



## 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):**

Admissions and admissions logs

**Rule Number(s):** OAC 5101:2-9-11\_

**Date of Submission for CSI Review:** 10/13/22

**Public Comment Period End Date:** 10/20/22

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/\_\_\_1\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR?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 5101:2-9-11 entitled "Admissions and admissions logs" sets forth guidance on the admissions of youth into a residential facility. The facility is to develop a written admissions policy specifying the type of child who will be accepted into the facility and the conditions under which a child would not be accepted.

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 5101:2-9-11 Statute: 5103.03

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 rule is not written as a requirement of Federal Law and does not exceed any Federal requirements.

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

The rule does 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 of the 134<sup>th</sup> General Assembly restructured and separated the residential care of infants and children into two different certifications. The rule allows for the placement of children under the age of six as an exception for an agency with the new certification of residential infant care center.

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

The implementation of the rule 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?**

*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 the rule: Providence House, Blessing House, Brigid's Path. The rule went through the public clearance on September 8, 2022 through September 22, 2022. There were no comments provided during this period of time.

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

No comments were provided by the stakeholders.

- 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.

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**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 alternative 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 amend the rule for an exception to allow Residential Infant Care Centers to admit children under the age of six.

**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 specifically one of 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 rule is final filed, a transmittal letter will be generated explaining the changes to the rule 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 is one agency in the state, Brigid's Path. The agency was involved in the development of legislation requiring the proposed rule change.

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

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The adverse impact would involve time and expenses related to compliance with requirements outlined in OAC 5101:2-9-11. The impact of the requirement for providers will vary depending on the provider's business structure. The requirements of having an admissions policy and admissions log will be a minimal impact for Brigid's Path or any future providers. 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.*

The new exemption would not entail additional costs for the current provider, 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 rule 5101:2-9-11, 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.

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