

Power to the Parents: How and Why Illinois Should Exempt Parent-Led Cooperative Childcare Pods (“PLCCPs”) from Day Care Licensure

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ABSTRACT: Illinois’ childcare scheme is flawed because it anticipates only two possibilities: (1) that parents send their children to a commercial childcare establishment where children are cared for by non-relatives and where facilities are subject to regulation; or (2) that parents send their children to a relative’s home where, by virtue of the close relationship, no regulation is required. Illinois’ regulatory scheme does not anticipate the possibility of parents blurring these two options by forming their own childcare solutions in which they provide care and share the burden of care with other parents. While COVID-19 popularized pod-based, parent-led cooperative childcare, this model is not likely to disappear alongside the virus. Given that childcare prices are rising at alarming rates and given that parents are more than equipped to assess whether an environment is safe for their child, Illinois should legalize pod-based, parent-led cooperative childcare by creating an exemption to current childcare licensure or at the very least, by allowing registration as an alternative solution.

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I. INTRODUCTION

New parents are currently experiencing two shifts at once: quality childcare for pre-school-aged children is becoming more expensive¹ and scarce² and the shape of employment is evolving into many different, more flexible forms.³ Though the work schedules of full-time working parents with pre-school-aged children are not *so* flexible that they could also provide full-

1. See RASHEED MALIK, WORKING FAMILIES ARE SPENDING BIG MONEY ON CHILD CARE, CTR. FOR AM. PROGRESS 2 (2019) (explaining that “[a]cross nearly every category—whether it be marital status, race, age, education level, or income—families paying for child care spend, on average, a greater share of their income than the HHS benchmark of affordability” which is set at seven percent of a family’s income).

2. See KRISTINA HAYNIE, CHECKING IN ON THE CHILD CARE LANDSCAPE: 2019 STATE FACT SHEETS 3 (2019) (documenting a sharp decline in Family Childcare Homes and a more modest decline in Childcare Centers between 2009 and 2017).

3. See Economic News Release, U.S. Bureau Lab. Stat., Job Flexibilities and Work Schedules Summary (Sept. 24, 2019, 10:00 AM), <https://www.bls.gov/news.release/flex2.nro.htm> [<https://perma.cc/YS9C-SERD>] (“Among those [36 million wage and salary workers] who worked at home, women were more likely than men to work at home . . . to coordinate their work schedule with personal or family needs (25 percent, compared with 20 percent).”).

time childcare, their schedules *could* be flexible enough to provide a percentage of the childcare that a day care might otherwise provide. However, taking on such care makes little financial difference for parents because day cares, in order to maintain their own financial viability, often require parents to pay even when their children do not attend.⁴

For illustrative purposes, imagine a family we will call the “Pipers.” The Pipers live in a small town in central Illinois and have two pre-school-aged children. Dad is a nurse who works four ten-hour shifts each week earning \$60,000 per year. Mom, a reporter for the local newspaper, works full-time but has autonomy over when she schedules her time and also earns \$60,000 per year. There are three day care facilities in the Pipers’ town and dozens of day care homes. Even with all these choices, the lowest priced option for full-time care of their two children costs \$20,000 per year, or 16 percent of the Pipers’ annual earnings. The Pipers decide there must be another way.

Now imagine that the Pipers and four similarly situated families—perhaps new parents the Pipers know from Lamaze classes⁵—each want to forgo traditional day care options and work together to provide day care themselves. The Pipers take Mondays, the Jones take Tuesdays, the Browns take Wednesdays, and so on. Each family offers care for the pre-school-aged children of all five families, between five and ten children total, from their own home one day each week. No money is exchanged. The Pipers and the families with whom they share workday childcare responsibilities are engaged in what this Note will call a Parent-Led Childcare Cooperative Pod (“PLCCP”).

If a small group of parents banded together to share the burden of childcare like this, some families could exit traditional day care entirely. That does *not* mean that day care would be free. Instead, it means that the currency with which parents pay for day care would shift from money to time,⁶ which would allow parents to save money while also spending more time with their children. While a PLCCP may seem far-fetched, in the wake of COVID-19-

4. See, e.g., KINDERCARE LEARNING CTNS., FAMILY HANDBOOK 33 (2010) (“To maintain our high standard of quality, we budget for everyday costs related to our dedicated teachers and our educational resources. To cover these costs, we charge a full week’s tuition . . . if your child attends any portion of the week.”). KinderCare’s policies represent the norm in the industry as KinderCare is “the nation’s leading private provider of high-quality early childhood education and school-age programs, serving more than 185,000 children . . .” *Leadership*, KINDERCARE LEARNING CTNS., <https://www.kindercare.com/about-us/who-we-are/leadership-and-experts> [<https://perma.cc/ZYT8-QWF7>].

5. Lamaze is a popular childbirth education class. For more information about Lamaze, visit LAMAZE INT’L (2021) <https://www.lamaze.org> [<https://perma.cc/ALM2-MGS7>].

6. Janelle Orsi, *Sample Babysitting Cooperative Agreement*, SHARING SOLUTION (Oct. 1, 2012, 3:21 PM) (adapted from JANELLE ORSI & EMILY DOSKOW, THE SHARING SOLUTION: HOW TO SAVE MONEY, SIMPLIFY YOUR LIFE & BUILD COMMUNITY (2009)), <http://sharingsolution.com/2012/10/01/sample-babysitting-cooperative-agreement> [<https://perma.cc/Q4XS-RHQ5>] (“A community babysitting cooperative often refers to an arrangement in which families share child care without any money changing hands. Instead, the care itself is the currency of exchange.”).

related childcare closures,⁷ parents across Illinois started to investigate and form similar parent-led childcare arrangements.⁸ Unfortunately, Illinois law does not support the creation of these PLCCPs⁹ without also subjecting parents to a burdensome, time consuming, and lengthy licensing process.¹⁰ That is, in part, because today's childcare regulations are outdated and "share the same regulatory origins" with state institutional care of abandoned children.¹¹

This Note argues that Illinois should create an exemption to existing childcare regulations for PLCCPs. While this Note focuses on Illinois in particular, other states with a similar statutory framework could also create such an exemption. The Note explores where Illinois' childcare regulations come from and what functions they serve. Then this Note lays out the costs of current childcare options and describes how legalizing PLCCPs could introduce a new, lower cost option. Finally, this Note examines the upside of officially exempting PLCCPs rather than turning a blind eye and forcing PLCCPs into the "shadow economy." Lawmakers should have "a general

7. Ally Marotti, *As Day Cares Shut Down to Stop the Spread of COVID-19, Chicago-Area Parents Must Juggle Child Care and Working from Home. It's A Very New Groove.*, CHI. TRIB. (Mar. 19, 2020, 6:00 AM), <https://www.chicagotribune.com/coronavirus/ct-chicago-daycares-coronavirus-2020-0319-nfpihtq47bctxovln64snmneea-story.html> [<https://perma.cc/AQR8-KT5A>]; Kelly Bauer, *Parents Return to Work Next Week, but Day Cares and Camps Are Still Closed: 'What Am I Gonna Do?'*, BLOCK CLUB CHI. (May 22, 2020, 7:22 AM), <https://blockclubchicago.org/2020/05/22/parents-return-to-work-next-week-but-day-cares-and-camps-are-still-closed-what-am-i-gonna-do> [<https://perma.cc/GS4K-E8AX>]; *KinderCare Shutting Down Daycare Centers Starting Monday*, MYSTATELINE.COM (Mar. 20, 2020, 2:47 PM), <https://www.mystateline.com/news/local-news/kindercare-shutting-down-daycare-centers-starting-monday> [<https://perma.cc/SV7Z-54Q6>].

8. Katherine Harmon Courage, *Day Care, Grandparent, Pod or Nanny? How to Manage the Risks of Pandemic Child Care*, NPR ILL. (Aug. 21, 2020, 4:00 AM), <https://www.nprillinois.org/post/daycare-grandparent-pod-or-nanny-how-manage-risks-pandemic-child-care#stream/o> [<https://perma.cc/WGE5-GR7F>]; Susie An, *To Help Lessen 'Yet Another Economic Divide,' Parents Launch DIY Learning Pods*, WBEZ CHI. (Sept. 3, 2020, 6:00 AM), <https://www.wbez.org/stories/to-help-lessen-yet-another-economic-divide-parents-launch-diy-learning-pods/feae9f44-8c24-4423-a2ca-67847197bof6> [<https://perma.cc/YKE2-9CEW>]; Ryan Denham, *Working Parents Turn to Learning 'Pods' to Solve Back-to-School Puzzle*, WGLT.ORG (Aug. 14, 2020, 2:25 PM), <https://www.wglt.org/post/working-parents-turn-learning-pods-solve-back-school-puzzle#stream/o> [<https://perma.cc/8NTE-NW2P>].

