responds to a complaint accepted under the dispute resolution process that concerns an immediate threat of harm to a child. A person seeking or holding a type B home license is required to utilize the dispute resolution process before requesting a hearing under the Administrative Procedure Act (R.C. Chapter 119.). (R.C. 5104.0317, 5104.20, 5104.201, and 5104.202.)

Ongoing public awareness program

The bill requires the ODJFS Director to establish an ongoing public awareness program regarding the licensure of type B homes that is aimed at child-care providers and caretaker parents of children in need of child care. (R.C. 5104.21.)

Developing licensing infrastructure

The bill also requires the ODJFS Director to develop the infrastructure that ODJFS needs to begin issuing licenses to type B homes as quickly as possible but not later than three years after the bill's effective date (Section 4).

Expansion of laws applicable to current types of child-care homes

Provisions of law that currently apply to all type B homes continue to apply, under the bill, to the new licensed type B homes. For example, type B

homes are not required to be licensed as food service operations (R.C. 3717.42(B)(8)). Since this exemption applies to all type B homes, it applies, under the bill, to unlicensed type B homes, licensed type B homes, and type B homes with limited certification.

In addition to the provisions that apply to all type B homes, the bill expands to licensed type B homes several provisions that currently apply only to certified type B homes. The bill expands these provisions by doing all of the following:

Child abuse and neglect:

- Including licensed type B homes in the definitions used in the juvenile court law in relation to a child's out-of-home care and out-of-home care child abuse (R.C. 2151.011(B)(6), (7), (27), and (33));

- Requiring a public children services agency to promptly provide information to a county department of job and family services regarding an applicant to become a licensed provider of a licensed type B home, or an applicant to renew such a license, for the purpose of evaluating the person's fitness for licensure, notwithstanding confidentiality laws (R.C. 5153.175).

Sex-offender registration notification:

- Requiring the sheriff to notify the provider of the licensed type B home if a person who has been convicted of or pleaded guilty to a specified sex-related offense (or has committed specified childhood sexual abuse) registers a residence or an intent to reside in the specified geographical notification area in which the type B home is located (R.C. 2950.11(A)(6) and 3797.06(A)(6));

- Requiring the Attorney General to adopt rules regarding the proper use and administration of information received by a licensed type B home about offenders who are subject to community notification under the sex offender and child-victim offender registration and notification law who are residing in the specified geographic area (R.C. 2950.13(A)(9)).

Health and safety:

- Requiring the Fire Marshal to cooperate with the ODJFS Director when the Director adopts fire prevention and fire safety rules (R.C. 3737.22(F) and 5104.018). The bill does not extend to licensed type B homes the existing law provision permitting unregulated type B homes

to request inspection by the Fire Marshal in order to receive funds under the *National School Lunch Act*[11] (R.C. 3737.22(G) and 5104.27);

- Including licensed type B homes as home-based child care in which smoking generally is prohibited during the hours of operation, unless the smoking is in an indoor area that is separately ventilated from the rest of the home or in an outdoor area so far removed from the children that they cannot inhale any smoke (R.C. 5104.30).

Property zoning:

- Specifying that certified, uncertified, and licensed type B homes must be considered to be a residential use of property for the purposes of municipal, county, and township zoning regulations (R.C. 5104.28).

Child Care Advisory Council:

- Including licensed type B homes among the child care facilities from which representatives to the Child Care Advisory Council are appointed (R.C. 5104.72(A));

- Including licensed type B homes as child care facilities regarding which the Child Care Advisory Council is required to advise the ODJFS Director on licensing and certification (R.C. 5104.72(B)).

Provision of publicly funded child care:

- Including licensed type B homes as child care providers that may provide publicly funded child care (R.C. 5104.52(A)(2));

- Including licensed type B homes as child care providers required to keep a record of each child eligible for publicly funded child care that must be made available to ODJFS or the county JFS department on request (R.C. 5104.56).

