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Memorandum

R-132-1681

To: Ohio House of Representatives

From:

Date: August 29, 2017

Subject: Vaccinations and child care enrollments

You asked LSC staff whether Ohio law allows a licensed child care facility to refuse to enroll a child who has not been vaccinated against one or more infectious diseases. Although existing law provides for several exceptions to the requirement that a child enrolled in a facility be immunized against certain diseases, it does not appear to prevent a facility from refusing entry to an unvaccinated child.

Admission to child care

At present, Ohio law does not generally address the admission of a child to a licensed child care facility,[1] other than by requiring each facility to notify parents or caregivers of its admissions policies and procedures.[2] With respect to admissions and vaccinations in particular, current law is largely silent, thereby allowing licensed facilities to refuse to admit or enroll children who have not been vaccinated against infectious diseases.

Child care policies and procedures - notice to parents

Existing law requires the Ohio Department of Job and Family Services (ODJFS) to adopt rules regulating the operation of child care facilities, including those governing admissions policies and procedures as well as health care policies and procedures.[3] Under current rule, the administrator of a child care facility must provide each parent

[1] R.C. Chapter 5104.

[2] R.C. 5104.015(E), Ohio Administrative Code (O.A.C.) 5101:2-12-07(B)(6), and Appendix B to O.A.C. 5101:2-12-07.

[3] R.C. 5104.015(E) and (F).

with a copy of the facility's policies and practices.[4] As outlined in the rule's appendix, these policies must address enrollment as well as the care of children without immunizations. It is likely that, at the time an administrator shares facility policies with a parent or caregiver, the parent or caregiver would be made aware of the fact that the facility does not enroll unvaccinated children.

Five-year rule review

Ohio law requires each administrative agency to review on a regular basis its existing rules.[5] In general, this review takes place every five years and may involve the agency amending or rescinding certain rules and adopting new versions.[6] With respect to the rule requiring child care administrators to notify parents of facility policies relating to the care of unvaccinated children, you expressed concern that this requirement was just adopted because the rule's appendix is dated August 3, 2017.[7]

It appears that ODJFS reviewed its rules in 2016 as required by law. With respect to those governing parental notice of facility policies, over the past year, ODJFS rescinded some and then adopted new versions, including appendices.[8] While both the former and current rules include a requirement that child care administrators provide parents with copies of facility policies, the latest version makes specific mention of policies relating to the care of children without immunizations; the prior version did not.

Background on mandatory immunizations

Effective March 19, 2015, Sub. H.B. 394 requires the caretaker parent of a child enrolled in a licensed child care facility to provide the facility a medical statement indicating that the child is immunized, or is in the process of being immunized, against specified diseases. The medical statement must be submitted not later than 30 days after

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[4] O.A.C. 5101:2-12-07(B)(6) and Appendix B.

[5] R.C. 106.03.

[6] *See* Joint Committee on Agency Rule Review, Ohio General Assembly, *What is 5 Year Rule Review?*, available at http://www.jcarr.state.oh.us/video?id=64.

[7] O.A.C. 5101:2-12-07(B)(6) and Appendix B.

[8] On December 6, 2016, ODJFS rescinded O.A.C. 5101:2-12-30, its rule requiring each licensed child care center to provide parents with written information concerning the center's policies and procedures. *See* http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/processPublicDisplayRules.jsp?entered_rule_no=5101%3A2-12-30&doWhat=GETBYRULENUM&Submit=Search. In place of O.A.C. 5101:2-12-30, ODJFS adopted a new version of O.A.C. 5101:2-12-07, requiring that the policies provided to parents address the care of unimmunized children. *See* http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/processPublicDisplayRules.jsp?entered_rule_no=5101%3A2-12-07&doWhat=GETBYRULENUM&Submit=Search.

enrollment and every 13 months thereafter. It must include the dates on which the child received vaccinations and state whether the child is subject to any exceptions.[9]

Exceptions to mandatory immunizations

An enrolled child is not required to be vaccinated against a specified disease if any of the following is the case:

(1) Vaccination against the disease is medically contraindicated for the child;

(2) The child's parent or guardian has declined to have the child vaccinated for reasons of conscience, including religious convictions;

(3) Vaccination against the disease is not medically appropriate for the child's age.[10]

As described above when discussing admission to child care, enrolled children must be vaccinated unless one of the three exceptions applies, but there does not appear to be any legal requirement that a facility enroll unvaccinated children.

Contact information

I hope this memorandum will be helpful to you. If you have any questions or need further assistance, please contact me by telephone at or by email at .

R1681-132.docx/ar

[9] R.C. 5104.014(B).

[10] R.C. 5104.014(C).