9. *Licensing Regulations for the State of Illinois*, CHILD CARE RES. SERV., <http://www.ccrs.illinois.edu/providers/licensing.html> [<https://perma.cc/8P2J-6M6T>] ("If the number of unrelated children you provide care for, is more than three (including your own children under age 12), you will need to obtain a child care license from the Illinois Department of Children and Family Services (DCFS).") (emphasis omitted).

10. Leyla Norman, *How to Start a Home Day Care in Illinois*, BIZFLUENT (Feb. 21, 2020), <https://bizfluent.com/how-6695976-start-home-daycare-illinois.html> [<https://perma.cc/5J8C-P8C6>] ("The licensing process takes 3-6 months, so be sure to apply well ahead of time of your planned opening. Conduct background checks on everyone who lives in your house or will be working with you over the age of 13. Those over 18 must be fingerprinted as well.") (emphasis omitted).

11. Erica B. Grubb, *Day-Care Regulation: Legal and Policy Issues*, 25 SANTA CLARA L. REV. 303, 305-06 (1985).

reluctance to intervene in arrangements parents make privately,¹² and should not stand in the way of parents looking to form PLCCPs. Illinois parents are already forming childcare pods. Now it is up to lawmakers to write reality into their childcare regulations and give parents a pathway to legalization.

II. BACKGROUND

Before exploring necessary updates to Illinois' day care licensure, understanding the history of this industry and its regulation is important. This Part explores the history of childcare in the United States and Illinois in particular, how the goals of childcare regulation have changed over time, and the options from which today's Illinois parents must choose. Finally, this Part examines how parents' work schedules are changing in a way that allows parents to take a more present parental role, should they so choose.

A. HISTORY OF CHILDCARE IN THE UNITED STATES

In 1912, the United States first assumed the power to regulate spaces where children are cared for by establishing licensing standards for "children's institutions" through the Children's Bureau of the U.S. Department of Health, Education and Welfare.¹³ Children's institutions were quite different from what we know of today as day cares. They were boarding homes where orphaned children lived.¹⁴ The Illinois Department of Public Welfare was tasked with overseeing boarding homes and required only that they provide care comparable to what "worthy parents from average homes" might provide.¹⁵ Early regulations resembled "goals" rather than actual rules. They were vague and impossible to enforce.¹⁶

The first wave of parents outsourcing daytime care of their children came in 1933, when the federal government's Works Progress Administration ("WPA") established 1,900 nursery schools where 75,000 children received

12. *Id.* at 306 n.13 (quoting CTR. FOR SYS. & PROGRAM DEV., POLICY ISSUES IN DAY CARE: SUMMARIES OF 21 PAPERS 34 (1977)).

13. ILL. FACILITIES FUND, A CENTURY OF CARING FOR CHILDREN (2000), https://iff.org/wp-content/uploads/2017/05/century_of_caring.pdf [<https://perma.cc/BJ5Z-ALTR>].

14. Grubb, *supra* note 11, at 308 ("The early laws focused on institutions and boarding homes where children lived. They did not contemplate regulation of facilities providing day care, partly because such facilities were rare and partly because the justification for state oversight was that children in foster care did not have parents to monitor their care and well-being." (emphasis omitted)).

15. ILL. FACILITIES FUND, *supra* note 13.

16. Grubb, *supra* note 11, at 310 (explaining that laws requiring licensure "often tended to be weak and impractical. Licensing agencies did not fully understand their responsibility and did not seem to know how to use either legal counsel or the courts to clearly define their powers. Most important, licensing staffs were generally too small to implement the law . . ." (quoting Monrad G. Paulsen, *The Licensing of Child-Care Facilities—a Look at the Law*, 21 ALA. L. REV. 1, 59 (1968))).

daytime care.¹⁷ The program was founded to help families bounce back from the Great Depression, was available only for low-income families, and ended in 1943.¹⁸ While the WPA did require oversight of the nursery schools, neither the WPA nor the Illinois Department of Public Welfare imposed specific regulations.¹⁹

Just as the WPA stopped funding nurseries for the children of low-income families, it authorized \$6 million for the care of children whose mothers were “employed in wartime industry” during WWII.²⁰ The centers charged a flat fee of 50 to 75 cents per day²¹ —about \$7.48 to \$11.40 in today’s currency.²² In 1946, many states, including Illinois, closed WPA-supported childcare centers.²³ Even though, under this program, the number of children in day care swelled to over one million, regulations remained loose.²⁴ This was in part because stricter licensing “would have ‘inhibited the massive expansion of day care which was seen as in the national interest at the time.’”²⁵ Although wartime employment opportunities eventually ended, “women continued to work outside the home at an ever-increasing rate.”²⁶

In the 1960s, federal initiatives like the Equal Pay Act of 1963 and Title IX expanded women’s opportunities in the work force.²⁷ Given that women continued to shoulder the majority of child rearing responsibilities, the popularity of day care necessarily grew as well.²⁸ In order to meet demand, large institutions like public school districts and nonprofit agencies began offering day care for pre-school-aged children.²⁹ In the Illinois Child Care Act of 1969, the first set of rules that resemble today’s childcare regulations began: staffing ratios, building requirements, and background checks, among other provisions.³⁰

17. *Id.* at 311; ILL. FACILITIES FUND, *supra* note 13.

18. *See* ILL. FACILITIES FUND, *supra* note 13.

19. *See id.*

20. *Id.*

21. *Id.*

22. Ian Webster, *Value of 50 Cents from 1943 to 2020*, CPI INFLATION CALCULATOR, <https://www.in2013dollars.com> [<https://perma.cc/MXK6-FSCD>] (enter “.50” for amount, 1943 for start year, 2020 for end year, then press “calculate”).

23. ILL. FACILITIES FUND, *supra* note 13.

24. Grubb, *supra* note 11, at 312.

25. *Id.* (quoting G. MORGAN, LEGAL ASPECTS OF FEDERAL DAY CARE STANDARDS 24 (Wheelock College) (1976)).

26. *Id.*

27. ILL. FACILITIES FUND, *supra* note 13.

28. *See generally* Grubb, *supra* note 11, at 312–20 (discussing that as women became employed, their children needed daytime care and thus the market for day care grew as well).

29. *See* ILL. FACILITIES FUND, *supra* note 13.

30. Child Care Act of 1969, 225 ILL. COMP. STAT. ANN. 10/1–20 (LexisNexis 2021).

B. GOALS OF CHILDCARE AND ITS REGULATION

The goals of childcare regulation have shifted over time. Before the 1920s, childcare regulations only applied where “the government needed to stand *in loco parentis*.”³¹ Oversight was only appropriate because “children in foster care did not have parents to monitor their care and well-being.”³² After the Great Depression and through WWII, the goal of childcare was to enable women—both poor and/or patriotic—to join the workforce. By the 1960s, legislatures shifted from thinking of parents’ needs to considering “the needs of the *children* of working parents.”³³

When it comes to regulating care for pre-school-aged children, the stakes are high. A child’s experiences in her first eight years of life have a “cumulative and lifelong impact.”³⁴ Parents are so eager to ensure their children receive quality care that today, 43 percent of moms exit the workforce to provide such care themselves.³⁵ For those families who instead opt to outsource childcare, regulatory bodies prescribe standards for “a minimal level of quality.”³⁶

While childcare in the early part of the 20th century “w[as] targeted and crisis-oriented,” today’s childcare is “developmental, rather than custodial, in nature.”³⁷ In Illinois, regulation of childcare reflects this shift. While early regulation set a broad requirement of providing care comparable to what “worthy parents from average homes” might provide,³⁸ today’s childcare regulations “emphasize lofty goals rather than minimum standards [because of] the influence of the child welfare organizations that helped state agencies devise day-care standards.”³⁹

However, such standards can have the effect of driving up costs⁴⁰ and substituting a parent’s judgement for the judgement of the state. For

31. Grubb, *supra* note 11, at 308.

32. *Id.*

33. *Id.* at 315.

34. Lara R. Robinson, Rebecca H. Bitsko, Ross A. Thompson, Paul H. Dworkin, Mary Ann McCabe, Georgina Peacock, Phoebe G. Thorpe, *CDC Grand Rounds: Addressing Health Disparities in Early Childhood*, CDC (July 28, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/mm6629a1.htm#> [<https://perma.cc/QD3Q-5PZS>] (“The first 8 years of a child’s life build a foundation for future health and life success. Thus, the cumulative and lifelong impact of early experiences, both positive and negative, on a child’s development can be profound.” (footnotes omitted)).