Recruiting and training providers:

- Including licensed type B homes as child care providers in relation to which each county JFS department is required to recruit individuals and groups interested in developing and operating child care (R.C. 5104.55(A)(2));

[11] 60 Stat. 230 (1946), 42 U.S.C. 1751, as amended.

- Including licensed type B homes as child care providers for which the county JFS departments must establish and administer on-the-job training activities for persons who wish to become licensed providers (R.C. 5107.60(B)).

The bill also applies a few provisions generally applicable to licensed type A homes to licensed type B homes. Type A home provisions are applied, by the bill, to licensed type B homes by doing all of the following:

Licensure:

- Prohibiting the ODJFS Director from issuing a type B home license to a youth development program that is exempt from operating without a license (R.C. 5104.023);

- Requiring the licensee of each licensed type B home to post the home's current license in a conspicuous place in the home that is accessible to caretaker parents of children who receive care at the home at all times when child care is provided (R.C. 5104.038).

Provision of assistance and training:

- Including licensed type B homes as child care providers to which the ODJFS Director must provide consultation, technical assistance, and training to improve programs and facilities providing child care (R.C. 5104.70).

Investigations, complaints, and toll-free numbers

The bill requires a county JFS department, public children services agency, and child care resource and referral service organization that receives a complaint that a child-care center, type A home, or type B home is not in compliance with licensing requirements to refer the complaint to ODJFS unless the complaint concerns a type B home with limited certification not being in compliance with the requirements for limited certification. The bill also requires a county JFS department or child care resource and referral services organization to notify a public children services agency if the complaint alleges an immediate threat of harm to a child. (R.C. 5104.0311.)

The bill requires ODJFS to initiate an investigation of a child-care center, type A home, or type B home not later than 24 hours after receiving a complaint if the complaint alleges an immediate threat of harm to a child. The bill requires ODJFS to notify a public children services agency of the complaint. (R.C. 5104.031.)

Current law requires a license for a child-care center or type A home include a toll-free telephone number to be used for persons suspecting that the center or home has violated a licensing requirement. The bill requires that an explanation of the toll-free number be printed on each license. The bill also applies these requirements to licenses for type B homes. (R.C. 5104.0310.)

Under current law, upon determining that a child-care center or type A home is operating without a required license, ODJFS must notify the Attorney General, the prosecuting attorney of the county in which the center or home is located, or the chief legal office of the municipal corporation in which the center or home is located that the center or home is operating without a required license. Upon receipt of notice, the Attorney General, prosecuting attorney, or chief legal office is required to file a complaint in the common pleas court of the county in which the center or home is located requesting that the court grant an order enjoining the owner from operating the center or home in violation of the licensing requirement. The court must order the injunctive relief on a showing that the respondent named in the complaint is operating a child-care center or type A home without a required license. The bill applies these provisions to type B homes that may not operate without a license. (R.C. 5104.0315.)

Limited certification of type B homes

Current law requires the ODJFS Director to adopt rules establishing procedures, standards, and other necessary provisions for county JFS directors to grant limited certification to type B homes that are operated by the following adult providers:

(1) Persons who provide child care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the provider;

(2) Persons who provide child care for eligible children all of whom are the children of the same caretaker parent.

A type B home provider is to be granted limited certification on signing a declaration under oath attesting that the provider meets the standards for limited certification. A provisional limited certificate remains in effect for no more than 60 days and entitles the provider to offer publicly funded child care. With a certain exception, a county JFS department must inspect the type B home before the provisional limited certificate expires. The provider is to be granted limited certification valid for two years if the provider meets the requirements for limited certification. With a certain exception, a type B home with limited certification is to be inspected annually. The exception to the inspection requirements is that a

county JFS department is to waive the inspection if the provider and the caretaker parent of the children receiving child care from the provider verify in writing to the county JFS department that the home meets minimum health and safety requirements.[12]

The bill revises the law governing limited certification of type B homes. The providers currently eligible to apply for limited certification continue to be eligible to apply but the bill also allows a third group of type B home providers to apply for limited certification. The third group consists of persons who seek to provide publicly funded child care in the person's type B home to not more than two children at one time. Whereas current law requires a county JFS department to waive an inspection of a type B home holding limited certification if the provider and caretaker parent provide written verification that the home meets minimum health and safety requirements, the bill provides that a county JFS director has the discretion to either cause a type B home with limited certification to be inspected to determine whether it meets the standards for limited certification or obtain from the provider and a caretaker parent of each child to whom the provider provides publicly funded child care written verification that the home meets the standards.

