

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Job and Family Services

Regulation/Package Title: Licensed Child Care Centers – Chapter 5101:2-12 (new rules)

Rule Number(s): 5101:2-12-02, 5101:2-12-03, 5101:2-12-04, 5101:2-12-05, 5101:2-12-06,
5101:2-12-07, 5101:2-12-08, 5101:2-12-09, 5101:2-12-10, 5101:2-12-11, 5101:2-12-12,
5101:2-12-13, 5101:2-12-14, 5101:2-12-15, 5101:2-12-16, 5101:2-12-17, 5101:2-12-18,
5101:2-12-19, 5101:2-12-20, 5101:2-12-21, 5101:2-12-22, 5101:2-12-23, 5101:2-12-24,
5101:2-12-25

Date: 7/25/2016

Rule Type:

☒ New ☐ 5-Year Review

☐ Amended ☐ Rescinded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.

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The filing of these 25 new rules facilitates the realignment and reorganization of Chapter 5101:2-12. Language requirements in these new rules are purposefully written with a consideration for small business, so as to not impede or inhibit the viability of small business owners.

Regulatory Intent

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

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

5101:2-12-02 "Application and amendments for a child care center license" is a new rule that describes the process and requirements for applying for a child care center license and the process to amend a currently existing child care center license. This rule is replacing in part rescinded rules 5101:2-12-04 and 5101:2-12-05 of the Administrative Code.

5101:2-12-03 "Compliance inspection and complaint investigation of a licensed child care center" is a new rule that outlines guidelines and timeframes for inspections and investigations of licensed child care centers. This rule is replacing in part rescinded rules 5101:2-12-07 and 5101:2-12-08 of the Administrative Code.

5101:2-12-04 "Building department, fire inspection and food service licensure for a licensed child care center" is a new rule that outlines the separate requirements of building inspections, fire inspections and food service licensure for licensed child care centers. This rule is replacing in part rescinded rules 5101:2-12-10, 5101:2-12-11, and 5101:2-12-12 of the Administrative Code.

5101:2-12-05 "Denial, revocation and suspension of a child care center application or license" is a new rule that outlines the parameters for denying an application and suspending or revoking a child care center license. This rule is replacing in part rescinded rule 5101:2-12-09 of the Administrative Code.

5101:2-12-06 "Procedures for a licensed child care center operating under a provisional license" is a new rule that outlines the operating requirements during the provisional licensing period. This rule is replacing in part rescinded rule 5101:2-12-04 and 5101:2-12-04.1 of the Administrative Code.

5101:2-12-07 "Administrator responsibilities, requirements and qualifications for a licensed child care center" is a new rule that outlines the education and responsibilities to become an administrator in a licensed child care center. This rule is replacing rescinded rule 5101:2-12-24 of the Administrative Code.

5101:2-12-08 "Employee and child care staff member requirements in a licensed child care center" is a new rule that outlines the qualifications for employees and child care staff

members in a licensed child care center. This rule is replacing rescinded rule 5101:2-12-25 of the Administrative Code.

5101:2-12-09 "Criminal records check requirements for a licensed child care center" is a new rule that outlines Bureau of Criminal Investigation, Federal Bureau of Investigation and Nonconviction statement requirements. This rule is replacing rescinded rule 5101:2-12-26 of the Administrative Code.

5101:2-12-10 "Professional development requirements for a licensed child care center" is a new rule that outlines the initial and on-going training requirements for child care center staff. This rule is replacing in part rescinded rules 5101:2-12-27 and 5101:2-12-28 of the Administrative Code.

5101:2-12-11 "Indoor and outdoor space requirements for a licensed child care center" is a new rule that outlines indoor and outdoor space requirements in a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-13 and 5101:2-12-14 of the Administrative Code.

5101:2-12-12 "Safe equipment and environment for a licensed child care center" is a new rule that outlines the requirements for safe equipment and environments in a licensed child care center. This rule is replacing in part rules 5101:2-12-13, 5101:2-12-14 and 5101:2-12-15 of the Administrative Code.