35. Sylvia Ann Hewlett & Carolyn Buck Luce, *Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success*, HARV. BUS. REV. (2005), <https://hbr.org/2005/03/off-ramps-and-on-ramps-keeping-talented-women-on-the-road-to-success> [<https://perma.cc/2VWH-KH7V>].

36. RACHEL A. GORDON, INST. GOV’T & PUB. AFFS., *CHILD CARE QUALITY IN ILLINOIS 78* (2009), <https://igpa.uillinois.edu/sites/igpa.uillinois.edu/files/reports/IR09-Ch7-Childcare.pdf> [<https://perma.cc/G3MM-ANJ8>].

37. ANDREW KARCH, *EARLY START: PRESCHOOL POLITICS IN THE UNITED STATES* 59, 64 (2013).

38. ILL. FACILITIES FUND, *supra* note 13.

39. Grubb, *supra* note 11, at 328.

40. Mark Adams, *Illinois Day Care Regulations Burden Working Mothers, Fail to Make Children Safe*, ILL. POL’Y INST. (June 20, 2016), <https://www.illinoispolicy.org/illinois-day-care-regulations>.

example, two reasonable families could have entirely divergent views on what constitutes a healthy meal. When the state prescribes standards for meals served in day cares,⁴¹ even if out of good intent, it undermines private family decision-making. “The tension between public and private responsibility for children has persisted throughout [the 20th century], and has played a role in every effort to regulate day care since the progressive era.”⁴²

C. CURRENT OPTIONS FOR ILLINOIS PARENTS

When working parents in Illinois embark on deciding who will provide workday care for their children, they have many options and considerations. Parents weigh factors like quality, cost, accessibility, scheduling, safety, and convenience. Among their options⁴³ are Day Care Centers, Licensed Family Childcare Centers, In-Home Care, or License-Exempt Providers.⁴⁴ The following captures Illinois’ current licensing regime. Individual cities within Illinois may impose regulations beyond those imposed by the state.

1. Day Care Centers

Day Care Centers are the largest facilities and the most formal childcare option for parents. Day Care Centers are subject to strict child-to-staff ratios that vary by age.⁴⁵ Because of their large scale, Day Care Centers are often more structured, sorting children into groups by age and offering daily planned activities.⁴⁶ While Illinois does not specify location requirements for Day Care Centers, individual municipalities may require that Day Care Centers occupy buildings with a specific zoning designation.⁴⁷ Day Care

burden-working-mothers-fail-to-make-children-safe [<https://perma.cc/Q2UN-Y5UG>] (“Day care facilities in Illinois are subject to restrictive regulations that make day care in the Prairie State the 9th-most expensive in the nation, according to a 2015 study by Child Care Aware of America.”).

41. See, e.g., CITY CHI. DEP’T PUB. HEALTH, HEALTH REQUIREMENTS FOR CHILD CARE CENTERS 26–28 (2012), https://www.chicago.gov/content/dam/city/depts/cdph/environmental_health_and_food/HEALTHREQUIREMENTSFORCHILDCARECENTERS2012.pdf [<https://perma.cc/PM45-DRZB>].

42. Grubb, *supra* note 11, at 309.

43. This Note focuses primarily on paid childcare options and does not consider families who utilize extended family, such as grandparents, for childcare.

44. ILL. ACTION FOR CHILD., FIRST STEPS: CHILD CARE OPTIONS FOR YOUR FAMILY, https://higherlogicdownload.s3.amazonaws.com/ACTFORCHILDREN/f8e9848a-47b2-4792-9e90-a35961561f37/UploadedImages/Documents/First_Step_Brochure_May_23rd_Final.pdf [<https://perma.cc/HY52-8FME>].

45. CITY CHI. DEP’T PUB. HEALTH, *supra* note 41, at 4.

46. ILL. ACTION FOR CHILD., *supra* note 44.

47. See e.g. LEMONT, ILL. MUN. CODE § 17.06.010 (2021), https://library.municode.com/il/lemont/codes/code_of_ordinances?nodeId=TTT17UNDEOR_ARTIIIZOZOR_CH17.06USRE_17.06.010USLA [<https://perma.cc/9L25-BLMV>] (requiring Day Care Centers to obtain a special use permit in almost every designated zone); RICHTON PARK, ILL., ZONING ORDINANCE § 7.10(b) (2020), <https://richtonpark.org/DocumentCenter/View/2817/Richton-Park-Zoning-Ordinance-Amended-through-01-27-2020> [<https://perma.cc/C6NQ-JSHR>] (“All yards containing equipment, amenities, or objects used by clientele for operation of the Child Day Care facility

Centers are generally more expensive than other day care options except hiring in-home care.⁴⁸

2. Licensed Family Childcare Centers

Licensed Family Childcare Centers, also known as Day Care Homes, are smaller childcare operations that take place in a provider's residence. Day Care Homes are permitted to "care for up to eight children, including their own, or up to twelve children with an assistant."⁴⁹ While Illinois appears to sweep so broad that even family and friends who provide regular care require licensure,⁵⁰ Illinois' largest city, Chicago, only mandates licensure when a provider cares for more than three unrelated children.⁵¹ Day Care Homes are the least regulated and most affordable option.⁵² Parents also choose Day Care Homes because siblings of varied ages can stay together, because of price, or because they prefer their children to be in a home environment.⁵³

3. In-Home Care

Families who prefer that their children are cared for within their own home can opt for in-home care. In-home childcare includes hiring a nanny or au pair.⁵⁴ Though this form of childcare is not, like the other forms, regulated by the Division of Child and Family Services, in-home care does require parents to navigate a different kind of regulation: becoming an employer.⁵⁵ Families may choose in-home care because it is the most flexible and convenient option.⁵⁶ However, it is also the most expensive form of care.⁵⁷

shall be enclosed in an opaque fence No such equipment, amenities, or objects shall be located or stored in the front yard."); DEER PARK, ILL., MUN. CODE § 158.33(A)(3)(g) (2021); <https://www.villageofdeerpark.com/DocumentCenter/View/373/Chapter-158—ZoningCode-PDF> [<https://perma.cc/S5TM-LWZY>] ("Daycare center: One parking space per employee plus 0.1 parking space per person of licensed capacity.").

48. CHILD CARE AWARE, PRICE OF CHILD CARE IN: ILLINOIS (2019) https://info.childcareaware.org/hubfs/2019%20Price%20of%20Care%20State%20Sheets/Illinois.pdf?utm_campaign=2019%20Cost%20of%20Care&utm_source=2019%20COC%20-%20IL [<https://perma.cc/H5B4-J9WH>].

49. ILL. ACTION FOR CHILD., *supra* note 44.

50. *People ex rel. Johnson v. Kulle*, 557 N.E.2d 488, 492 (Ill. App. Ct. 1990) ("If one receives or places children into any facility apart from parents on a regular basis for less than 24 hours, without transfer of custody rights, then one is engaged in the practice of day care . . . and must be appropriately licensed.").

51. *See* Child Care Act of 1969, 225 ILL. COMP. STAT. 10/2.18 (2021).

52. GORDON, *supra* note 36, at 82. ("[T]he median cost of center-based care was \$48 per day, in contrast to \$26 per day in licensed home-based care.").

53. ILL. ACTION FOR CHILD., *supra* note 44.

54. *Id.*

55. *Id.*

56. *Id.*

57. *See* Jenni Julander, *How Much Does Daycare Cost in My State?*, GO AUPAIR (Mar. 9, 2020), <https://www.goaupair.com/childcare-advice/how-much-does-daycare-cost-in-my-state> [<https://perma.cc/85K8-RC6Z>] (quoting in-home care of an infant in Illinois at \$19,788).

4. License-Exempt Childcare

The Child Care Act of 1969 provides that certain kinds of childcare providers are exempt from the licensing process.⁵⁸ These providers are still required to meet public health and fire safety guidelines. However, rather than undergo inspection, providers simply submit a notarized statement attesting to their safety compliance.⁵⁹ License-exempt facilities include: (1) facilities on the grounds of a public or private elementary school that serve children who are at least three years of age, such as a pre-kindergarten program; (2) any State Board of Education-recognized program for children of at least three years of age; (3) programs that are registered with the State Board of Education and exclusively serve children with disabilities who are at least three years of age; (4) facilities connected to other services (like shopping malls, gyms, or religious services) “where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises and readily available;” (5) athletics or other enrichment programs operated by “civic, charitable and [other] governmental organizations;” (6) some part-day childcare programs; (7) programs that serve only school-aged youth; and (8) programs that happen when school is not in session.⁶⁰ These exemptions demonstrate that childcare regulation in Illinois is meant to cover day care that happens before children are school aged or are enrolled in pre-kindergarten. The exemptions also represent the legislature’s willingness to spare athletics, enrichment programs and incidental childcare from licensure. Furthermore, the legislature carves out educational institutions from day care licensure because the purpose of day care regulation is not education, but the health and safety of very young children.⁶¹ The limited scope of the exemptions demonstrates the legislature’s lack of flexibility for new solutions parents might attempt.

