

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Rule review for Certified Type B Providers and In Home Aides

Rule Number(s): 5101:2-14-02, 5101:2-14-04, 5101:2-14-05, 5101:2-14-13, 5101:2-14-36,  
5101:2-14-56, 5101:2-14-58

Date: 10/11/12

**Rule Type:**

☐ New

☐ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

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

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These rules contain requirements for type b home providers and in-home aides that are currently certified or seeking certification by the county department of job and family services. The rules contained in this package regulate the requirements of application for certification, issuance and renewal of certification, provider qualifications, cribs, and training. Proposed amendments include new federally mandated crib requirements from the consumer product safety commission, the elimination of more than one certificate per address, requirements to providers to give parents their tax ID number at time of enrollment, increased required health and safety training from six to eight hours, and removal of the requirements for three references and a medical exam every three years.

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

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

5104.011, 5104.041, 5104.11

**3. 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.*

Yes, Rule 5101:2-14-36 implements 16 CFR parts 1219, 1220 and 1500; and the Consumer Product Safety Commission federal requirements for crib standards for full-size and non full-size baby cribs that ODJFS enforces compliance for licensed providers and CDJFS enforces compliance for certified child care providers. Yes, this amendment enables ODJFS to enforce a federal law through rule that county departments of job and family services enforce.

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

Not applicable.

**5. 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)?**

The rules, which are promulgated pursuant to the requirements of the Revised Code, establish regulations for minimum health and safety standards for certified child care environments, staffing, child records, and administrative policies and procedures.

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

The success of these regulations is measured during certification inspections, monitoring of incident reports submitted by regulated providers, materials submitted to address non-compliances and any complaints received by ODJFS. Stakeholders also provide continuous input into the regulation and the effort to comply with the rule.

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## **Development of the Regulation**

### **7. 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.*

County department of job and family services (CDJFS) representatives provided input at the Job and Family Services Director's Association (JFSDA) conference on May 24, 2012 as well as during regularly scheduled video conferences hosted by ODJFS. These rules went through the public ODJFS clearance process for two weeks from April 18, 2012 through May 2, 2012. Twenty-three people provided comments including CDJFS staff, current type B child care home providers, AFSCME representatives and parents receiving child care. AFSCME and their local presidents and their local presidents provided input at a State – Union quarterly meeting held in April 2012.

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

Input included (see attached clearance comments):

1. A comment requesting that caretakers (not just parents) be included in who may grant a Type B provider permission to administer medication. This comment was accepted.
2. Eleven people commented on ODJFS's decision not to allow more than one type B provider to reside at the same address. ODJFS did not accept these comments. Reasoning: JFS incurs higher costs to reimburse more than one provider of child care services under the same roof. It is possible for a child to be cared for in the house by both providers for a full day each day of the week and for ODJFS to pay one full time rate and one part time rate instead of just one full time rate. Assessing compliance on physical issues within the home is also complicated when there are two providers sharing the same physical space (house). There are approximately 25 addresses (out of 5700 type B homes) that this impacts. In 2008, ODJFS stopped permitting this practice of multiple providers at one address for new providers.
3. Comment regarding no longer requiring references from Type B child care providers. ODJFS did not accept the comment. Reasoning: References proved ineffective in providing substantial information. Removing this requirement lessens provider requirements and aligns with to the requirement for type A homes and child care centers.
4. Comment received on allowing all training to be online. ODJFS did not accept this comment.

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Reasoning: Current approval practices by ODJFS do not allow for all training to be online.

5. Comment regarding the parent's signature affirming attendance.

ODJFS did not accept this comment. Reasoning: The language requested is more appropriate for rules contained in Chapter 5101:2-16 of the Administrative Code.

6. ODJFS received questions and requests for more clarification. ODJFS accepted these requests.

**9. 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?**

Data used to develop regulation for cribs came from the Consumer Product Safety Commission and can be found at <http://www.cpsc.gov/info/cribs/index.html>. Outcomes will be measured by compliance records reviewed by ODJFS and CDJFS during inspections. Rules requiring the limited number of providers being issued a certification were developed due to Ohio Revised Code requirements and outcomes will be measured by compliance records.

