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# OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 210\***  
**133<sup>rd</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 210's Bill Analysis / Fiscal Note](#)

**Primary Sponsor:** Rep. Carruthers

**Impacted Professions:** Preschool and child day-care workers

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Holly Cantrell Gilman Attorney/Deputy Division Chief

Alexander Moon, Economist

LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

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### Summary of Proposed Regulations

The bill requires persons who (1) have lived in a country identified by the World Health Organization as having a high tuberculosis burden, and (2) arrived in the United States in the last five years, to undergo a tuberculosis test as a prerequisite to obtaining employment with a licensed preschool program or child day-care center. If the person is ultimately hired by the program or center, they must submit to annual re-testing for five years thereafter.

If one of the tests indicates active tuberculosis, the person must undergo additional testing, which may include a chest radiograph or the collection and examination of specimens. If that testing is positive, the person cannot be hired by a program or center until they complete a tuberculosis treatment regimen, as prescribed by a licensed health professional, and are free from the disease. If the person is already employed by a program or center at the time of the positive test (for instance, if the positive result occurred at one of the annual

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\*This report addresses the "As Introduced" version of H.B. 210. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

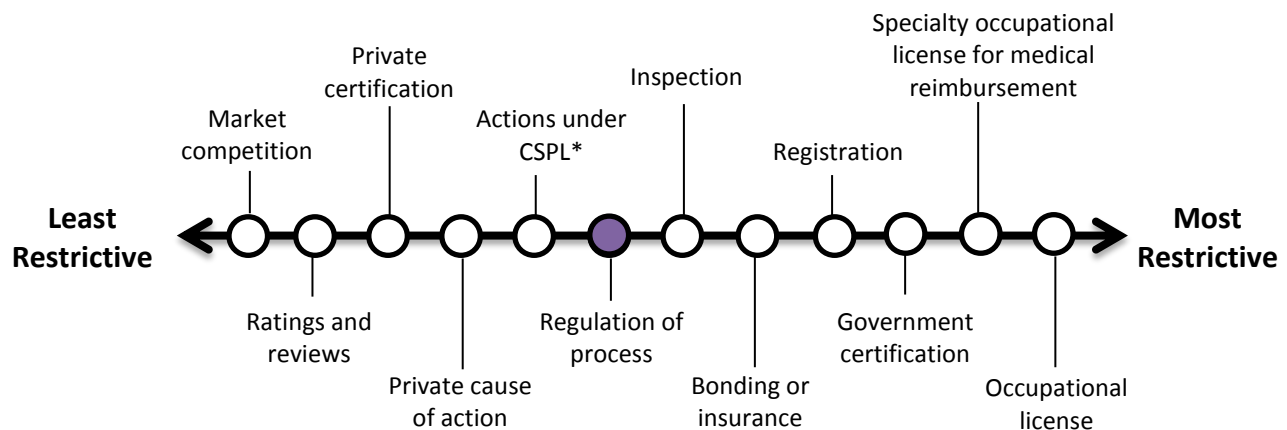
re-tests), the person must not be physically present at the program or center until the treatment regimen is complete and the person is free from the disease.<sup>2</sup>

## Least Restrictive Regulation Comparison

### Ohio's general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from “present, significant, and substantiated harms that threaten health, safety, or welfare,” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”<sup>3</sup>

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



\*CSPL – The Consumer Sales Practices Law

### Necessity of regulation

Representative Carruthers – the bill’s primary sponsor – testified that the regulation’s purpose is to prevent the spread of tuberculosis in child day-care and preschool facilities.<sup>4</sup> Tuberculosis is a bacterial infection that generally affects the lungs but can spread to other parts of the body. Approximately one-fourth of the global population has “latent tuberculosis,” meaning that they are carriers of the bacteria but do not experience symptoms and cannot spread the disease. “Active tuberculosis” which causes coughing, chest pains, weakness, weight

<sup>2</sup> R.C. 3301.531 and 5104.037.

<sup>3</sup> R.C. 4798.01 and 4798.02, not in the bill.

<sup>4</sup> Representative Sara Carruthers, [H.B. 210 Sponsor Testimony](#), June 11, 2019.

loss, fever, and night sweats – is infectious and can be fatal. In 2017, there were 9,105 new cases of active tuberculosis in the United States and 10 million new cases worldwide.<sup>5</sup>

In 2018, 41 children in Hamilton County were potentially exposed to active tuberculosis by an infected employee of a day-care center.<sup>6</sup>

## **Restrictiveness of regulation**

Whether the regulation proposed by the bill is the least restrictive measure sufficient to protect the public from the spread of active tuberculosis is a policy judgment. However, some insight into this question can be garnered by comparing it to the objective guidance included in the state’s regulatory policy.