D. THE CHANGING SHAPE OF WORK

In the United States, the standard work week for most parents is Monday through Friday, nine to five PM, with some variation between regions.⁶² However, an increasing number of children are being cared for by working parents with a “nonstandard schedule.”⁶³ In fact, “[a] full 50% of kids in dual-

58. Child Care Act of 1969, 225 ILL. COMP. STAT. 10/2.09 (2021).

59. *Id.*

60. *Id.*

61. Grubb, *supra* note 11, at 327.

62. See generally *A Demographic Profile of U.S. Workers Around the Clock*, POPULATION REFERENCE BUREAU (Sept. 18, 2008), <https://www.prb.org/resources/a-demographic-profile-of-u-s-workers-around-the-clock> [<https://perma.cc/T6UZ-RC66>] (examining when workers begin shifts in comparison to different socio-economic factors).

63. Brian Knop, *Parents Burning the Midnight (and Weekend) Oil*, U.S. CENSUS BUREAU (Nov. 21, 2017), https://www.census.gov/newsroom/blogs/random-samplings/2017/11/parents_burning_the.html [<https://perma.cc/CB3M-JX67>].

parent families have at least one parent working weird hours, and the number goes up to 61% if both parents in the house are employed.”⁶⁴ Further, “Gallup estimates that 29% of all workers in the U.S. have an alternative work arrangement”⁶⁵ In addition, an increasing share of parents have autonomy over how they schedule their work hours, whether because they work as freelancers, because they work in the gig economy,⁶⁶ or because they work in sectors that take a different approach to shift length and frequency, like hospitality or healthcare.⁶⁷

For parents who work non-traditional schedules, securing childcare can be challenging.⁶⁸ In Illinois, just 16 percent of childcare providers offer evening hours and just eight percent have weekend hours.⁶⁹ While this Note principally argues that parents with workplace autonomy would benefit from legalization of PLCCPs, the PLCCP model could also be a valuable resource for parents who work non-traditional hours not out of autonomy but out of necessity.

III. BETWEEN COSTS AND POTENTIAL INSTABILITY, SOMETHING HAS TO CHANGE

Illinois’ childcare scheme is flawed because it anticipates only two possibilities: (1) parents send their children to a commercial childcare establishment where children are cared for by non-relatives and where facilities are subject to regulation,⁷⁰ or (2) parents send their children to a relative’s home where, by virtue of the close relationship, no regulation is

64. Heather Marcoux, *43% of Kids Have a Parent That Works Non-Traditional Hours*, MOTHERLY (Nov. 30, 2017), <https://www.mother.ly/news/43-of-kids-have-a-parent-that-works-non-traditional-hours> [https://perma.cc/TFV2-25V2].

65. GALLUP, GALLUP’S PERSPECTIVES ON THE GIG ECONOMY AND ALTERNATIVE WORK ARRANGEMENTS 2 (2018), <http://acrip.co/contenidos-acrip/gallup/2020/mayo/gallup-perspective-gig-economy-perspective-paper.pdf> [https://perma.cc/L4A2-6U55].

66. *Id.* at 8 (“[T]he gig economy may benefit individuals who otherwise might be excluded from the traditional workforce, such as working mothers.”).

67. See, e.g., Amanda Bucceri Androus, *12-Hour Shifts Vs. 10-Hour Shifts: Pros and Cons of a 3 or 4 Day Workweek*, REGISTEREDNURSING.ORG (May 4, 2021), <https://www.registerednursing.org/articles/12-hour-shifts-vs-10-hour-shifts> [https://perma.cc/7LQE-qJKE] (“Working longer shifts translates to more days off during the week in which nurses can spend time with their family, take care of personal health needs, or enjoy their hobbies or recreational activities.”).

68. MARCIA STOLL, DAVID ALEXANDER & NIWAKO SUGIMURA, ILL. ACTION FOR CHILD. RSCH. DEP’T, WORKING LATER IN ILLINOIS: WORK SCHEDULES, INCOMES AND PARENTS’ ACCESS TO CHILD CARE, at i (rev. 2006), https://higherlogicdownload.s3.amazonaws.com/ACTFORCHILDREN/f8e9848a-47b2-4792-9e90-a35961561f37/UploadedImages/Documents/MDP_Research_Publications_PDFs_WorkScheds.pdf [https://perma.cc/J5TB-TLCB] (“Among the substantial challenges nonstandard work schedules present to Illinois working parents, one is finding suitable child care. According to state data, relatively few center-based and licensed. Home child care programs in Illinois offer care during evening, night or weekend hours.”).

69. *Id.* at 11.

70. See 225 ILL. COMP. STAT 10/2.18 (2021).

required.⁷¹ Illinois' regulatory scheme does not anticipate the possibility of parents blurring these two options by forming their own childcare solutions in which they provide care and share the burden of care with other parents. For many reasons, the state's laws should account for more flexible options.

First, childcare in Illinois is alarmingly expensive,⁷² and children benefit from additional time with their parents. To the extent parents want to pay for childcare with their time rather than their money, Illinois regulation should allow it. Second, COVID-19's recent interruption to childcare systems means many childcare providers may not survive closures and many parents have started to think about or rely on childcare that falls outside of the existing regulatory scheme,⁷³ such as parent-led, pod-based childcare. Third, while parent-led pods might rightly be subject to some regulation, subjecting parent-led pods to the current scheme applied to commercial providers would be so burdensome and heavy handed that it would stop parent-led pods before they ever start. Fourth, when parents send their children to childcare that contravenes existing regulation, they assume enormous risks, including instability and high fines. Finally, by failing to acknowledge parent-led childcare pods in the regulatory scheme, Illinois may force those engaged in this kind of childcare into a "shadow economy."

A. COST OF CHILDCARE IN ILLINOIS

The costs of childcare in Illinois are \$13,762 per year for center-based infant care or \$8,616 per year for home-based infant care.⁷⁴ For context, childcare costs "in Illinois [are] nearly the same as the average annual tuition and fees at a public four-year college or university."⁷⁵ However, unlike the costs associated with college, parents incur the costs of childcare early in their careers, when their earning potential is lower and when they have had relatively little time to save. The cost of childcare represents between 8 and 14 percent of a couples' yearly household income.⁷⁶ Parents who dare have two pre-school-aged children face even steeper costs: \$24,194 per year for center-based care and \$16,569 for home-based care.⁷⁷

That said, the cost of childcare is, at times, quite different from what parents actually pay. In Illinois, families with income at or below 185 percent

71. See *id.* ("Day care homes' means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. . . . The term does not include facilities which receive only children from a single household." (emphasis added)); *id.* § 10/2.05 ("Facility for child care' . . . means any [one] . . . who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility." (emphasis added)).

72. See MALIK, *supra* note 1, at 2.

73. *Supra* note 8 and accompanying text.

74. CHILD CARE AWARE, *supra* note 48.

75. *Id.*

76. *Id.*

77. *Id.*

of the federal poverty level—\$43,440 for a family of three—are eligible for the Child Care Assistance Program (“CCAP”).⁷⁸ Families using CCAP pay a monthly “parent co-payment” between \$2 and \$282⁷⁹—or between \$24 and \$3,384 per year. In any case, at all income levels and regardless of whether parents receive aid, families are paying a much higher share of their income toward childcare than the seven percent threshold that the Department of Health and Human Services deems “affordable.”⁸⁰

The cost of childcare has a strong impact not just on the pocketbook of parents, but also on whether young people decide to have children at all. “For those who do have young children, parenthood in the United States can feel like a relentless series of financial challenges.”⁸¹ As childless millennials observe their peers who *have* become parents, the unwieldy costs of parenthood, and childcare, are all too apparent.⁸² While this may seem like a private problem faced by individuals, it will have lasting impacts on Medicare, Social Security, and the economy at large.⁸³ For that reason among many others, policies that make parenthood more tenable for those who have an interest in parenting should be given serious consideration.

B. CHILDCARE IN 2020: NAVIGATING COVID-19

In March 2020, in response to the spread of respiratory illness COVID-19, Illinois Governor JB Pritzker ordered all schools and day cares to close and all people to “stay in their home or places of residence.”⁸⁴ In the wake of the Executive Order, only a handful of day cares remained open in order to serve “Prioritized Essential Workers includ[ing] those working in Health Care, Human Services, essential Government services (e.g. Corrections, law enforcement, fire department), and essential Infrastructure,” which did not include childcare.⁸⁵ Parents in Illinois and across the country scrambled to

78. ILL. ADMIN. CODE tit. 89, §§ 50.110(d), 50.230, 50.235 (2021).

79. *Id.* § 50.320.