Current law does not expressly apply the provisions regarding certification of type B homes to type B homes seeking limited rather than full certification. The bill provides for many of the provisions to apply expressly to type B homes seeking or holding limited certification, including provisions regarding (1) investigations and inspections following a complaint, (2) obtaining information about abuse or neglect, (3) denying a certificate if the home is certified as a specialized foster home, (4) posting the certificate in a conspicuous place in the home, (5) a provider not being an employee of a county JFS department, (6) ODJFS publishing a guide describing state statutes and rules governing certification, (7) criminal records checks, (8) smoking restrictions, and (9) denying or suspending a certificate if the provider is in default under a child support order.[13]

Current law requires the ODJFS Director, when establishing reimbursement ceilings for publicly funded child care, to set the ceiling for type B homes with

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[12] In the case of a type B home provider who provides child care to children all of whom are the children of the same caretaker parent, the provider and caretaker parent must be friends for the county JFS department to waive the inspection.

[13] Because the bill eliminates the authority of county JFS directors to issue full certification to type B homes, the provisions are to apply to type B homes seeking or holding limited certification only.

limited certification at either 75% or 60% of the rate that would otherwise apply. The ceiling is 75% for type B home providers with limited certification who provide child care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the provider. The ceiling is 60% for type B homes with limited certification who provide child care for eligible children all of whom are the children of the same caretaker parent. The bill provides instead that the 75% ceiling is to apply if the provider underwent an inspection not more than one year earlier and the 60% ceiling is to apply if the provider has not undergone an inspection during that one-year period.

Calculating the number of children receiving child care

To determine whether a child-care provider is a child-care center, type A home, or type B home, the number of children receiving child care at the facility or home must be counted. Under existing law, a child-care center and a type A home must include in that count any children under age six who are related to a licensee, administrator, or employee and are on the premises of the center or type A home. A type B home must include in the count any children under age six who are related to the provider and are on the premises of the type B home. (R.C. 5104.01(K), (WW), and (XX).)

The bill revises how the number of children in the center or home are calculated. A child under age six who is related to an owner, rather than a licensee, is to be counted when on the premises of a child-care center or type A home. A licensee is an owner of a licensed child-care center or type A home who is responsible for ensuring compliance with state law and rules governing child care. A child under age six who is related to the individual responsible for the daily operation of child care provided at the type B home, rather than the provider, is to be counted when on the premises of the type B home. In addition to including children under age six, the bill requires additional children at the facility or home to be included in the calculation of children receiving child care. A child-care center and type A home must include in the count children under age 15 who are on the premises of the facility or residence and to whom the owner, administrator, or an employee of the facility or residence provides child care, foster care, or other type of care for remuneration paid by a person or government entity. A type B home must include in the count children under age 15 who are on the premises of the residence and to whom the individual responsible for child care provided at the residence provides child care, foster care, or other type of care for remuneration paid by a person or government entity. (R.C. 5104.024 and 5104.025.)

CRIMINAL RECORDS CHECKS

Disqualifying offenses and criminal records checks

Existing law

Child care employees. Under existing child care law, the administrator of a child-care center or a type A home or the provider of a certified type B home is required to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check with respect to any applicant who has applied to the center or home for employment as a person responsible for the care, custody, or control of a child. The request is to be made at the time of the applicant's initial application for employment and every four years thereafter at the time of a license renewal.

