



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

**Agency, Board, or Commission Name:** Ohio Department of Job and Family Services\_

**Rule Contact Name and Contact Information:**

Michael Lynch

**Regulation/Package Title (a general description of the rules' substantive content):**

Additional requirements for children's crisis care facilities.

**Rule Number(s):** OAC 5101:2-5-03, 5101:2-9-36, 5101:2-9-43 and 5101:2-9-44

**Date of Submission for CSI Review:** 8/8/2022

**Public Comment Period End Date:** 8/15/2022

**Rule Type/Number of Rules:**

New/ 2 rules

No Change/      rules (FYR?     )

Amended/ 2 rules (FYR? Y)

Rescinded/      rules (FYR?     )

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☒ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

OAC 5101:2-5-03 entitled "Certification of an agency to perform specific functions" sets forth guidance on the types of foster care certifications an agency may receive from ODJFS. Paragraphs (A), (C), and (D) were amended to add the new facility types of residential infant care centers and family preservation centers.

OAC 5101:2-9-36 entitled "Additional requirements for children's crisis care facilities" is amended to provide guidance for children crisis care facilities. The amendment is removing waivers from the rule and providing instruction in regard to the facility providing an engagement plan to the parent or agency placing the child. The amendments include protective monitoring methods for sleeping infants and hygiene for children after bathroom usage, outside play and handling animals. Other grammatical changes have been made for clarity and correction within the rule.

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OAC 5101:2-9-43 entitled "Residential infant care center" is a new rule to provide guidance for the primary purpose of residential services for infants affected by substance use and the preservation of families through infant diversion practices and programs.

OAC 5101:2-9-44 entitled "Family preservation center" is a new rule to provide guidance on a new certificate which will allow either a children's crisis care facility or a residential infant care center to provide family preservation programs.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

OAC 5101:2-5-03 Statutes: 5103.03, 5103.54, 5153.166

OAC 5101:2-9-36 Statutes: 5103.03, 5103.13

OAC 5101:2-9-43 Statutes: 5103.03, 5103.13

OAC 5101:2-9-44 Statutes: 5103.03, 5103.13

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No, the rules are not written as a requirement of Federal Law and does not exceed any Federal requirements.

**5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The rules do not exceed federal requirements.

**6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

HB 265 restructured and separated the residential care of infants and children into two different certifications. The rules set up structure for the provision of permitted actions when children are in out of home placements within a residential facility.

**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The implementation of the rules and subsequent outcomes are monitored through the certification process.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

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*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

ODJFS has met with PCSAO and the following agencies, which are the only current providers of the services subject to these rules: Providence House, Blessing House, Brigid's Path. The rules went through the public clearance on July 11, 2022 through July 25, 2022.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The rule language was drafted by Providence House, Blessing House and Brigid's Path. The rules amendment and formation of two new rules follow the language created by the three agencies. ODJFS met with the agencies and received feedback in the creation of the rule process and reviewed the public clearance. Their suggestions for changes and clarity were accommodated. PCSAO reviewed the rules as to the impact it would or would not have for the PCSAs.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was used to develop the rules.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

No alternatives regulations were considered as the passing of HB 265 mandated the rules be amended or created to include the regulations.

**13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

ODJFS did not consider a performance-based initiative, but rather followed statutory language prescribing the department set standards to ensure separate certifications, one for the Children's Crisis Care, a second for Residential Infant Care Centers and a third for Family Preservation Centers.

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**14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

This regulation is newly created and impacts only three agencies in Ohio providing this specific service to parents and infants/children. In addition, JFS Legal staff and Policy developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

**15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Once the rules are final filed, a transmittal letter will be generated explaining the changes to the rules and the rationale for the changes. The transmittal letters can be viewed at <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL>. ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community; and**

The impacted business community are Blessing House, Providence House and Brigid's Path. The three agencies involved in the development of legislation requiring the proposed rule changes and the rule language itself.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance); and**

The adverse impact would involve time and expenses related to compliance with requirements outlined in OAC 5101:2-5-03, 5101:2-9-36, 5101:2-9-43 and 5101:2-9-44 for an agency to obtain and maintain a Crisis Care certification or Residential Infant Care certification. The impact of the requirement for providers will vary depending on the provider's business structure. The requirements of hiring clinical staff, maintaining child-staff ratios and training staff. The requirements of a residential facility are currently within established rules and provide the baseline of functioning a residential facility.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

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The new licensures would not entail additional costs for the current providers, but any new providers would have to establish a business and the costs would be variable and be based on geographical set up, meeting all standards to functioning as a residential facility and becoming certified. ODJFS is unable to project a reliable cost estimate given these possible variables for any possible new providers seeking a license.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

HB 265 created the regulatory intent and ODJFS is maintaining compliance with the Ohio Revised Code.

**Regulatory Flexibility**

**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

For rules 5101:2-5-03, 5101:2-9-36, 2-9-43, 2-9-44, there is no alternative means of compliance.

**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not applicable.

**20. What resources are available to assist small businesses with compliance of the regulation?**

ODJFS has a regional office with a licensing specialist that is assigned to assist the agency in the entire application process including assistance with the proper information required by this rule.