

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Job and Family Services

Regulation/Package Title: Licensed Family Child Care – Chapter 5101:2-13 (new rules)

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

Date: July 25, 2016

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☐ Rescinded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

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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.

The filing of these new rules facilitates the consolidation and alignment of Chapter 5101:2-13 (Type A rules) and Chapter 5101:2-14 (Type B rules) in order to bring these child care home providers and settings under one licensing standard. 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.

Rule 5101:2-13-02 has a new requirement for Type B Home Providers to pay a licensing fee and a change of location fee same as Type A Home Providers do. The license fee is \$250 for the initial license. When a family child care provider moves once licensed there is a change of location fee of \$125. All other costs and penalties for noncompliance are already in place with the current licensing requirements.

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.

5101:2-13-02 "Application and amendments for a family child care provider license" is a new rule that describes the process and requirements for applying for a family child care license. This rule is replacing in part rescinded rules 5101:2-13-04 and 5101:2-14-02.

5101:2-13-03 "Compliance inspection and complaint investigation of a licensed family child care provider" is a new rule that outlines guidelines and timeframes for inspections and investigations of the family child care home. This rule is replacing in part rescinded rules 5101:2-13-07, 5101:2-13-08 and 5101:2-14-03.

5101:2-13-04 "Building department inspection and fire inspection for a licensed family child care provider" is a new rule that outlines the separate requirements of building and fire safety for type A home providers and type B home providers. This rule is replacing in part rescinded rules 5101:2-13-10, 5101:2-13-11 and 5101:2-14-10.

5101:2-13-05 "Denial, revocation and suspension of a family child care application or license" is a new rule that outlines the parameters for denying an application and suspending or revoking a family child care provider license. This rule is replacing in part rescinded rules 5101:2-13-09 and 5101:2-14-04.

5101:2-13-06 "Procedures for a family child care provider operating under a provisional license" is a new rule that outlines the operating requirements during the provisional license

period. This rule is replacing in part rescinded rules 5101:2-13-4.1 and 5101:2-14-05 of the Administrative Code.

5101:2-13-07 "Provider responsibilities, requirements and qualifications for a licensed family child care provider" is a new rule that outlines the education, experience and other requirements to become a licensed provider. This rule is replacing in part rescinded rules 5101:2-13-24 and 5101:2-14-06 of the Administrative Code.

5101:2-13-08 "Employees, child care staff members and substitute responsibilities and qualifications for a licensed family child care provider" is a new rule that outlines the qualification for all staff members and substitutes. This rule is replacing in part rescinded rules 5101:2-13-25 and 5101:2-14-09 of the Administrative Code.

5101:2-13-09 "Criminal records check requirements for a licensed family child care provider" is a new rule that outlines BCI, FBI and nonconviction statement requirements. This rule is replacing in part rescinded rules 5101:2-13-26 and 5101:2-14-09 of the Administrative Code.

5101:2-13-10 "Training and professional development requirements for a licensed family child care provider and child care staff members" is a new rule that outlines the initial and on-going training for providers and staff. This rule is replacing in part rescinded rules 5101:2-13-27, 5101:2-13-28 and 5101:2-14-08 of the Administrative Code.

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

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

5101:2-13-13 "Sanitary equipment and environment for a licensed family child care provider" is a new rule that outlines the requirements for sanitary equipment and environments for a licensed family child care home. This rule is replacing in part rescinded rules 5101:2-13-15, 5101:2-13-15.1, 5101:2-13-15.3, and 5101:2-14-13 of the Administrative Code.

5101:2-13-14 "Transportation and field trip safety for a licensed family child care provider" is a new rule that outlines transportation and field trip requirements for a licensed family child care. This rule is replacing in part rescinded rules 5101:2-13-18, 5101:2-13-18.1, 5101:2-12-18.2 and 5101:2-14-14 of the Administrative Code.

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5101:2-13-15 "Child record requirements for a licensed family child care provider" is a new rule that outlines record requirements for a licensed family child care home. This rule is replacing in part rescinded rules 5101:2-13-37, 5101:2-13-38 and 5101:2-14-15 of the Administrative Code.