A pre- and post-employment tuberculosis screening requirement for prospective preschool and child day-care workers can be conceptualized as an inspection requirement or a process regulation. The state’s policy stipulates that periodic inspections are an appropriate means of protecting consumers from “unsanitary facilities and general health, safety, or welfare concerns.”<sup>7</sup> The state’s policy does not provide specific guidance as to when a regulation of process is the best means of protecting consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of actions, and actions under the state’s Consumer Sales Practices Law (CSPL) do not provide sufficient protection.<sup>8</sup>

As a policy objective, preventing the spread of an infectious disease is seemingly consistent with the types of public health concerns that merit an inspection or regulation of process requirement under the state’s policy. In fact, similar screening measures are recommended by the Centers for Disease Control and Prevention (CDC) and the Ohio Department of Health (ODH) for health care personnel. The bill’s tuberculosis screening requirement for preschool and child day-care workers differs from the recommendations for health care personnel in two ways:

1. The CDC and ODH recommend general screening of all prospective health care personnel, while the bill requires screening of only prospective preschool and child day-care workers who recently immigrated to the U.S. and resided in a country with a high tuberculosis burden.

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<sup>5</sup> See, Kaiser Family Foundation, *The U.S. Government and Global Tuberculosis Efforts*, July 22, 2019, available at <https://www.kff.org/global-health-policy/fact-sheet/the-u-s-government-and-global-tuberculosis-efforts/>, and Tim Ingram, H.B. 210 Proponent Testimony, June 18, 2019.

<sup>6</sup> Angenette Levy and Liz Bonis, *Parents warned about confirmed case of tuberculosis in west side day care worker*, February 16, 2018, available at <https://local12.com/news/local/parents-warned-about-confirmed-case-of-tuberculosis-in-west-side-day-care-worker>.

<sup>7</sup> R.C. 4798.02(B)(2), not in the bill.

<sup>8</sup> R.C. 4798.01, not in the bill.

2. The CDC and ODH do not recommend re-testing for health care personnel unless there is a known exposure or ongoing transmission at the personnel’s place of work. The bill requires re-testing for the subject workers for five years after they are hired.<sup>9</sup>

## **Other regulatory policies**

Ohio law does not contain a general statement explaining the state’s intent in regulating preschool and child day-care workers. Nonetheless, the occupations are subject to numerous state regulations under continuing law – including several health-related requirements. For example, administrative rules require that preschool and child day-care workers receive a pre-employment medical exam, be vaccinated against certain diseases, and periodically submit updated medical records to their employers.<sup>10</sup> A prior administrative rule of the Ohio Department of Job and Family Services required that child day-care workers (and seemingly preschool workers as well)<sup>11</sup> be “[f]ree from communicable tuberculosis.” That rule was rescinded in 2011, and has not since been revived.<sup>12</sup>

ODH has adopted specific tuberculosis standards in its Tuberculosis Program Manual. The standards include recommendations for targeted testing of high risk groups based on epidemiologic analysis and profiling. The manual also identifies facilities that have adopted rules for pre-screening staff or patients based upon the facility’s risk for transmission. These facilities are: health care facilities, adult care facilities, ambulatory or free standing surgical care and dialysis centers, hospice facilities, hospitals, maternity homes, nursing homes, prisons, and jails.<sup>13</sup>

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## **STATE BY STATE COMPARISON**

All five surrounding states require pre-employment screening of child day-care workers for tuberculosis. Indiana, Kentucky, Michigan, and Pennsylvania also require pre-employment screening of preschool workers. West Virginia does not require pre-screening of prospective employees of its universal Pre-K program, but does require pre-screening in preschools that are licensed as child care centers. Kentucky, Pennsylvania, and West Virginia have periodic

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<sup>9</sup> See Centers for Disease Control and Prevention, TB Screening and Testing of Health Care Personnel, May 16, 2019, available at <https://www.cdc.gov/tb/topic/testing/healthcareworkers.htm>, and Ohio Department of Health, Updated Recommendations for TB Testing and Treatment for Health Care Personnel, July 9, 2019, available at [https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/tuberculosis/news-and-events/updated\\_testing\\_healthcare](https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/tuberculosis/news-and-events/updated_testing_healthcare).

<sup>10</sup> R.C. 3301.53, 3301.54, and 5104.015; Ohio Administrative Code (O.A.C.) 3301-37-04(D) and 5101:2-12-08(A) (including Appendix A).

<sup>11</sup> Continuing law requires that administrative rules for licensed preschools must “meet or exceed the requirements of the rules adopted for child day-care centers.” R.C. 3301.53.

<sup>12</sup> 2010 O.A.C. 5101:2-12-25.

<sup>13</sup> Ohio Department of Health, TB Manual Chapter 3: Targeted Testing for Tuberculosis Infection, available at [https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/tuberculosis/media/tbmanual\\_chapter3](https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/tuberculosis/media/tbmanual_chapter3).

tuberculosis re-screening requirements. Of the surrounding states, only West Virginia limits tuberculosis pre-screening and re-screening to “high risk” groups.

The table below summarizes the tuberculosis screening requirements of the surrounding states in greater detail.