80. MALIK, *supra* note 1, at 2.

81. *Id.* at 1.

82. Claire Cain Miller, *Americans Are Having Fewer Babies. They Told Us Why*, N.Y. TIMES (July 5, 2018), <https://www.nytimes.com/2018/07/05/upshot/americans-are-having-fewer-babies-they-told-us-why.html> [<https://perma.cc/5244-5UNZ>] (“This generation, unlike the ones that came before it, is as likely as not to earn less than their parents. . . . Financial concerns also led people to have fewer children than what they considered to be ideal: 64 percent said it was because child care was too expensive . . .”).

83. John W. Rowe, Dana P. Goldman & S. Jay Olshansky, *Effects of Historically Low Birth Rate Will Reverberate for Years to Come*, HILL (May 21, 2018, 1:30 PM), <https://thehill.com/opinion/finance/388618-effects-of-low-birth-rates-will-reverberate-for-years-to-come> [<https://perma.cc/H2XU-J46Y>].

84. Exec. Order 2020-15, Executive Order in Response to COVID-19 (Mar. 27, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-15.aspx> [<https://perma.cc/FA93-8KHQ>].

85. ILL. DEP’T OF HEALTH & HUM. SERVS. – BUREAU OF SUBSIDY MGMT., COVID-19 PRIORITIZED ESSENTIAL WORKERS CHILD CARE APPLICATION 1 (2020), <http://www.dhs.state.il.us/>

figure out how to care for their children *and* work a full time job—all without the ability to leave their homes or interact with individuals from other households.

By August 2020, with many schools and day cares still closed, parents “started organizing ‘pandemic pods,’ or home schooling pods, . . . in which groups of three to 10 students learn together in homes under the tutelage of the children’s parents”⁸⁶ Pods became attractive options for parents because they allow children in-person social interaction while also limiting each family’s potential exposure to COVID-19.⁸⁷ Pods are also attractive because they give parents a much-needed break from pandemic childcare duties.⁸⁸

Though it is too early to know how many pandemic pods were formed, headlines in Illinois suggest that many parents seriously consider pods.⁸⁹ Despite pods entering the mainstream, the Illinois Department of Children and Family Services explicitly stated in its reopening plan that pods are subject to the Child Care Act and are illegal if they consist of more than three unrelated children.⁹⁰ As social media groups dedicated to pandemic pod formation gain thousands of members,⁹¹ Illinois’ dichotomous view of childcare—private unregulated family care versus licensed commercial care—is

OneNetLibrary/27893/documents/CoronavirusInfo/COVID-19-Child-Care-Application-4-3-2020.pdf [https://perma.cc/MD74-K3BM].

86. Melinda Wenner Moyer, *Pods, Microschools and Tutors: Can Parents Solve the Education Crisis on Their Own?*, N.Y. TIMES (Aug. 18, 2020), <https://www.nytimes.com/2020/07/22/parenting/school-pods-coronavirus.html> [https://perma.cc/GF6H-KJU7].

87. Allyson Chiu, *A Pandemic Pod Could Help You Get Through Winter, Experts Say. Here’s How to Form One.*, WASH. POST (Oct. 14, 2020, 8:00 AM), https://www.washingtonpost.com/lifestyle/wellness/pandemic-pod-winter-covid/2020/10/14/214ed65c-0d63-11eb-b1e8-16b59b92b36d_story.html [https://perma.cc/HB8K-8H3S] (“Ideally, pod members can then socialize together in person in settings where the rules can be relaxed, without increased risk of contracting or spreading the virus.”).

88. Adrienne So, *Parenting in the Age of the Pandemic Pod*, WIRED (Aug. 19, 2020, 7:00 AM), <https://www.wired.com/story/parenting-pandemic-pod> [https://perma.cc/B4XE-UR7P] (“[COVID-19] poses a problem for working parents, many of whom are now scrambling to perform childcare, supervise their children’s schooling, and do their own jobs. One of the ad hoc solutions—pooling together small groups of kids for social and educational reasons—birthed a new buzzword: the pandemic pod.”).

89. Moyer, *supra* note 86.

90. ILL. DEP’T CHILD. & FAM. SERVS., RESTORE ILLINOIS LICENSE DAY CARE GUIDANCE & LICENSE EXEMPT AGE GUIDANCE 11 (2021), https://www2.illinois.gov/dcf/brighterfutures/healthy/Documents/Day_Care_Guidance.pdf [https://perma.cc/2MGZ-PEZQ] (“During this pandemic, many families are exploring learning pods . . . in an effort to oversee or enhance remote learning. By definition, under the Child Care Act . . . [t]he limitation of 3 children in the [unlicensed] home includes one’s own children.”).

91. Thirty-eight thousand members in *Pandemic Pods - Main*, FACEBOOK, <https://www.facebook.com/groups/pandemicpodsf> [https://perma.cc/6HQ3-KFNX]; 758 members in *Pandemic Pods - Illinois*, FACEBOOK, <https://www.facebook.com/groups/330744631292098> [https://perma.cc/AEE5-X4X3].

bound to face challenges from parents who have innovative ideas about how to best rear their children.

C. *WHY SUBJECTING PARENT-LED PODS TO LICENSURE IS ABSURD*

The Illinois childcare provider licensing process is important to the discussion of whether to subject parent-led childcare cooperatives to licensure. Given that this Note recommends parent-led childcare as a means of family savings, this Note will assume that parents engaging in this model are operating out of their homes and not out of a space rented for the particular purpose of childcare. A childcare facility that operates out of a home where more than three unrelated children are cared for requires a “Day Care Home” license.⁹² Given that the PLCCP model requires each family to provide care from their home, forming a PLCCP would mandate not just one family to obtain a license, but each family in the group to obtain the license. So, to understand the impact of subjecting PLCCPs to the same licensure as Day Care Homes, multiply each of the below requirements by five, assuming five families participate in each cooperative. Lastly, in addition to state-level licensing requirements, parents may also be subject to city-level licensing requirements.⁹³

In order to get licensed as a Day Care Home, parents must first complete an online Day Care Home Licensing Orientation.⁹⁴ Orientation includes a 43-item eligibility questionnaire asking things like:

Do you have . . . 35 sq. ft. of floor space per child[?] . . . Are you working outside the home? Caution: You may not be employed outside the home during the hours that child care is being provided. . . . Do you plan on doing daycare on any level besides the ground level of your residence? . . . Are you willing to complete 15 hours of pre-service training before you apply for a daycare home license? [and] . . . Are you able to pay for required medical examinations for you and anyone living in your household?⁹⁵

92. Child Care Act of 1969, 225 ILL. COMP. STAT. 10/2.18 (2021) (“Day care homes” means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family’s natural or adopted children and all other persons under the age of 12.”); see *supra* Section II.C.2.

93. See, e.g., BUS. AFFS. & CONSUMER PROT., DAY CARE LICENSING IN CHICAGO (2009), <https://www.chicago.gov/dam/city/depts/bacp/general/daycarefactsheetbacp102610.pdf> [<https://perma.cc/FP7M-MFHN>].

94. *Day Care Home License Orientation*, ILL. DEP’T CHILD. & FAM. SERVS. [hereinafter *Orientation*], <https://hdl.dcfstraining.org/jsp/index.jsp?sessionId=68137268DFAE55EEDD76367BADBD2B3C> [<https://perma.cc/7HRH-7F97>]. Due to the scope of this Note, city-level licensing will not be discussed in detail.

95. *Id.*

Once eligibility is established, applicants must complete a 60–90 minute online training in order to receive a printable Certificate of Completion.⁹⁶ Applicants must then submit their Certificate of Completion, as well as “a completed, signed and dated Child Support Certification form,” “a written hazard protection plan,” and “proof that the home has been tested within the last 3 years for radon” among other, less time-consuming requirements.⁹⁷ In all, childcare licensure would cost 20-plus hours per family and would require payment for and execution of background checks for ten or more caregivers (assuming each family has a minimum of two caregivers). While Illinois charges no license fee for day care providers,⁹⁸ the application process is far from cost-free. Applicants must pay for a background check, physical examination, and a 15-hour online training.⁹⁹ However, for context, Chicago declines to require additional licensure of day care homes.¹⁰⁰

While background checks, physical examinations, inspections, and training may be important for commercial establishments, these requirements are superfluous in the context of PLCCPs. In fact, these requirements would likely leave parents with two options: foreclose on the idea of a parent-led cooperative entirely or operate illegally.¹⁰¹

D. THE REGULATORY RISK OF INNOVATING

The consequences are dramatic for those who run afoul of Illinois’ day care licensing scheme and for those who, knowingly or unknowingly, opt for an out-of-compliance provider. Operating a Day Care Home without a license is a Class A misdemeanor and comes with a fine of up to \$10,000 per day, which can quickly add up.¹⁰² In addition to potential fines, operating illegally can also cause significant instability in a service that parents *really* rely on. When a parent’s childcare falls through, it sends ripples throughout the rest

96. *Id.*

97. *Id.*

98. *Licensing Regulations for the State of Illinois*, CHILD CARE RES. SERV., <https://ccrs.illinois.edu/licensing> [<https://perma.cc/H838-M35K>]. The cost of training for a Family Childcare Credential is currently covered by a Preschool Development Grant, but that may not always be the case. *Family Child Care Credential*, GATEWAY TO OPPORTUNITY, <https://www.ilgateways.com/credentials/family-child-care-credential> [<https://perma.cc/K82U-R2RF>].