Existing law generally prohibits a child-care center or type A home from employing or contracting with another entity for the services of a person as a person responsible for the care, custody, or control of a child if the person has been convicted of or pleaded guilty to certain specified offenses. If the person meets certain rehabilitation standards adopted by ODJFS, the person may be so employed despite such a conviction or plea of guilty. The center or home may employ a person conditionally until the criminal records check is completed. However, the administrator must review the results of the criminal records check before the applicant has sole responsibility for the care, custody, or control of any child. (R.C. 5104.012(A), (B), and (E).)

The Superintendent of BCII is required to perform a criminal records check of the person (R.C. 109.572(A)(9)).

Child care owner, licensee, administrator, or provider. The ODJFS Director, as part of the process of licensure of child-care centers and type A homes, must request that the Superintendent of BCII conduct a criminal records check with respect to the owner, licensee, or administrator of a child-care center or type A home. Similarly, a county JFS director, as part of the process of certification of type B homes, must request that the Superintendent of BCII conduct a criminal records check with respect to any authorized provider of a certified type B home. The requests are to be made at the time of the initial application for licensure or certification and every four years thereafter at the time of license or certificate renewal.

The ODJFS Director is generally prohibited from granting a license to a child-care center or type A home and a county JFS director is generally prohibited from certifying a type B home if a person for whom a criminal records check is required in connection with the center or home has been convicted of or pleaded

guilty to certain offenses. A license or certificate may be issued if the person has met certain ODJFS established rehabilitation standards. (R.C. 5104.013(A), (D), and (G).)

The Superintendent of BCII is required to perform a criminal records check of the person. (R.C. 109.572(A)(9).)

Adult residing in a type A or type B home. The ODJFS Director, as part of the process of licensure of type A homes, must request that the Superintendent of BCII conduct a criminal records check with respect to any person age 18 or older who resides in a type A home. Similarly, a county JFS director, as part of the process of certification of type B homes, must request that the Superintendent of BCII conduct a criminal records check with respect to any person age 18 or older who resides in the certified type B home. The requests are to be made at the time of the initial application for licensure or certification and every four years thereafter at the time of license or certificate renewal.

The ODJFS Director is generally prohibited from granting a license to a type A home and a county JFS director is generally prohibited from certifying a type B home if the adult previously has been convicted of or pleaded guilty to certain offenses. A license or certificate may be issued if the adult meets certain ODJFS established rehabilitation standards. (R.C. 5104.013(A), (D), and (G).)

The Superintendent of BCII is required to perform a criminal records check of the person (R.C. 109.572(A)(9)).

Prohibition. Current law (R.C. 5104.09) contains a general prohibition against a person playing certain roles in relation to children, requires certain people to sign attestations regarding whether they or others have committed certain offenses, and makes withholding information or falsifying information on those attestations a criminal offense. It generally prohibits an individual who has been convicted of or pleaded guilty to certain offenses from:

- Being certified as an in-home aide;
- Being employed in any capacity in a child-care center or type A home;
- Owning or operating a child-care center, type A home, type B home, or certified type B home.

This prohibition does not apply to a person who meets certain ODJFS rehabilitation standards. It also does not appear to contain an enforcement mechanism--no mechanism is provided to determine whether a person has pleaded guilty to or been convicted of a disqualifying offense and no entity is specifically

directed to take any action, or refrain from taking an action, if a person is convicted of a disqualifying offense.

Attestations. Existing law requires the following attestations:

- Each employee of a child-care center and type A home and every person age 18 or older residing in a type A home must sign a statement attesting to the fact that the employee or resident person has not been convicted of or pleaded guilty to any disqualifying offense that applies to employees and that no child has been removed from the employee's or resident person's home pursuant to an abuse, dependency, or neglect adjudication.

- Each licensee of a type A home and each certified provider of a type B home must sign a statement attesting to the fact that no person *under* age 18 who resides at the home has been adjudicated a delinquent child for committing any disqualifying offense that applies to employees.

- Each administrator and licensee of a center or type A home and each certified provider of a type B home must sign a statement attesting that the administrator, licensee, or provider has not been convicted of or pleaded guilty to any offense applicable to owners or operators of centers and homes and that no child has been removed from the person's home pursuant to an abuse, dependency, or neglect adjudication.