5101:2-13-16 "Emergency and health-related plans for a licensed family child care provider" is a new rule that outlines medical, dental, first aid and communicable disease procedures, incident and injuries and disaster planning for a licensed family child care home. This rule is replacing in part rescinded rules 5101:2-13-34, 5101:2-13-35, 5101:2-13-36 and 5101:2-14-16 of the Administrative Code.

5101:2-13-17 "Programming and materials for a licensed family child care provider" is a new rule that outlines daily activities for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-16 and 5101:2-14-17 of the Administrative Code.

5101:2-13-18 "Group size and ratios for a licensed family child care provider" is a new rule that outlines the requirements for staff to child ratios and grouping for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-20 and 5101:2-14-18 of the Administrative Code.

5101:2-13-19 "Supervision of children and child guidance for a licensed family child care provider" is a new rule that outlines the requirements for supervision and acceptable and unacceptable discipline for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-20, 5101:2-13-21, 5101:2-13-22 and 5101:2-14-20 of the Administrative Code.

5101:2-13-20 "Sleeping and napping requirements for a licensed family child care provider" is a new rule that outlines requirements for the use of cribs, mats, cots and other sleep surfaces for a licensed family child care provider. This rule is replacing in part rescinded rules 5101:2-13-19, 5101:2-13-42 and 5101:2-14-19 of the Administrative Code.

5101:2-13-21 "Evening and overnight care for a licensed family child care provider" is a new rule that outlines the evening and overnight care guidelines for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-23 and 5101:2-14-24 of the Administrative Code.

5101:2-13-22 "Meal preparation/nutritional requirements for a licensed family child care provider" is a new rule that outlines meal and snack procedures for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-39 and 5101:2-14-21 of the Administrative Code.

5101:2-13-23 "Infant care and diaper care for a licensed family child care provider" is a new rule that outlines requirements for caring for infants for a licensed family child care provider.

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This rule is replacing rescinded rules 5101:2-13-40, 5101:2-13-41 and 5101:2-14-22 of the Administrative Code.

5101:2-13-24 "Swimming and water safety requirements for a licensed family child care provider" is a new rule that outlines swimming and water safety requirements for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-17 and 5101:2-14-23 of the Administrative Code.

5101:2-13-25 "Medication administration, food supplements and medical foods for a licensed family child care provider" is a new rule that outlines the requirements for administering medication and modified food diets for a licensed family child care provider. This rule is replacing rescinded rules 5101:2-13-31 and 5101:2-14-15 of the Administrative Code.

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

ORC 5104.013

ORC 5104.017

ORC 5104.018

ORC 5104.019

ORC 5104.025

ORC 5104.041

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)?

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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, through materials submitted to address noncompliance issues; and through any complaints received by ODJFS. Stakeholders also provide continuous input into the regulation and the effort 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

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

Family Child Care Ad hoc Workgroup – comprised of Type A Home Providers, Type B Home Providers, County Department of Job and Family Services and AFSCME Local Council 8 (Note: AFSCME Local Council 8 represented the family child care providers while the ad hoc workgroup was convened in spring 2013)

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 ODJFS clearance process. On December 2, 2015 through December 30, 2015, the ODJFS made the proposed family child care licensing rules and forms available for public comment and received 37 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 10 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 5101.017 and 5101.018.

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.

County agency licensing specialists utilize a software system to inspect licensed family child care homes and providers. ODJFS help desk staff provides support and assistance to licensed child care providers and families 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:

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a. Identify the scope of the impacted business community;

There are upwards of 3,516 licensed family child care providers in Ohio.

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

New costs associated with these rules include the application fee and change of location fee for Type B Home Providers, phasing out of 15-passenger vans for Type B Home Providers, training for Type A Home Providers who previously were not required to have specific training and creation of the disaster plan. 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 and change of location fees for Type A Home Providers, training costs, 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 existing requirements and accompanying estimated costs to licensed child care homes.

