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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
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Office

H.B. 142*
134th General Assembly

Occupational Regulation Report

[Click here for H.B. 142's Bill Analysis/Fiscal Note](#)

Primary Sponsors: Reps. Crawley and Brinkham Jr.

Impacted Profession: Doulas

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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

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

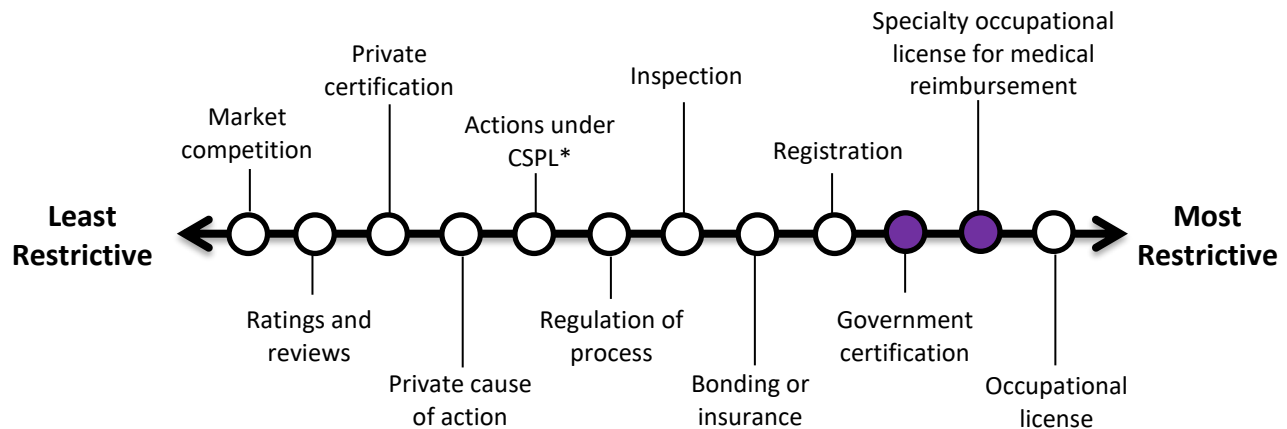
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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."²

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:

* This report addresses the "As Introduced" version of H.B. 142. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

H.B. 142 creates a specialty occupational license for medical reimbursement and a voluntary government certification. The state’s general 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. The “doula certification” created by the bill establishes a new means by which qualified doulas can be compensated for their services. It is less restrictive than an occupational license because uncertified doulas may continue to engage in the same professional activities without Medicaid reimbursement.

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 certain education and experience requirements. Therefore, it functions as a certification.³

Necessity of regulations

The bill’s sponsors, Representatives Crawley and Brinkham Jr., had not yet provided sponsor testimony at the time this report was prepared. The bill seems to be aimed at addressing disparities in access to physical, emotional, and informational support during the various stages of pregnancy.⁴ The bill will likely increase access to doula services among pregnant individuals who qualify for Medicaid by allowing them to pay for doula services with Medicaid funding. Some pregnant inmates participating in certain prison nursery programs will also gain access to doula services. The registry of certified doula service providers might be helpful to pregnant women in choosing a qualified doula with credible education and experience.

³ R.C. 4798.01(A), not in the bill.

⁴ R.C. 4723.89(A)(1).

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.”⁵ Midwives, friends, and family members have assisted in child births throughout history, but professional doulas did not emerge until the 1970s or 1980s.⁶ 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.⁷ 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, obtaining such a private certification is one way to qualify for the Ohio registry. Whether these private certifications are alone sufficient to address consumers’ needs for information about doula credentials is a policy decision.

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.⁸

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 use the title of Certified Doula, and during the period of the pilot programs operated by the Department of Rehabilitation and Correction (DRC) and the Department of Medicaid (ODM), receive payment for working with prison inmates and Medicaid enrollees. The bill may additionally enhance opportunities for doulas to obtain employment from patients who are not covered by Medicaid or incarcerated, if the doula certification established by the doula advisory board within the Ohio Board of Nursing makes it easier for patients with private insurance or those who self-pay to seek out certified doulas.

⁵ R.C. 4798.02(B)(6), not in the bill.

⁶ Coburn Dukehart, NPR, “Doulas: Exploring a Tradition of Support,” July 14, 2011.

⁷ R.C. 4798.02(B)(5), not in the bill.

⁸ Ohio Administrative Code (O.A.C.) 3701-83-56 and 3701-83-57.

Opportunities for employment may decrease for those doulas who are ineligible for or elect to not obtain certification from the Ohio Board of Nursing.

Consumer choice and market competition

By allowing Medicaid patients and incarcerated individuals to obtain doula services during the period of the DRC and ODM pilot programs, the bill is likely to increase consumer choice, by making a new category of caregiver eligible to be included in a Medicaid patient or incarcerated individual's pregnancy care. The bill is additionally likely to increase market competition, by broadening the population of patients outside of these pilot programs 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. 142's [fiscal note](#).

SUMMARY OF PROPOSED REGULATIONS

Certification of doulas

The bill requires the Medicaid program DRC to establish four-year pilot programs for coverage and provision of doula services. To be eligible to participate in the programs, a doula must first be certified by the Ohio Board of Nursing and, in the case of the Medicaid program, have a valid provider agreement.⁹ A person seeking certification under the bill must either be certified by a doula certification organization (such as Birthing Beautiful Communities, Restoring Our Own through Transformation, or The International Childbirth Education Association) or have education and experience considered appropriate by the Ohio Board of Nursing. Prospective doulas must also complete training on racial bias, health disparities, and cultural competency.¹⁰ The bill prohibits use of the title "certified doula" by persons that do not hold a certificate issued by the Board.

Doula advisory board

The bill creates the Ohio Doula Advisory Board within the Ohio Board of Nursing. The advisory board's duty is to provide general advice, guidance, and recommendations to the board of nursing regarding doula certification and the Medicaid pilot program.¹¹

Registry of certified doulas

The bill requires the Ohio Board of Nursing to develop and regularly update a registry of certified doulas. The registry must be made available to the public on the Board's website.¹²

⁹ R.C. 5164.071(B) and 5164.658(B).

¹⁰ R.C. 4723.89(B) and (C).

¹¹ R.C. 4723.90(H)(1) to (3).

¹² R.C. 4723.89(D).

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				
State	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				
State	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.