Tuberculosis Screening Requirements		
State	Child day-care	Preschool
<b>Indiana</b>	<p>Pre-screening is required for all licensed child care providers and persons employed by or volunteering for a child care facility.</p> <p>Annual re-screening is required for all licensed child care providers but is not required for employees or volunteers unless the employee or volunteer has a history of tuberculosis.<sup>14</sup></p>	Same. Preschools are licensed as child care centers. <sup>15</sup>
<b>Kentucky</b>	<p>Pre-screening is required for all employees.</p> <p>Re-screening or a statement from a health professional that the employee is free from tuberculosis is required every two years thereafter.<sup>16</sup></p>	Same. Preschools are licensed as child care centers. <sup>17</sup>
<b>Michigan</b>	<p>Pre-screening (or proof of screening within the preceding year) is required for all employees and volunteers that have contact with children at least four hours per week for more than two consecutive weeks.</p> <p>No re-screening requirement.<sup>18</sup></p>	Same. Preschools are licensed as child care centers. <sup>19</sup>

<sup>14</sup> Ind. Code § 12-17.2-3.5-6.

<sup>15</sup> Ind. Code § 12-17.2-3.5-6; see also, *Indiana Family & Social Servs. Administration v. Radigan*, 755 N.E.2d 617 (Ind.App.2001).

<sup>16</sup> Ky. Rev. Stat. § 199.896(19)(c) and 922 Ky. Admin. Regs. § 2:110.

<sup>17</sup> Ky. Rev. Stat. § 199.894(3).

<sup>18</sup> Mich. Admin. Code r. 400.8128.

<sup>19</sup> Mich. Admin. Code r. 400.8101.

Tuberculosis Screening Requirements		
State	Child day-care	Preschool
<b>Pennsylvania</b>	Pre-screening (or proof of screening within the preceding year) is required for all prospective employees and volunteers that come into direct contact with children or are involved in food preparation.  Re-screening is required every two years. <sup>20</sup>	Same for preschools licensed as child care centers.  If the preschool is licensed as a private academic nursery school, all employees are subject to pre-employment screening, but there is no re-screening requirement. <sup>21</sup>
<b>West Virginia</b>	Pre-screening (or proof of screening within the preceding 90 days) is required for prospective employees and volunteers. Screening consists only of a “risk assessment” unless the assessment suggests that a skin test is necessary.  Annual re-screening is required. <sup>22</sup>	Same for preschools licensed as child care centers. No pre-screening or re-screening requirement for employees or volunteers of a public Pre-K program. <sup>23</sup>

## Impact Statement

### Opportunities for employment

The bill restricts the ability of people from countries with a high tuberculosis burden who have been in the U.S. less than five years to obtain employment in a preschool or day-care center. In 2019, the World Health Organization identified 30 countries as having a high burden for tuberculosis, including, most prominently, India, China, Indonesia, the Philippines, Pakistan, Nigeria, Bangladesh, and South Africa.<sup>24</sup> Persons who previously resided in these countries will need to undergo a tuberculosis test before employment and annually for five years if hired. A tuberculosis test generally costs between \$35 to \$75, including both the test and reading.<sup>25</sup> If any of these people test positive for active tuberculosis, they will need to undergo a treatment

<sup>20</sup> 55 Pa. Code §§ 3270.151 and 3270.4.

<sup>21</sup> 22 Pa. Code § 51.31.

<sup>22</sup> W. Va. Code § 49-2-110 and W. Va. Code R. § 78-1-8.

<sup>23</sup> W. Va. Code R. § 126-51-5.

<sup>24</sup> [www.who.int/tb/publications/global\\_report/tb19\\_Report\\_country\\_profiles\\_15October2019.pdf](http://www.who.int/tb/publications/global_report/tb19_Report_country_profiles_15October2019.pdf).

<sup>25</sup> [www.cvs.com/minuteclinic/services/price-lists](http://www.cvs.com/minuteclinic/services/price-lists), [www.walgreens.com/topic/healthcare-clinic/price-menu.jsp](http://www.walgreens.com/topic/healthcare-clinic/price-menu.jsp), [www.thelittleclinic.com/clinic-services/854/00112](http://www.thelittleclinic.com/clinic-services/854/00112).

regimen before employment, or, if already employed, before being permitted to be physically present at the school or center. Currently, treatment regimens require 6 to 9 months for active cases of tuberculosis.<sup>26</sup> The number of people who will require testing will likely be a fairly small subset of the total number of employees in the field, and the number who will require treatment should be very small. In 2018, there were 178 cases of tuberculosis reported in Ohio (1.5 per 100,000).<sup>27</sup>

### **Consumer choice and market competition**

Given the small number of employees likely to be affected by the bill, the services provided by preschools and day-care centers in Ohio should not be significantly affected. Therefore, the bill is not likely to have an impact on consumer choice or market competition.

### **Cost to government**

For the cost to government, see the [fiscal note for H.B. 210](#).

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<sup>26</sup> [www.cdc.gov/tb/topic/treatment/tbdisease.htm](http://www.cdc.gov/tb/topic/treatment/tbdisease.htm).

<sup>27</sup> <https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/tuberculosis/data-and-surveillance/tuberculosis-data-and-surveillance>.