99. *Orientation*, *supra* note 94.

100. BUS. AFFS. & CONSUMER PROT., *supra* note 93 (“Home based day care centers are *only* licensed by the State of Illinois and do not require a City license.”).

101. A note about the importance of making pods easy to form and easy to leave: PLCCPs will not work for everyone. Parents may form a pod only to find that they don’t feel equipped to care for six toddlers at once or circumstances at work might make it hard to continue devoting a slice of their schedule to childcare. Some will leave because their children are ready to start kindergarten. Given this consideration, if the barrier to forming or joining a pod is too high, it will stop pods before they ever start. Pods need to be dynamic and flexible in order to work. Some parents will come in and decide it is not for them. In order for pods to work, the barrier to entry (and exit) has to be low.

102. Child Care Act of 1969, 225 ILL. COMP. STAT. 10/11 (2021).

of their life: first their work schedule, then potentially their pay and job security, and then their budget.

For example, a 2018 crackdown on three unlicensed day cares in Shelbyville, Illinois left families all over town scrambling to find alternative care.¹⁰³ Parents impacted by the closure told local news outlets “[i]f the provider is related to the children, then there is no limit as to how many children they can care for. It simply doesn’t make sense” and “[a]s a parent, I would never take my children somewhere I didn’t think was a safe environment. . . . I think it should be up to the parents to decide, not the state.”¹⁰⁴ While the parents in Shelbyville staked their arguments against licensure on the fact that “in a town like [Shelbyville] everybody knows each other,”¹⁰⁵ the same might be true for a group of parents interested in forming a PLCCP.

Legalizing PLCCPs does more than just avoid the negative possibility of fines and a potential shut down. It would also allow PLCCPs to experience the benefits of the open market, like the ability to advertise or obtain proper insurance, within certain boundaries explored in the next Section.¹⁰⁶ When PLCCPs operate without a license, they do so with the threat of being shut down at any time. In any case, some determined parents might still form childcare cooperatives, either because of external factors like COVID-19 or because they want to cut their costs and carve out more time to spend with their children, or both. Those parents will assume a place in Illinois’ day care shadow economy.¹⁰⁷

103. Stan Polanski, *State Cracks Down on Unlicensed Shelbyville Day Cares*, EFFINGHAM DAILY NEWS (Feb. 15, 2018), https://www.effinghamdailynews.com/news/local_news/state-cracks-down-on-unlicensed-shelbyville-day-cares/article_264104c1-c1cd-590b-abc1-9e6d1a55aa86.html [https://perma.cc/Q4DG-UFFZ].

104. *Id.*

105. *Id.*

106. *Cf.* JOHN C. CROSS, *INFORMAL POLITICS: STREET VENDORS AND THE STATE IN MEXICO CITY 29–30* (1998) (“Informal economic activity comprises those economic strategies that contravene laws regulating *how* business should be conducted, but not laws specifying *what* business may be conducted.”). Though the business of making tamales is, in many respects, different from the cooperative and noncommercial pursuit of caring for children, Cross’s point about the inherent limits of operating without a license are still salient. While absence of a license may not keep parents from forming PLCCPs (*what* business may be conducted), it may very well limit *how* PLCCPs are formed. Are parents able to hang a flyer at their eldest child’s elementary school to fill a spot in their pod without the threat of a call from licensing agencies? Can they call their insurance company to obtain appropriate insurance coverage? Though yet to be seen, the answer is likely no.

107. *Shadow Economy – Definition and Meaning*, MKT. BUS. NEWS, <https://marketbusinessnews.com/financial-glossary/shadow-economy-definition-meaning> [https://perma.cc/8TBK-YQES] (“The shadow economy refers to all work activity and business transaction that occur ‘below the radar’” (emphasis omitted)). Though the shadow economy is often characterized as a marketplace for illicit goods, any industry with heavy regulation will, by virtue of the attendant regulations, have participants who opt not to comply with regulations and thus fall into the “shadow economy.” *Id.*

IV. A PATHWAY FOR LEGALIZING PARENT-LED COOPERATIVE CHILDCARE PODS

In order to provide a legal pathway for families to establish PLCCPs, this Note proposes that Illinois create an exemption to its current licensing regime. The exemption should allow parents to work together to share the burden of childcare, so long as they exchange no compensation. While this Note proposes PLCCPs as a new childcare solution provided for under Illinois law, childcare cooperatives generally are far from new. Indeed, in 1916, wives of University of Chicago faculty members opened “[o]ne of the first parent cooperative nursery schools.”¹⁰⁸ The mothers wanted childcare for their children, but also “parent education for themselves . . . as well as child-free time to participate in volunteer Red Cross work.”¹⁰⁹ This Part of the Note proceeds in five Sections: First, it will propose specific statutory language and will suggest where to place the exemption within Illinois’ Child Care Act; second, it will provide a model PLCCP agreement; third, it explores the benefits of requiring PLCCPs to register rather than obtain a license; fourth, this Part examines legislation that allowed pod-based care in Massachusetts; lastly, this Part explains the limitations of PLCCPs.

A. *EXEMPTING PARENT-LED COOPERATIVE CHILDCARE PODS*

In order to legalize PLCCPs, Illinois could exempt them from obtaining a Day Care Home license. As discussed in Section II.B.4, Illinois already exempts ten categories of childcare providers, including “facilities operated in connection with a shopping center or service . . . where transient children are cared for temporarily while parents or custodians of the children are occupied,” part-day programs where a church or social service agency offers care for less than ten hours each week, and periodic child activity programs like athletics or art classes.¹¹⁰ However, these providers all provide care in commercial spaces and would otherwise be subject to a Day Care Center license rather than a Day Care Home license. Illinois currently exempts no categories of providers from the Day Care Home license.¹¹¹ By adding the following proposed statutory language to the list of Day Care Center exemptions, Illinois could open a legal pathway for parents interested in establishing PLCCPs (existing statute in plain font, proposed language in italics):

108. E. KIM COONTZ, BRINGING FAMILIES TOGETHER: A GUIDE TO PARENT COOPERATIVES 2 (2003).

109. *Id.*

110. Child Care Act of 1969, 225 ILL. COMP. STAT. 10/2.09 (2021).

111. *Id.* “Day-care homes are a separate and specific type of child-care facility under the [Illinois] Child Care Act.” Hawthorne v. Vill. of Olympia Fields, 790 N.E.2d 832, 841 (Ill. App. Ct. 2003). “[I]f one receives or places children into any facility apart from parents on a regular basis for less than 24 hours, without transfer of custody rights, then one is engaged in the practice of day care . . . and must be appropriately licensed where no exclusion provided in [this] section . . . is applicable.” People *ex rel.* Johnson v. Kulle, 557 N.E.2d 488, 492 (Ill. 1990).

“Day care center” means any child care facility which regularly provides day care for less than 24 hours per day for (1) more than 8 children in a family home, or (2) more than 3 children in a facility other than a family home, including senior citizen buildings.

The term does not include:

- (a) – (i) [exemptions omitted]
- (j) programs or portions of programs that:
 - (1) – (8) [exemptions omitted];¹¹²
 - (9) *take place in a family home where a caregiver is responsible for pre-school-aged children, where at least one of those children is the caregiver’s own child or relative, and where the caregiver provides care for no more than ten hours each week. In order to fall under this exemption, the caregiver must not receive payment for their services and must be solely engaged in caregiving and no other work when children are in their care.*

Day care licensure is onerous, and it remains important when parents are *not* the ones involved in the provision of care. The above proposed exemption, in several respects, guards against misuse by those who should be licensed. First, it requires that the caregiver be a parent or relative to at least one child within their care.¹¹³ This would prevent a commercial provider from falling under this exemption by caring for their own child alongside paying customers. Misuse is also prevented by (1) limiting each caregiver to ten hours each week; and (2) barring the exchange of payment in connection with childcare services. While this exemption would be the first of its kind, it could make Illinois a front-runner in developing innovative, parent-led childcare solutions.