5101:2-12-13 "Sanitary equipment and environment for a licensed child care center" is a new rule that outlines the requirements for sanitary equipment and environments for a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-15, 5101:2-12-15.1, 5101:2-12-15.2, 5101:2-12-15.3, and 5101:2-12-15.4 of the Administrative Code.

5101:2-12-14 "Transportation and field trip safety for a licensed child care center" is a new rule that outlines transportation requirements for a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-18, 5101:2-12-18.1, and 5101:2-12-18.2 of the Administrative Code.

5101:2-12-15 "Child record requirements for a licensed child care center" is a new rule that outlines child record requirements for a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-34 and 5101:2-12-37 of the Administrative Code.

5101:2-12-16 "Emergency and health-related plans for a licensed child care center" is a new rule that outlines medical, dental, first aid and communicable disease procedures, incidents and injuries and disaster planning for a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-15.1, 5101:2-12-34 and 5101:2-12-37 of the Administrative Code.

5101:2-12-17 "Programming and materials for a licensed child care center" is a new rule that outlines daily activities in a licensed child care center. This rule is replacing in part rescinded rule 5101:2-12-16 of the Administrative Code.

5101:2-12-18 "Group size and ratios for a licensed child care center" is a new rule that outlines the requirements for staff to child ratios and grouping in a licensed child care center. This rule is replacing in part rescinded rule 5101:2-12-20 of the Administrative Code.

5101:2-12-19 "Supervision of children and child guidance for a licensed child care center" is a new rule that outlines the requirements for supervision and acceptable and unacceptable discipline for a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-20 and 5101:2-12-21 of the Administrative Code.

5101:2-12-20 "Sleeping and napping requirements for a licensed child care center" is a new rule that outlines requirements for the use of cribs, mats, cots and other sleep surfaces for a licensed child care center. This rule is replacing in part rescinded rules 5101:2-12-19 and 5101:2-12-42 of the Administrative Code.

5101:2-12-21 "Evening and overnight care for a licensed child care center" is a new rule that outlines the evening and overnight care guidelines for a licensed child care center. This rule is replacing rescinded rule 5101:2-12-23 of the Administrative Code.

5101:2-12-22 "Meal preparation/nutritional requirements for a licensed child care center" is a new rule that outlines meal and snack procedures for a licensed child care center. This rule is replacing rescinded rule 5101:2-12-39 of the Administrative Code.

5101:2-12-23 "Infant care and diaper care for a licensed child care center" is a new rule that outlines requirements when caring for infants in a licensed child care center. This rule is replacing rescinded rules 5101:2-12-40 and 5101:2-12-41 of the Administrative Code.

5101:2-12-24 "Swimming and water safety requirements for a licensed child care center" is a new rule that outlines swimming and water activities requirements for a licensed child care center. This rule is replacing rescinded rule 5101:2-12-17 of the Administrative Code.

5101:2-12-25 "Medication administration, food supplements and medical foods for a licensed child care center" is a new rule that outlines the requirements for administering medication and modified food diets for a licensed child care center. This rule is replacing rescinded rule 5101:2-12-31 of the Administrative Code.

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

ORC 5104.013

ORC 5104.015

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ORC 5104.016

ORC 5104.042

- 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, Child Care Development Fund (CCDF) rules require that all child care providers have background checks and that all publicly funded providers are inspected annually, meet training requirements and are regulated on specific health and safety topics. In Ohio, licensing rules do not differentiate between publicly funded and non-publicly funded programs because the requirements benefit all children.

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

The regulations do not exceed federal requirements.

- 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)?**

These rules, promulgated pursuant to the requirements of the Ohio Revised Code, establish regulations for minimum health and safety standards for licensed 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 determined during licensing inspections, through the monitoring of incident reports submitted by regulated providers and through materials submitted to address noncompliances. Stakeholders also provide continuous input into the regulation and their ability to comply with the rules.

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.

