

CHILD CARE & WORKFORCE POLICY OPTIONS: REGULATIONS

ECONOMIC AFFAIRS INTERIM COMMITTEE
ERIN SULLIVAN - MARCH 2024

BACKGROUND AND PURPOSE

The Economic Affairs Interim Committee (EAIC) chose to study child care and the workforce during the 2023-2024 interim. After hearing testimony from stakeholders during the first half of the interim, the committee requested information and options regarding potential policy changes in child care regulation, including:

- HOA covenants & zoning;
- regulations for licensing a day-care;
- ratios; and
- building codes.

This paper summarizes legislation that was passed during the 2023 legislative session and provides potential policy considerations concerning **regulations** the EAIC could introduce in a committee bill or bills for the upcoming 2025 legislative session.

It is important to note that these are draft options developed by staff based on committee hearings and discussions to date.

References to statute are for the Montana Code Annotated (MCA), references to rule are for the Administrative Rules of Montana (ARM); and references to the department are for the Department of Public Health and Human Services (DPHHS).

HOA COVENANTS / ZONING

Two bills passed during the 2023 session dealt with HOA covenants and zoning for in-home day-care facilities and registration requirements.

[HB187](#) clarified that child care is a residential use of property:

(New) 70-17-216. Home-based child care. For residential property subject to a covenant, providing child care in a family day-care home as defined in 52-2-703 or a group day-care home as defined in 52-2-703 is a residential use of property and is a residential purpose.

The statute applies retroactively to covenants on residential property that do not clearly and expressly address child care, as well as covenants on residential property adopted on or after the effective date that do not clearly and expressly address child care.

[HB918](#) eliminated a registration requirement by the department for an in-home day-care in order to qualify as a residential use of property for zoning purposes.

76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.

(2) A family day-care home or a group day-care home, as defined in 52-2-703, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 15 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home.

In addition to eliminating the registration requirement for zoning purposes, HB918 increased the maximum allowable children in a day-care home from 12 to 15 children.

In an unrelated bill during the 2023 session – [SB382](#) - the provisions of 76-2-412, MCA, were incorporated into a new section of law, resulting in a new MCA section that references the maximum number of children in a day-care home as 12 children, not 15:

76-25-303. Limitations on zoning authority. (1) A local government acting pursuant to this part may not: (g) except as provided in subsection (3), apply any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children;

COMMITTEE CONSIDERATIONS FOR HOA COVENANTS / ZONING

- Look at the enacted 2023 legislation as a starting point for additional revisions to address the issues identified during committee meetings.
- Consider amending 76-25-303 to correct the maximum children allowed in a day-care home as provided in 76-2-412.
- Review additional statutes within the [Montana Child Care Act](#) (Title 52, chapter 2, part 7) that have not been revised in recent legislative sessions to determine if amendments are warranted.

- The Montana Child Care Act uses the terms ‘child care’, ‘child-care’, ‘day care’ and ‘day-care’ interchangeably, with industry indicating a preference for the term ‘child care’ as ‘day care’ is an outdated term. The committee’s review may include cleanup of inconsistent terminology and spelling of ‘child care’ and ‘day care’.
- Review current HOA statutes for possible revisions as it relates to child care. The Local Government Interim Committee (LGIC) is currently studying this topic, so the committee may consider coordinating with the LGIC to avoid duplicative efforts.

LICENSING & REGISTRATION

Two bills during the 2023 session loosened licensing and registration restrictions on child care facilities and amended the same statute.

[HB556](#) excludes a private residence from the requirement to obtain a family day-care home registration certificate if the care being provided is for six or fewer children, and if the provider does not receive payments as provided in 52-2-713 (payments for eligible children).

[HB336](#) requires DPHHS to recognize the status of, and may not require a state license for, a day-care facility that is licensed as a family child care provider or child care facility by any branch of the United States Armed Forces.