5101:2-13-02 – A license fee is a charge of \$250.00 and amendments to a license costs \$125.00. Time involved in completing the online application and JFS 01250, actual amount cannot be estimated because costs will vary from provider to provider depending on their business model.

5101:2-13-03 – There will be costs associated with the provider having to provide written materials to address noncompliances as well as completing the JFS 01155 for appealing a noncompliance, if applicable.

5101:2-13-04 – Building approvals from the Ohio department of commerce or from the local certified building department is required for Type A Providers. 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 for Type A Providers. Local fire departments or the state fire marshal provide these at costs ranging from \$0.00 up to \$100.00. Type B Providers are required to follow basic fire safety measures which may have potential costs such as a fire extinguisher.

5101:2-13-05 – If a provider's license is suspended, the center must provide written notification to all parents. There will be time and costs associated with this process.

5101:2-13-06 – All provisional licensed family child care providers must comply with all of the Chapter 5101:2-13 requirements. The costs associated with these requirements are detailed in the other rules in this chapter.

5101:2-13-07 – The actual amount cannot be estimated because costs will vary from provider to provider depending on their business model. There will be costs associated with the provider time to fill out forms, create policies and procedures and attend required orientation and trainings.

5101:2-13-08 – The actual amount cannot be estimated because costs will vary from provider to provider depending on their business model. There will be costs associated with child care staff members attending the required orientation training.

5101:2-13-09 – Licensed family child care providers are required to submit fingerprints for themselves, adult residents of the home and 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 people in the home and staff a provider employs.

5101:2-13-10 – Family child care providers 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 provider employs.

5101:2-13-11 – Family child care providers are required to have a home with adequate space that will determine the number of children that can be served. The cost will vary depending on the location of the home and if it is purchased or rented.

5101:2-13-12 – Family child care providers are required to have age-appropriate equipment available. The cost will vary depending on the amount and type of products used. Providers are required to have carbon monoxide detectors on-site. The costs for these detectors can range from \$25.00 and up.

5101:2-13-13 – Licensed family child care providers 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. Providers are required to have liquid soap, maintain individually assigned towels or disposable towels and have disposable gloves, cleaning, sanitizing and disinfectant products. Providers are required to keep their environment smoke free while children are present.

5101:2-13-14 – Requirements for the type of vehicles used is not being changed for Type A Homes. Beginning in 2020, Type B Providers will no longer be permitted to

transport children in 15-passenger vehicles. There is no fee to do the new driver training, there is time involved as the training must be repeated yearly.

5101:2-13-15 – Family child care providers are required to maintain child files. There are no new costs associated with this requirement, costs vary depending on the number of children enrolled.

5101:2-13-16 – Licensed family child care providers 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 provider.

5101:2-13-17 – Family child care providers 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 provider.

5101:2-13-18 – Family child care providers 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 with the provider.

5101:2-13-19 – Family child care providers will need appropriate staff for supervision. The costs will vary depending on the number of staff and children enrolled with the provider.

5101:2-13-20 – Family child care providers are required to obtain and maintain beds, couches, cots or mats for children who sleep or nap in their homes. Costs range from \$12.00 to \$600.00 depending on the type of sleeping surface purchased. Licensed family child care providers 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.

5101:2-13-21 – Family child care providers are required to provide bedding if overnight care is provided. The costs will vary depending on the number of children served and what the provider provides for care compared to what the parent provides.

5101:2-13-22 – Family child care providers may provide meals and snacks according to their policies or parents may provide the meals or snacks. Family child care

providers 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.

5101:2-13-23 – Family child care providers 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 provider purchases when not provided by the parent.

5101:2-13-24 – Family child care providers are required to have a barrier on and around the pool if a pool is onsite. The cost will vary depending on the type of barrier used. Barriers permitted may be a fence or an approved cover.

5101:2-13-25 – Family child care providers may administer medication, providers may incur costs completing the JFS 01217 and ensuring that a medical professional has completed it when needed. Costs vary depending on the provider's 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 type A providers and type B providers (who provide publicly funded child care) 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 family child care providers 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/>