H.B. 611*
l_133_2248-1

Occupational Regulation Report

Click here for H.B. 611's Bill Analysis / Fiscal Note

Primary Sponsors: Rep. Hicks-Hudson and Rep. Crawley

Impacted Profession: Doulas

Emma Carroll, Research Analyst

Nelson V. Lindgren, Economist

Joe McDaniels, Division Chief/Attorney

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.[1]

SUMMARY OF PROPOSED REGULATIONS

Medicaid coverage of doula services

The bill requires the Medicaid program to cover doula services provided by an individual who meets certain requirements. The total of all Medicaid payments for doula services for each pregnancy may not exceed $2,500.[2] The bill defines doula services as physical, emotional, or educational support provided during prenatal, childbirth, and postpartum periods, other than support that is considered to be medical, midwifery, or clinical in nature.[3]

Eligibility requirements

To be eligible for Medicaid payments, a doula must submit all of the following to the satisfaction of the Medicaid Director:

*This report addresses the substitute version of H.B. 611 adopted by the House Insurance Committee (l_133_2248-1). It does not account for changes that may have been made since the adoption of that substitute bill on June 9, 2020.

[1] R.C. 103.26, not in the bill.

[2] R.C. 5164.071(B).

[3] R.C. 5164.071(A)(3).

- Proof that the doula has a current, valid certificate issued by a doula certification organization. The bill defines a doula certification organization as a local, state, national, or international entity recognized for training and certifying doulas whose educational curriculum meets the requirements set forth in the bill. Some examples include a Black-led, community-based public health organization approved by the Ohio Doula Advisory Board, Birthing Beautiful Communities, Restoring Our Own Through Transformation, DONA International, Birthworks International, Doula Trainings International, and Commonsense Childbirth, Inc.
- An attestation that the doula has completed at least 60 hours of in-person classroom instruction and training that includes any combination of childbirth education, birth doula training, antepartum doula training, and postpartum doula training. Proof of attendance at one breastfeeding class, two childbirth classes, and two births. At least one positive reference from a birth mother and at least one positive reference from a licensed health professional practicing in public health or a community-based public health organization. Proof of completion of instruction in cultural competency, CPR, and health information confidentiality, including privacy standards established under the federal Health Insurance Portability and Accountability Act of 1996.[4]

Doula registry

The bill creates the Ohio Doula Advisory Board and, among other things, requires it to establish a state doula registry. A doula who seeks to be included on the registry must establish to the board that they are:

- At least 18 years old;
- Eligible for Medicaid payments under the bill's criteria;
- Covered by malpractice insurance; and
- Compliant with any other eligibility requirements established by the Board.[5]

[4] R.C. 5164.071(A)(2) and (C).

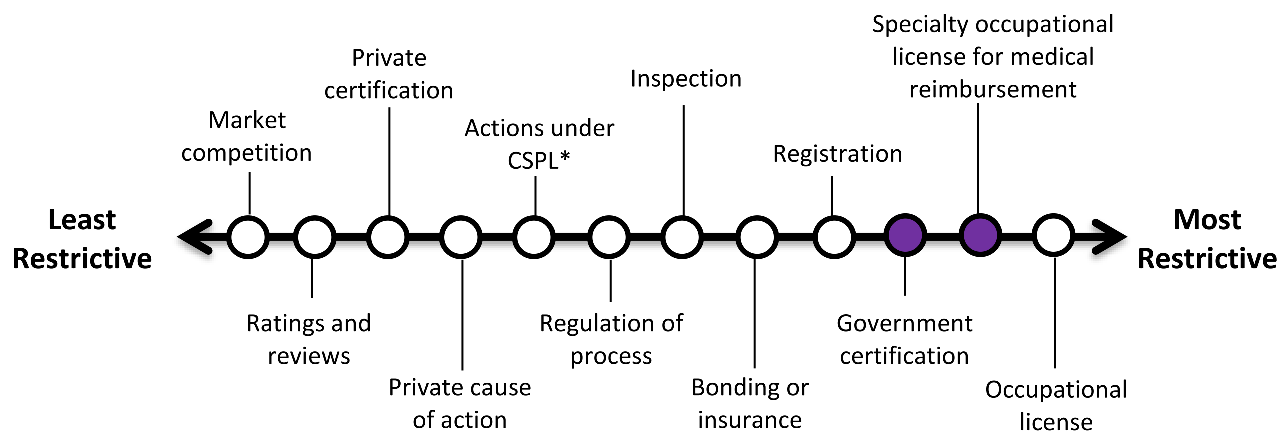
[5] R.C. 5164.072(H)(3).

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."[6]

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

H.B. 611 creates a specialty occupational license for medical reimbursement and a voluntary government certification. The policy defines a specialty license for medical reimbursement as an authorization for an individual, based on personal qualifications, to receive payment from a government agency for providing medical services. Under the bill, this license creates a new means by which qualified doulas can be compensated for their services.