Stakeholders involved in developing these rules include:

Child Care Advisory Council – Policy Subcommittee

Ohio Job and Family Services Director's Association – Child Care Committee

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Ohio Department of Health – Pediatric Obesity Collaborative Improvement and Innovation Network (CoIIN)

Ohio Department of Education

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

Stakeholder comments were incorporated where appropriate during the drafting and the two ODJFS clearance periods. On December 2, 2015 through December 30, 2015, the ODJFS made the proposed child care center licensing rules and forms available for public comment and received 84 comments. Based upon the number of comments received and revisions to the proposed rules and forms, the ODJFS made the rules available for a second public comment period on April 14, 2016 through April 21, 2016. The ODJFS received 14 comments from the second clearance. New input will continue to be carefully considered during and immediately following the public hearing comment period.

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?

Not applicable.

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?

These rules were promulgated to comply with the statutory requirements of ORC 5101.015.

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 state mandates under Ohio Revised Code 5104. intended to increase the health, safety, and general well-being 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 ODJFS rule specialists and legal staff prior to the Clearance process to ensure there is no duplication of our agency or other agency rules.

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 utilize a software system to inspect licensed centers. ODJFS help desk staff provides support and assistance to licensed child care providers and families

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regarding the provisions of the rules. Formal notification of the rules is provided to 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 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;

There are approximately 4,157 licensed child care centers throughout Ohio.

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

The costs will vary by provider. New costs associated with these rules include training for staff previously exempted from training, creation of the disaster plan and carbon monoxide detectors for centers that don't already have them. Efforts have been made in these new rules to streamline processes and decrease paper in programs to off-set any new costs. Costs already in place includes license fees, equipment, criminal records checks, employer time for completion of forms and documentation.

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 following rules contain the requirements and accompanying estimated costs to licensed child care centers:

5101:2-12-02 – A license fee is a charge of \$500.00 and amendments to a license costs \$250.00. Time involved in completing the online application and JFS 01250, actual amount cannot be estimated because costs will vary from center to center depending on their business model.

5101:2-12-03 – There will be costs associated with the center having to provide written materials to address noncompliances as well as completing the JFS 01155 for appealing a noncompliance, if applicable.

5101:2-12-04 – Building approvals from the Ohio department of commerce or from the local certified building department is required. The cost is difficult to determine because fees vary depending on the size of the building and types of inspections needed. Fire inspection(s) is required. Local fire departments or the state fire marshal provide these at costs ranging from \$0.00 up to \$100.00. Food service licensure is required. The cost is difficult to determine because fees vary depending on the type of food service license that is obtained.

5101:2-12-05 – If a center's license is suspended, the center must provide written notification to all parents. There will be time and costs associated with this process.

5101:2-12-06 – All provisional licensed child care centers must comply with all of the Chapter 5101:2-12 requirements. The costs associated with these requirements are detailed in the other rules in this chapter.

5101:2-12-07 – The actual amount cannot be estimated because costs will vary from center to center depending on their business model. There will be costs associated with Administrator time to fill out forms, create policies and procedures and attend the ODJFS Administrator Rules Training.

5101:2-12-08 – The actual amount cannot be estimated because costs will vary from center to center depending on their business model. There will be costs associated with child care staff members time spent viewing the required orientation training.

5101:2-12-09 – Licensed child care centers are required to submit fingerprints for staff to undergo a BCI and FBI check. The average costs for a BCI is \$22.00 and the average cost for a FBI check is \$24.00. Costs will vary depending on the number of staff a program employs.

5101:2-12-10 – Child care administrators and child care staff members are required to take health and safety trainings as well as six hours of professional development each year. Costs will vary depending on the number of staff a program employs.

5101:2-12-11 – Child care centers are required to obtain a location with adequate space that determines the number of children that can be served. The cost will vary depending on the location of the space that is purchased or leased as well as location (prices in Columbus Ohio will be higher than in Fairfield County).