**10. 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?**

Rules were developed due to federal and state mandates.

**11. 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.***

No. Rules were developed to implement federal and state mandates intended to increase the health and safety of children in child care.

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

Rules are reviewed by the legal team at ODJFS prior to the official clearance period to ensure there was no duplication with other agency rules. The rules are promulgated pursuant to the Revised Code.

**13. 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.**

ODJFS licensing specialists inspect licensed child care centers and type A homes utilizing compliance software which ensures consistency. CDJFS staff utilize a required form contained in the Ohio Administrative Code to inspect type B homes and in home aides.

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ODJFS technical assistance staff and help desk staff provide support and consultation to child care providers and families on the rules. Formal notification of the rules is provided to CDJFS, child care providers, families and others by use of an eManual for child care which is located at <http://emanuals.odjfs.state.oh.us/emanuals/>. Email updates from ODJFS can be received by signing up at <http://www.odjfs.state.oh.us/subscribe/> as well as through an RSS feed at <http://www.odjfs.state.oh.us/ccupdates/>.

### **Adverse Impact to Business**

**14. 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;**

These rules impact all certified type B home child care providers.

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

Only those type B home providers certified to serve infants and whose cribs do not meet the new requirements must purchase new cribs. Providers who do not serve infants or providers whose cribs already meet the new requirements will not incur these costs.

An estimated 25 providers will lose their certification as a result of implementing the “one provider per address” provision. This is a small percentage of the total certified providers (approximately 5700). Of the 25 providers, a portion, although certified, had no children authorized to their care and therefore are not losing any money because of this change.

Although there’s an increase in training hours required, the CDJFS provides this training at no cost to the provider. In addition, this change only impacts new providers certified on or after the effective date of the rule. There is no change in training requirements for existing certified type B providers.

**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.***

Cribs: The cost for a new crib is approximately \$300 to \$600. The number of cribs to be purchased per provider will depend upon the number of infants served. Type B providers are not permitted to care for more than three infants at a time. Those who do not serve infants or whose cribs already meet the requirements will not incur costs. Additionally, there are other sleeping options for infants instead of a crib (example, a pack-n-play). (source: review of local stores who sell cribs).

One provider per address:

In addition, these rule changes also result in several cost savings for type B home providers. Providers no longer have to complete a new medical examination every three years, nor do they have to submit three written references for initial certification.

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

Cribs: Current ORC requires ODJFS to develop standards for equipment and environments that are safe for children. The crib requirements were federally mandated and ODJFS rules cannot supersede federal mandate.

One provider per address: ODJFS determined that the savings of dollars and consistency in assessing compliance justified ending the certification for these 25 type B home providers (of 5700 total).

### **Regulatory Flexibility**

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

No, standards for cribs are federally mandated, no exemptions.

**17. 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?**

This is not applicable because type B providers are not issued fines for violating rules or non-submission of paperwork.

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

The CDJFS enforces the rules set forth by ODJFS. ODJFS provides technical assistance through technical assistance staff, video conferences, emails, ebasts, rss feeds, eManual, help desks and through the Ohio Child Care Resource and Referral Association.

ODJFS provides the following:

Division of Child Care and Development Helpdesk  
CHILDCAREPOLICY@jfs.ohio.gov  
1-877-302-2347

eManual for child care located at: <http://emanuals.odjfs.state.oh.us/emanuals/>

email updates from ODJFS can be received by signing up at:  
<http://www.odjfs.state.oh.us/subscribe/>

RSS feed sign up at: <http://www.odjfs.state.oh.us/ccupdates/>

Child Care in Ohio website is located at: <http://jfs.ohio.gov/cdc/childcare.stm>

The rules went through the official ODJFS clearance. This process is open to the public, anyone can sign up to receive the notice of clearance and the department's official public hearing process. Anyone can subscribe to the website above to sign up for these notices.