- Each in-home aide must sign a statement attesting that the aide has not been convicted of or pleaded guilty to any disqualifying offense that applies to employees and that no child has been removed from the aide's home pursuant to an abuse, dependency, or neglect adjudication.

- Every person 18 years of age or older residing in a type A or certified type B home must sign a statement attesting to the fact that the resident has not been convicted of or pleaded guilty to any disqualifying offense that applies to employees and that no child has been removed from the employee's or resident person's home pursuant to an abuse, dependency, or neglect adjudication.

Inconsistency in current law

Current law contains several inconsistencies. The list of offenses that the Superintendent must search for, in some instances, does not match the list of disqualifying offenses. The list of disqualifying offenses under R.C. 5104.09 does not match the list of offenses for the same type of person under R.C. 5104.012 or 5104.013.

Operation of the bill

Substantive changes. The bill makes the following substantive changes:

- Makes the list of disqualifying offenses uniform (R.C. 109.572(A)(9) and 5104.01(P)).

- Expressly prohibits the issuance or renewal of a license for a child-care center, type A home, or type B home or issuance or renewal of a limited certificate for a type B home or certificate for an in-home aide if the provider or an adult resident has had a child removed from his or her home pursuant to an abuse, neglect, or dependency adjudication or if a minor resident has been adjudicated a delinquent child for committing a disqualifying offense unless the minor meets rehabilitation standards (R.C. 5104.34 and 5104.341).

- Expressly prohibits a child-care center or type A home from employing an individual in any position at the center or home if the individual has had a child removed from his or her home pursuant to an abuse, neglect, or dependency adjudication (R.C. 5104.342).

- Expressly requires a child-care center or type A home to request a criminal records check of each job applicant who is under final consideration for employment in any position at the center or type A home and each employee who is employed in any position at the center or type A home rather than just a position in which the job applicant would have or employee has responsibility for the care, custody, or control of a child (R.C. 5104.345(A)).

- Provides that a child-care center or type A home is not required to request a criminal records check for a job applicant or employee if (1) the entity that has contracted with the center or home for the job applicant or employee's employment at the center or home requested that the Superintendent of BCII conduct a criminal records check of the job applicant or employee to determine whether the job applicant or employee has been convicted of or pleaded guilty to a disqualifying offense, (2) the entity, job applicant, or employee provides the center or home the results of the criminal records check, and (3) the criminal records check was completed not more than one year before the date the entity, job applicant, or employee provides the center or home the results of the criminal records check (R.C. 5104.345(D)).

- Requires an individual who has been convicted of or pleaded guilty to a disqualifying offense but meets rehabilitation standards to sign a statement attesting to that fact (R.C. 5104.3411).

- Requires the provider of a type A home or type B home to sign a statement attesting to the fact that a minor resident of the home has been adjudicated a delinquent child for committing a disqualifying offense but meets rehabilitation standards (R.C. 5104.3412).

Out-of-home care

The bill provides that state law governing criminal records checks of persons responsible for a child's care in out-of-home care does not apply to an in-home aide or an administrator, employee, or agent of a child-care center, type A home, licensed type B home, or type B home with a limited certification (R.C. 2151.86).

Nonsubstantive changes. The bill consolidates the various criminal records check provisions into a single series of provisions.

PUBLICLY FUNDED CHILD CARE

Contracts

The bill requires ODJFS, beginning not later than three years after the bill's effective date, to contract with the following providers: child-care centers, type A homes, licensed type B homes, child day camps, preschool programs, school child programs, and border state child care providers. The bill also requires county JFS departments to contract only with type B homes with limited certification and in-home aides once ODJFS begins to contract with the other providers. (R.C. 5104.52.)