B. A MODEL AGREEMENT FOR PARENT-LED COOPERATIVE CHILDCARE PODS

Given that the stability of their childcare is at stake, parents forming PLCCPs should carefully construct an agreement between pod participants. By including the below provisions,¹¹⁴ participants in PLCCPs can avoid disruption in their childcare arrangements:

112. Child Care Act of 1969, 225 ILL. COMP. STAT. 10/2.09.

113. “Relative” is already defined within the Child Care Act as someone “who (i) is currently related to the child . . . by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, great-uncle, or great-aunt; or (ii) is the spouse of such a relative; or (iii) is a child’s step-father, step-mother, or adult step-brother or step-sister.” *Id.* § 10/2.17.

114. The basis for this agreement is Janelle Orsi’s *Sample Babysitting Cooperative Agreement*. Orsi also recommends several helpful measures that are not captured in this Note’s agreements. For example, Orsi’s agreement handles how to give families who perform administrative duties credit and how to decide whether a new family is a good fit for the co-op. Orsi also suggests that member

1. Purpose – The purpose of this Parent-Led Cooperative Childcare Pod (“PLCCP”) is to share in providing routine, work-day care for the pre-school-aged children of each pod participant.
2. Size – This PLCCP currently consists of [#] families. The maximum number of families who may participate is [#]. If the number of participating members drops below [#], the PLCCP shall collaboratively engage in member recruitment.
3. Caregiving – Each participating family is responsible for providing care for the pre-school-aged children of all pod participants [frequency].
4. Caregiver – This PLCCP prefers that caregiving is provided by a parent who is within the family unit of a participating family. However, if all PLCCP members agree, caregiving may also be provided by a relative of the participating family,¹¹⁵ for example a grandma or aunt. PLCCP members should make every effort to ensure that no more than two caregivers, all of whom must be related to the participant child, are routinely responsible for the member family’s share of caregiving duties.
5. Regular Meetings – This group will meet quarterly. All parents and caregivers are required to attend quarterly meetings.
6. Scheduling Cancellation – For many reasons, such as vacation, PLCCP participants may need time off from their caregiving duties. At least [#] weeks before a quarterly meeting, PLCCP participants must notify all other pod participants of any days in which they cannot provide childcare in the upcoming quarter. At quarterly meetings, each pod participant should come prepared to offer whatever time they can to parents who timely notify that they will not be available. All pod participants enter this agreement acknowledging that disruptions in childcare are a huge problem. All pod participants agree that communication, flexibility, and advanced planning can mitigate disruptions. Pod participants are, therefore, committed to communication, flexibility, and advanced planning.
7. Emergency Cancellation – In the event that an emergency or illness makes it impossible for a participating family to assume their duties, they must notify all pod members as soon as is practicable.

families pay yearly dues in order to “cover the cost . . . for our meetings, a mediator (if we need one), and any supplies involved in the administrator’s work.” Orsi, *supra* note 6.

115. This agreement expands the eligible caregivers from just parents to any relative of a participating child. This change was an intentional choice made to honor the fact that many children are raised by people other than their parents. This choice would also make it possible for parents to enlist a relative to perform their share of childcare, as long as all members of the PLCCP agree with such an arrangement.

Pod participants should make all efforts to avoid emergency cancellation and should do so understanding that by cancelling, they cause disruption in each other pod participants' work life.

8. Exiting this PLCCP – Pod participants may exit at any time. Where practicable, pod participants should make every effort to notify fellow participants of their intent to exit the pod at the quarterly meeting preceding their departure.

9. Points – In order to ensure equitable division of labor, this PLCCP will assign [x] points to those who “pick up shifts” for pod participants who schedule cancellation. In addition, this PLCCP will assign [x] points to parents who, during an emergency cancellation, are able to assume the duties of a fellow pod participant. Lastly, this PLCCP will assign [x] points to parents who “pick up shifts” when the departure of a pod member creates a gap in childcare.

Parents might also include provisions waiving liability, agreeing to obtain a specific level of insurance, assigning an administrator to tally points and maintain relevant health data and contact information, designating who is responsible for providing meals, and prescribing a grievance procedure. One potentially frustrating but critical feature of the above agreement is the ability of parents to easily exit a PLCCP agreement. Cooperative childcare only works when participants are enthusiastically and actively engaged.¹¹⁶ Parents might enter a PLCCP only to find that they do not enjoy caring for multiple pre-school-aged children or they are not actually able to set work aside for an entire day in order to provide quality care. If PLCCPs want to enjoy the benefit of license exemption, they must also be set up in a way that encourages quality and allows parents to exit their PLCCP agreement if and when they find that they cannot feasibly provide quality care.

C. REGISTRATION AS AN ALTERNATIVE TO LICENSURE

In addition to or in place of the above proposed statutory exemption, Illinois could consider subjecting PLCCPs to registration, as opposed to licensure. Due to budget cuts, some states have opted to require that home-based day cares obtain registration rather than licensure.¹¹⁷ “Registration often does not require inspection by the state, emphasizing instead the participation of parents in monitoring the care of their children.”¹¹⁸ For example, in Iowa, “[t]he department shall issue a certificate of registration

116. See COONTZ, *supra* note 108, at 51–52.

117. Karen Lehrman & Jana Pace, *Day-Care Regulation: Serving Children or Bureaucrats?*, CATO INST. (Sept. 25, 1985), <https://www.cato.org/sites/cato.org/files/pubs/pdf/pao59.pdf> [<https://perma.cc/K87K-QPFD>].

118. *Id.*

upon receipt of a statement from the [childcare provider] . . . verifying that the person complies with applicable rules”¹¹⁹

Registration allows a state to maintain records about where childcare is offered while leaving the duty of assessing for quality in the parent’s hands.¹²⁰ In addition, because registration does not include an inspection and instead requires childcare providers to attest to having met specific standards, registration allows providers and parents to ignore frivolous requirements. For example, Illinois requires that Day Care Homes have 35 square feet of play space for each child.¹²¹ If a Chicago-based PLCCP caring for six children uses a 10 ft by 10 ft living room and 10 ft by 10 ft playroom, it might still fall short of Illinois’ requirements.¹²² Under a license and inspection model, the provider would be shut down before ever getting started. Under a registration model, the provider could attest to meeting the requirements and let parents, employing their own judgement, decide whether a home is too small to provide childcare. With registration, states maintain their “teeth” or ability to enforce regulations when issues arise. However, registration allows providers to get started even though they may not tick every regulatory box.

As discussed in Section II.A, day care regulations descend from regulations for group homes of orphaned children,¹²³ “rather than being developed to meet the needs of daytime child care. Therefore, the licensing requirements may not necessarily meet the needs of today’s system.”¹²⁴ Government does not need to supplement parental judgement through regulation when parents are available to assess day care quality because they are also *the ones providing the day care*, as is the case with PLCCPs.

D. POD-BASED CARE: COMPARING ILLINOIS TO MASSACHUSETTS

Given that COVID-19 impacted the entire country, Illinois parents were not unique in their quest to form pods.¹²⁵ As discussed in Section III.B, Illinois explicitly advised parents that pods caring for more than three unrelated children would be required to obtain licensure.¹²⁶ In contrast, Massachusetts took concrete steps toward allowing unlicensed pods to form.¹²⁷ Through

119. IOWA CODE § 237A.3A (2020).

120. See Lehrman & Pace, *supra* note 117.

121. ILL. ADMIN. CODE tit. 89, § 407.370(d)(1) (2019).

122. See *id.* § 407.370(d). Illinois would require that six children have 210 square feet of space, and this example would provide just 200 square feet of space.

123. Grubb, *supra* note 11, at 308. The goals of childcare regulation have shifted over time. Before the 1920s, childcare regulations only applied where “the government needed to stand *in loco parentis*.” *Id.* Oversight was only appropriate because “children in foster care did not have parents to monitor their care and wellbeing.” *Id.*

124. Maryan Wagner Johnson, *The Regulation of Child Care*, 18 J. LEGIS. 45, 48 (1991).

125. *Supra* note 8 and accompanying text.