52-2-721. License required — registration required — term of license or registration certificate — no fee charged. (1) Except as provided in subsection (7), a person, group of persons, or corporation may not:

(a) establish or maintain a day-care center for children, in which day care is provided on a regular basis, unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate must contain the ages and numbers of children for whom day care may be provided.

(3) The applicant’s own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule.

(6) The department may issue a license to a day-care center in which day care is provided on an irregular basis if the person operating the center chooses to apply for licensure.

(7) A person who provides day care in a private residence for six or fewer children is not required to obtain a family day-care registration certificate and is exempt from the requirements of this part if that person does not receive payments as provided in 52-2-713. - HB556 (2023)

(8) The department shall recognize the status of and may not require a state license for a facility that is licensed as a family child care provider or child care facility by a branch of the United States armed forces, including the United States coast guard. - HB336 (2023)

COMMITTEE CONSIDERATIONS FOR LICENSING & REGISTRATION

- Look at the enacted 2023 legislation as a starting point for additional revisions to address the issues identified during committee meetings.
- Review additional statutes within the [Montana Child Care Act](#) (Title 52, chapter 2, part 7) that have not been revised in recent legislative sessions to determine if amendments are warranted.
 - The Montana Child Care Act uses the terms ‘child care’, ‘child-care’, ‘day care’ and ‘day-care’ interchangeably, with industry indicating a preference for the term ‘child care’ as ‘day care’ is an outdated term. The committee’s review may include cleanup of inconsistent terminology and spelling of ‘child care’ and ‘day care’.

CHILD CARE STAFFING & RATIOS

Child care staffing and ratio requirements are generally outlined in administrative rule and therefore are not subject to direct statutory change. However one bill passed in 2023 related to staffing requirements for child care facilities: [HB422](#), sponsored by Representative Terry Falk (R – Kalispell), which directs DPHHS to amend ARM 27.95.623 to revise the child-to-staff ratios and maximum group sizes for child care centers and to provide for a higher child-to-staff ratio during nap times under certain conditions.

COMMITTEE CONSIDERATIONS FOR REGULATIONS

- Look at the enacted 2023 legislation as a starting point for additional revisions to address the issues identified during committee meetings.
- Request additional information from DPHHS on administrative rules regarding staffing and ratios. If the committee chooses to look at administrative rules, the committee should seek a memorandum of understanding or other method of coordination with the Children, Family, Health

and Human Services (CFHHS) Interim Committee, as CFHHS has administrative oversight for DPHHS. Additionally, the administrative rules governing daycares are presently under objection by CFHHS and the department is unable to make amendments until further notice.

- For more details on the administrative rules objection, see the briefing paper titled: Montana Child Care Act & Administrative Rules

BUILDING CODES

While not specific to child care, one bill – [SB406](#) – passed in 2023 that clarified authorization of building codes between local and state government.

50-60-301. County, city, and town building codes authorized — health care facility and public health center doors — fee adjustment for model plans. (1) The local legislative body of a county, city, or town may adopt a building code to apply to the county, city, or town by an ordinance or resolution, as appropriate:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) (a) Except as provided in subsection (2)(b), a county, city, or town may not adopt or enforce a building code that is more stringent than the building code adopted by the department or as required by state law.

(b) A county, city, or town may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

COMMITTEE CONSIDERATIONS FOR BUILDING CODES

- Look at the enacted 2023 legislation as a starting point for additional revisions to address the issues identified during committee meetings.
- Request additional information or take other action based on information received during the March 2024 committee meeting.

OTHER CONSIDERATIONS

If the committee chooses to look at reviewing additional statutes within the Montana Child Care Act, or seek additional information from the department regarding administrative rules, the committee may consider coordinating with the Children, Family, Health, and Human Services (CFHHS) Interim Committee, as CFHHS has administrative oversight for the department.

Additionally, the administrative rules governing daycares are presently under objection by CFHHS and the department is unable to make amendments until further notice. A separate briefing paper regarding the Montana Child Care Act and its corresponding administrative rules has been prepared for reference.