Payments

The bill requires ODJFS to pay a provider the amount specified in the contract if ODJFS contracted with the provider and for a county department to pay the provider the amount specified in the contract if the county department contracted with the provider, unless ODJFS is to make direct payments to providers pursuant to an agreement entered into with a board of county commissioners. The bill also permits ODJFS to do the following as current law permits a county department to do:

(1) Waive the reimbursement ceiling applicable to rates for the purpose of paying a higher rate based on the special needs of a child;

(2) To the extent permitted by federal law, use state and federal funds to pay deposits and other advance payments that a provider customarily charges all children who receive child care from the provider;

(3) To the extent permitted by federal law, pay for up to 30 days of child care for a child whose caretaker parent is seeking employment, taking part in employment orientation activities, or taking part in activities in anticipation of enrollment or attendance in an education or training program or activity, if the employment, education, or training program or activity is expected to begin within the 30-day period. (R.C. 5104.55 and 5104.551.)

Monitoring expenditures

Maintains current law requiring the ODJFS Director to establish a procedure in rules for monitoring expenditures of county JFS departments to ensure that expenditures do not exceed the federal and state funds available for publicly funded child care, but also required the monitoring of ODJFS's expenditures. (R.C. 5104.59.)

Step up to quality

Current law requires ODJFS, in using federal funds available under the Child Care and Development Block Grant Act, to allocate and use at least 4% of the federal funds for certain activities. Among the activities is the establishment of a voluntary child-care center quality rating program, popularly known as Step Up to Quality, under which centers may receive grants, technical assistance, training, or other assistance and become eligible for unrestricted monetary awards for maintaining a quality rating. The bill expands the program to licensed type A homes and type B homes. (R.C. 5104.50(C)(3)(d).)

Notification of results of publicly funded child care application

Existing law requires each county JFS department to implement procedures for making determinations of eligibility for publicly funded child care. Under those procedures, the eligibility determination for each applicant must be made no later than 30 calendar days from the date a county JFS department receives a *completed* application for publicly funded child care. The bill eliminates the requirement that the application be completed before the determination is made. Under the bill, a county JFS department must make the determination no later than 30 days from the date it receives an application. (R.C. 5104.54(A)(1).)

OTHER CHILD CARE PROVISIONS

Notice of proposed rule changes

Existing law requires the ODJFS Director, when proposing rules governing the licensing of child-care centers and type A homes to provide either an electronic or paper copy of a rule to each licensee at least 30 days before its effective date. (R.C. 5104.011(J).) The bill eliminates the authority for the ODJFS Director to provide a paper copy of a rule. This means ODJFS is to provide copies of the rules in electronic form. (R.C. 5104.0114.)

Consumer education

Provides that the individualized consumer education to families seeking child care that is part of child care resource and referral services is to include education about the availability of type B homes with limited certification. (R.C. 5104.01(M)(2).)

Cooperation with counties

Provides that child care resource and referral services are to include cooperating with county JFS departments in locating child care for caretaker parents seeking child care. (R.C. 5104.01(M)(11).)

Name of child care providers

The bill changes all references to "child day-care centers" and "family day-care homes" to "child-care centers" and "family child-care homes."

Elimination of obsolete provisions

One additional type of child-care home, a type C family day-care home was previously established in uncodified law as part of a time-limited pilot program.[14] Law establishing type C family day-care homes has expired. However, existing codified law still contains statutory references to type C family day-care homes. The bill eliminates these obsolete statutory references. (R.C. 109.57, 2923.124, 2923.126, 2923.1212, and 3742.01.)

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[14] Type C family day-care homes were authorized under a two-year pilot program created by Sub. H.B. 62 of the 121st General Assembly. Am. Sub. S.B. 160 of the 121st General Assembly lengthened the pilot program to three years. Sub. H.B. 407 of the 123rd General Assembly extended the pilot program an additional three years, through March 28, 2003.

The bill also specifies that Revised Code sections cited as the authority for rules adopted under the child care law are deemed to be the sections as renumbered by the bill. The bill provides that the ODJFS Director is not required to amend any rule previously adopted under that law for the sole purpose of changing the citation of the Revised Code section that authorizes the rule. (Section 3.)

HISTORY

ACTION	DATE
Introduced	10-04-07
Reported, S. Health, Human Services & Aging	---

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