126. ILL. DEP’T CHILD. & FAM. SERVS., *supra* note 90, at 11.

127. See COVID-19 Order No. 49, Order Authorizing Certain Program Adjustments to Support Families with Students Engaged in Remote Learning (Aug. 28, 2020), <https://www.mass.gov/>

Executive Order, Massachusetts Governor Charles Baker directed the Department of Early Education and Care to promulgate rules allowing “Remote Learning Parent Cooperatives.”¹²⁸ The order permits pods with five families or less and is restricted to school-aged children.¹²⁹ The order also stipulates that “any exchange of funds among parents . . . may only occur if directly related to materials or supplies.”¹³⁰ The order also applies only until “the state of emergency is ended.”¹³¹

Through the order, Massachusetts hoped “to provide relief for parents unsure of how they would act as a part-time teacher while working from home, something that plagued many during the spring’s remote learning.”¹³² Though distinct from this Note’s proposal of PLCCPs for *pre-school-aged children*, Massachusetts’ move toward allowing pods for school-aged children shows some political appetite for allowing parents to utilize new and less regulated childcare options.

E. THE LIMITATIONS TO AND VALUE OF COOPERATIVE
CHILD CARE BEYOND COVID-19

While adding this category to the list of license exemptions is an important step toward legally acknowledging the existence of PLCCPs, this new category does not resolve all of the issues inherent in reconciling pods with current childcare regulations. For example, even with an exemption from licensure, parents would still be required to follow the state’s staff-to-child ratio guidelines.¹³³ In Illinois, infants require one adult per four children, toddlers (15 to 23 months) require one adult per five children, two-year-olds require one adult per eight children and three-year-olds require one adult per ten children.¹³⁴

Think back to the group of families mentioned earlier in the piece. Assuming a five-day work week with each family providing 20 percent, or one day per week of childcare responsibility, no family could have a pod-participating infant without also breaking the child-to-staff ratio rules.¹³⁵ In addition, if any child was under age two, no family could have more than one

doc/august-28-2020-supporting-parents-with-children-in-remote-learning/download?_ga=2.242812290.1805222495.1603499060-1915370182.1602705082 [https://perma.cc/WY2X-WHQU].

128. See *id.* at 4.

129. *Id.*

130. *Id.*

131. *Id.*

132. Mike Carraggi, *State Offers Child Care Relief for Students Learning Remotely*, PATCH (Aug. 28, 2020, 3:22 PM), <https://patch.com/massachusetts/boston/state-offers-childcare-relief-students-learning-remotely> [https://perma.cc/T43Q-LUV5].

133. See ILL. ADMIN. CODE tit. 89, § 407.190 (2021).

134. *Id.* § 407.190(a).

135. *Id.*; see *supra* Part I.

pod-participating child.¹³⁶ This limitation does not, however, invalidate the value of small pods that can meet those guidelines or larger pods caring for older pre-school-aged children.

Critics may think “Sure, this sounds great, but what family is actually going to be able to make this work? And even if there is one family that can make this work, will there ever be a group of families that could?” PLCCPs will not work for most families.¹³⁷ However, the cost of childcare for pre-school-aged children is a significant concern for Illinois families, and legislation “should be responsive to the expressed needs of parents as they perceive them and should allow for a wide range of program options.”¹³⁸

Another critique is PLCCP’s untrained staff, in contrast to licensed childcare providers. Just because a lay parent can be trusted to provide care for their own child does not mean that a lay parent can handle the duty of caring for a group of children’s needs. However, experience and observation are as good a teacher as any.¹³⁹ Lay parents who participate in PLCCPs will transform from lay to expert by doing and by observing other PLCCP members.

In addition to satisfying the minority of parents who may prefer and be able to participate in PLCCPs, Illinois has another looming reason to think creatively about childcare: The childcare system is so fragile that COVID-19 threatened to close nearly half of all Illinois childcare providers, or 141,000 childcare slots.¹⁴⁰ “Child care providers typically operate on thin margins and

136. This is because children ages 15 to 23 months require one adult for every five children. See ILL. ADMIN. CODE tit. 89, § 407.190. This assumes that pods will naturally form with as many families as there are workdays each week—five. If pods of fewer than five families formed, they would be able to form pods in which some families have more than one participating child, as long as the number of children ages 15 to 23 months does not exceed five per one adult.

137. For example, families with two parents who both have fixed, inflexible, full-time schedules would not have capacity to add a day of childcare. Families without a dedicated space where they can comfortably care for multiple children might also be excluded. As would families with more than two pre-school aged children. And families with parents who, when given the option, would rather pay for day care than spend out-of-work time caring for 5–10 children under the age of five. PLCCPs might not be attractive to families who are eligible for childcare subsidies because PLCCPs would not be able to accept childcare subsidies as payment—the only appropriate PLCCP payment is time devoted to childcare. Lastly, while PLCCPs would not categorically exempt special needs children, the parents of special needs children may or may not feel like lay caregivers are equipped to provide childcare to their special needs children.

138. CTR. FOR SYS. & PROGRAM DEV., *supra* note 12, at 65.

139. Besides, even if you do send your child to a commercial childcare facility, it still may not be likely that the caregiver has completed any training beyond the 15-hour, state-mandated online course. According to a study by the Institute of Labor Economics, “results point to a consistent pattern regarding the hiring behavior of center-based program directors: that of decreasing returns to job-seeker qualifications. . . . [T]hose with more experience are less likely to receive an interview than those with less.” CASEY BOYD-SWAN & CHRIS M. HERBST, INST. LAB. ECON., THE DEMAND FOR TEACHER CHARACTERISTICS IN THE MARKET FOR CHILD CARE: EVIDENCE FROM A FIELD EXPERIMENT 33 (2017), <https://ftp.iza.org/dp10702.pdf> [<https://perma.cc/2FJB-7MGH>].

140. Steven Jessen-Howard & Simon Workman, *Coronavirus Pandemic Could Lead to Permanent Loss of Nearly 4.5 Million Child Care Slots*, CTR. FOR AM. PROGRESS (Apr. 24, 2020, 5:00 AM), <https://>

struggle to stay in business if they are not consistently collecting tuition and/or subsidy payments for nearly 100 percent of children they enroll.”¹⁴¹ By legalizing PLCCPs, Illinois can address the childcare system’s instability and give parents, particularly parents who may also be struggling with employment in the wake of the wide-scale economic shocks like COVID-19, a cost-efficient tool for providing childcare.¹⁴²

While this Note primarily addresses PLCCPs as a solution to stress on families’ budgets,¹⁴³ PLCCPs are also valuable in that they allow parents to spend more time with their children and build community with other parents. Parent development is as important an aspect of cooperative childcare as cost savings and child development.¹⁴⁴ “[P]arents are often unsure of their parenting and of what to expect from their children. . . . When parents volunteer in . . . cooperative[s], they [benefit from] observ[ing] other children near their own child’s age.”¹⁴⁵ Children also benefit from “opportunities to closely observe the myriad personalities of adults and widen their social experiences.”¹⁴⁶ Lastly, “[t]he cooperative encourages the formation of family-to-family friendships that can last well beyond the co-op years.”¹⁴⁷

V. CONCLUSION

Though COVID-19 was a catalyst for parents exploring cooperative childcare, Illinois has many reasons to legalize cooperative childcare by allowing parents to form PLCCPs. If there are parents interested in achieving the twin goals of saving money and spending more time with their children

www.americanprogress.org/issues/early-childhood/news/2020/04/24/483817/coronavirus-pandemic-lead-permanent-loss-nearly-4-5-million-child-care-slots [https://perma.cc/E5BV-HBRK]. For more information about how COVID-19 closures impact specific communities, see NAT’L ASS’N FOR EDUC. YOUNG CHILD., HOLDING ON UNTIL HELP COMES: A SURVEY REVEALS CHILD CARE’S FIGHT TO SURVIVE (2020), https://www.naeyc.org/sites/default/files/globallyshared/downloads/PDFs/our-work/public-policy-advocacy/holding_on_until_help_comes.survey_analysis_july_2020.pdf [https://perma.cc/CL7H-PTDP].

141. See Jessen-Howard & Workman, *supra* note 140.

142. Imagine a parent who works in a secretarial position that, in the wake of COVID-19, does not come back. Her office moves to remote work and severely downsizes its physical footprint. If she joins a PLCCP, she will care for her child and a group of other children one day each week. On the other four days, she can look for work or attend training in a field more suited to a post-COVID economy. Whether joining a PLCCP because she is unable to pay for childcare or because, due to COVID, there are half as many childcare slots in her community, the PLCCP will be pivotal in her ability to manage her expenses and care for her child.

143. Childcare takes up too large a share of a family’s budget. See MALIK, *supra* note 1, at 2.

144. See COONTZ, *supra* note 108, at vii (“Shrinking family size and the decline of extended family linkages have reduced the chances for families to be closely connected to children of varying ages and to observe the intricacies of parent-child relationships.”).

145. *Id.* at viii.

146. *Id.*

147. *Id.*

by forming PLCCPs, Illinois should allow PLCCPs to form by exempting them from Day Care licensure, and/or requiring registration.