5101:2-12-12 – Child care centers are required to have age-appropriate equipment available. The cost will vary depending on the amount and type of products used. Child care centers are now required to have carbon monoxide detectors on-site. The costs for these detectors can range from \$25.00 and up.

5101:2-12-13 – Child care centers are required to use cleaning and sanitizing products and maintain liquid soap and paper towels. The cost will vary depending on the amount and type of products used. Licensed child care centers are required to have liquid soap, maintain individually assigned towels or disposable towels and have disposable gloves, cleaning, sanitizing and disinfectant products. Child care centers are required to keep their environment smoke free while children are present. If a child care center policy allows smoking on the premises separate ventilation needs to be installed.

5101:2-12-14 – Child care centers that provide transportation must follow standard vehicle safety requirements including maintenance of the vehicles. An inspection by an Automotive Service Excellence (ASE) mechanic is offered at a cost ranging from \$50.00 up to \$120.00 depending on the type of vehicle; some vehicles are exempt from this requirement. Requirements for the type of vehicles used is not being changed. There is no fee to do the new driver training, there is time involved as the training must be repeated yearly.

5101:2-12-15 – Child care centers are required to maintain child files. There are no new costs associated with this requirement, costs vary depending on the number of children enrolled.

5101:2-12-16 – Child care centers are required to have first aid kits, develop a disaster plan and fill out incident and injury reports. Costs range from \$25.00 to \$45.00 for first aid kit supplies. There will be staff time associated with the development of the disaster plan and completing the forms.

5101:2-12-17 – Child care centers are required to obtain supplies and materials representative of the rule requirements. Cost will vary depending on the type of materials purchased, the number of children served, and the policy of the center.

5101:2-12-18 – Child care centers will need appropriate staff for ratio and group size and for completing attendance records. The costs will vary depending on the number of staff and children enrolled at the center.

5101:2-12-19 – Child care centers will need appropriate staff for supervision. The costs will vary depending on the number of staff and children enrolled at the center.

5101:2-12-20 – Child care centers are required to obtain and maintain cots or mats for children who sleep or nap in their programs. Costs range from \$12.00 to \$150.00 depending on the type of cot or mat purchased. Child care centers are required to obtain and maintain cribs for infants who sleep or nap in their programs. Cribs range in price from \$200.00 up, depending on the type of crib.

5101:2-12-21 – Child care centers are required to provide bedding if overnight care is provided. The costs will vary depending on the number of children served and what the center provides for care compared to what the parent provides.

5101:2-12-22 – Child care centers may provide meals and snacks according to their policies or parents may provide the meals or snacks. Child care centers will incur costs to purchase the food that meet the rule requirements. Costs will vary depending on the number of meals and snacks that are served. Programs that participate in the Child and Adult Care Food Program (CACFP) receive financial assistance to cover the cost of food.

5101:2-12-23 – Child care centers may provide items and materials associated with diapering if not supplied by the parent. The costs will vary depending on what items (such as diapers and wipes) the center purchases when not provided by the parent.

5101:2-12-24 – There may be costs associated with lifeguards when the children are permitted to swim. These costs will vary depending on if the pool is public or private, the number of lifeguards needed and the city in which the pool resides.

5101:2-12-25 – Child care centers may administer medication, centers may incur costs completing the JFS 01217 and ensuring that a medical professional has completed it when needed. Costs vary depending on center policy.

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

The regulatory intent justifies the financial impact child care providers may incur because these licensing standards are mandated to ensure the health and safety of children. Ohio Revised Code requires child care centers to be regulated.

Regulatory Flexibility

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

No. Licensing standards for child care centers are mandated by the Ohio Revised Code.

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?

Not applicable.

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

ODJFS provides technical assistance through technical assistance staff, technical assistance documents, video conferences, emails, eblasts, RSS feeds, eManual, help desks and through the Ohio Child Care Resource and Referral Association.

ODJFS provides the following:

Child Care Policy Helpdesk

CHILDCAREPOLICY@jfs.ohio.gov

1-877-302-2347 option 4

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