The doula registry prescribed by the bill is a registration requirement by name, but operates as a voluntary certification for the purposes of the state's policy. Under that policy, "registration" regulations require an individual to give notice to the state before practicing an occupation. They do not involve the assessment of personal qualifications. Conversely, a "certification" confers recognition by the state or a private organization that an individual meets certain personal qualifications. The bill's "registry," is composed only of doulas that meet

[6] Section 3 of the bill and R.C. 4798.01 and 4798.02, neither in the bill.

certain age, education, and experience requirements. Therefore, it is best described as a certification.[7]

Necessity of regulations

Sponsor and proponent testimony indicates that the intent of H.B. 611 is to increase access to doula services among pregnant individuals who qualify for Medicaid. The testimony suggests that health indicators associated with pregnant women, new mothers, and infants living in the United States (e.g., preterm birth rate, infant mortality rate, and maternal mortality rate) are trending in a bad direction. Representative Erica Crawley, one of the bill's sponsors, emphasized that the risk of pregnancy-related death is particularly high for Black women who, according to the Ohio Department of Health's Pregnancy Associated Mortality Review, were more than two and one-half times as likely to die during childbirth between 2008 and 2016 than white women who gave birth during the same period. Representative Paula Hicks-Hudson, the bill's other sponsor, testified that many of these deaths are preventable and that providing access to doula services may lead to healthier pregnancy outcomes for Ohio mothers.[8]

Restrictiveness of regulations

Specialty occupational licenses and voluntary government certifications are fairly restrictive options on the state's continuum of regulations. According to the policy, specialty occupational licenses are an appropriate means of facilitating government reimbursement for services that are part of an "emerging medical specialty."[9] Midwives, friends, and family members have assisted in child births throughout history, but professional doulas did not emerge until the 1970's or 1980's.[10] As discussed below, doula services are not yet widely covered by state Medicaid plans. Accordingly, it appears to be the type of new medical service contemplated by the state's policy on occupational regulations.

Under the state's policy, a voluntary certification is an appropriate means to address "asymmetrical information between the seller and buyer." Private certifications are preferred when a suitable option is available.[11] Since professional doula services are a relatively new medical specialty, consumers might lack the expertise needed to differentiate between qualified and unqualified persons engaged in that field. Numerous private certifications for doulas are available – in fact, the bill requires doulas to obtain such a private certification before qualifying for the Ohio registry. Whether these private certifications are alone sufficient to address consumers' needs for information about doula credentials is a policy decision.

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[7] R.C. 4798.01(A), not in the bill.

[8] Representative Erica C. Crawley, H.B. 611 Sponsor Testimony, June 3, 2020; Representative Paula Hicks-Hudson, H.B. 611 Sponsor Testimony, June 3, 2020; and Lisa Amlung Halloway, H.B. 611 Proponent Testimony, June 9, 2020.

[9] R.C. 4798.02(B)(6), not in the bill.

[10] Coburn Dukehart, NPR, "Doulas: Exploring a Tradition of Support," July 14, 2011.

[11] R.C. 4798.02(B)(5).

Other regulatory policies

The Revised Code does not currently include any express references to doulas or doula services. The profession is referenced a few times in the licensing regulations for health care facilities, but it is not subject to direct state regulation. Consequently, there is no general policy prescribing the state's intent in (not) regulating doulas.[12]

IMPACT STATEMENT

Opportunities for employment

The bill is expected to enhance opportunities for employment for doulas, as the bill allows doulas who meet the specified conditions to receive payment for working with Medicaid enrollees. The bill may additionally enhance opportunities for doulas to obtain employment from patients who are not covered by Medicaid, if the state doula registry makes it easier for patients with private insurance or those who self-pay to seek out registered doulas. As inclusion in the Medicaid doula registry is optional, and a doula can be eligible for Medicaid reimbursement but choose not to be included in the registry, opportunities for employment may increase most for those doulas who are both eligible for Medicaid reimbursement, and choose to be listed in the Medicaid doula registry.

Consumer choice and market competition

By allowing Medicaid patients to obtain doula services covered by Medicaid, the bill is likely to increase consumer choice, by making a new category of caregiver eligible to be included in a patient's pregnancy care. The bill is additionally likely to increase market competition, by broadening the population of patients who might seek out doulas, and potentially increasing the number of doulas working in the state.

Cost to government

For information about costs to government, refer to H.B. 611's fiscal note.

[12] Ohio Administrative Code (O.A.C.) 3701-83-56 and 3701-83-57.

COMPARISON TO OTHER STATES

Of the five surrounding states, only Indiana addresses doula services by statute. Two U.S. states (Minnesota and Oregon) have a doula registry, and at least two others (New Jersey and Washington) regulate doulas in some capacity. The table below summarizes the doula regulations in each of these states.

Doula Regulations				
	Doula registry	**Registry requirements**	**Medicaid coverage**	**Other**
Indiana	No	N/A	Yes (permissive)[13]	N/A
Minnesota	Yes[14]	Valid certificate issued by doula certification organization, criminal background check, $185 application fee, and $15 background check fee[15]	Yes[16]	Doula access permitted for incarcerated women if provided without charge or paid for by inmate[17]

[13] Indiana Code Annotated 12-15-5-7.

[14] Minnesota Annotated Statutes 148.996.

[15] Minn. Ann. Stat. 148.996 and 148.997.

[16] Minn. Ann. Stat. 256B.0625.

[17] Minn. Ann. Stat. 241.89.

Doula Regulations				
	Doula registry	**Registry requirements**	**Medicaid coverage**	**Other**
Oregon	Yes – included in Traditional Health Worker Registry[18]	18 years of age, not listed on Medicaid provider exclusion list, background check, oral health training,[19] and 40 hours of doula-related training[20]	Yes (permissive)[21]	N/A
New Jersey	No	N/A	Yes[22]	N/A
Washington	No	N/A	No	Jails must make reasonable accommodations for doula access[23]

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[18] Oregon Administrative Rules 410-180-0325.

[19] OR. Admin. Rules 410-180-0325.

[20] OR. Admin. Rules 410-180-0375.

[21] Oregon Annotated Statutes 414.669; OR. Admin. Rules 410-130-0015.

[22] New Jersey Annotated Statutes 30:4D-6.

[23] Revised Code of Washington 70.48.135.