

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Job and Family Services

Regulation/Package Title: OFA: PFCC Rules FYR and Re-numbering

Rule Number(s): 5101:2-16-42 (R); 5101:2-16-43 (R); 5101:2-16-44 (R); 5101:2-16-71 (R); 5101:2-16-72 (R); 5101:2-16-09 (N); 5101:2-16-11 (N); 5101:2-16-12 (N)

Date: 06/03/2019

**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☒ Rescinded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.

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

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**Rescinded Rules:**

5101:2-16-42 "Payment rates for children with special needs" outlines the requirements for requesting an increased or differentiated payment rate for child care providers who provide publicly funded child care for children with special needs. This rule is being rescinded and replaced with a new rule, 5101:2-16-09.

5101:2-16-43 "Approval for Ohio department of education (ODE) programs to provide publicly funded child care" outlines the process for ODE providers to follow prior to entering into a provider agreement with the Ohio department of job and family services (ODJFS) to provide publicly funded child care services. This rule is being rescinded and is being replaced with a new rule, 5101:2-16-09.

5101:2-16-44 "Provider agreement for payment of publicly funded child care" contains the requirements for a provider agreement for providers who want to participate in publicly funded child care. This rule is being rescinded and is being replaced with a new rule, 5101:2-16-09.

5101:2-16-71 "Provider improper payments or misuse of publicly funded child care" defines a provider improper payment, misuse and fraud and outlines the process for recoupment of funds. This rule is being rescinded and is being replaced with a new rule, 5101:2-16-11.

5101:2-16-72 "Publicly funded child care program integrity review" outlines the requirements to participate in record reviews conducted by ODJFS as part of the program integrity process. This rule is being rescinded and replaced with a new rule, 5101:2-16-12.

**New Rules:**

5101:2-16-09 "Provider responsibilities for publicly funded child care" replaces rescinded rules 5101:2-16-42, 5101:2-16-43, and 5101:2-16-44 and outlines the requirements for eligible providers to sign a provider agreement with ODJFS to provide publicly funded child care.

5101:2-16-11 "Provider improper payments or misuse of publicly funded child care benefits" replaces rescinded rule 5101:2-16-71 and defines a provider improper payment, misuse and fraud and outlines the process for recoupment of funds.

5101:2-16-12 "Publicly funded child care program integrity review" replaces rescinded rule 5101:2-16-72 and outlines the requirements to participate in record reviews conducted by ODJFS as part of the program integrity process.

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

5101:2-16-42 – 5104.30

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5101:2-16-43 – 5104.30, 5104.38

5101:2-16-44 – 5104.30, 5104.38

5101:2-16-71 – 5104.38

5101:2-16-72 – 5104.38

**New Rules:**

5101:2-16-09 – 5104.30, 5104.38

5101:2-16-11 – 5104.38

5101:2-16-12 – 5104.38

- 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.*

These rules, in part, set forth the requirements for a child care provider entering into a provider agreement with ODJFS, to provide publicly funded child care under the federal Child Care Development Fund.

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

These rules 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)?**

The public purpose of the language in these rules is to allow eligible child care providers to request and receive payment for care provided to children who are eligible for publicly funded child care and to allow ODJFS to recoup funds when improper payments are made for publicly funded child care.

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

ODJFS will measure the success of these rules by reviewing the number of eligible providers who provide and receive reimbursement for publicly funded child care and to compare those payments to the number of recoupments of improper payments.

**Development of the Regulation**

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

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

The child care advisory council (CCAC) policy subcommittee reviewed the proposed changes on February 21, 2019. The rules were in Clearance from April 9, 2019 through April 30, 2019. Comments submitted during Clearance were reviewed and changes were made based on the feedback.

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

The CCAC subcommittee had many comments on the options for children with special needs. As a result, clarification was added to rule 5101:2-16-09 as well as to the family eligibility rules.

**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?**

No alternative regulations were used.

**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.***

Performance-based regulations were not considered because these rules were developed to comply with Federal Regulations and Revised Code.

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

Rules are reviewed by ODJFS Office of Legal Services. 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 child care technical assistance staff and help desk staff will provide support and consultation to county agency staff and child care providers via phone calls and emails. ODJFS also maintains an eManual for child care which is located at:  
<http://emanuals.odjfs.state.oh.us/emanuals/>.

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Email updates from ODJFS can be received by registering 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;**

Providers participating in the publicly funded child care program.

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

Non-compliance may result in loss of an agreement to provide publicly funded child care services and/or the requirement to pay back improper payments.

**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.*

Rule 5101:2-16-09 – Child care providers who wish to provide publicly funded child care must complete a provider agreement and for those providers not licensed by ODJFS, the provider must request approval to be eligible to sign a provider agreement.

- Based on the preparedness of the child care provider, the on-line provider agreement takes about forty-five minutes to complete.
- A border state provider must complete an online form and upload the required documents. Depending on the preparedness of the program, this should take approximately one hour to complete.
- An ODE program needs approximately one hour to complete the JFS 01140.
- To request approval for the enhanced rate for a child with special needs, a child care provider must submit the JFS 01231. The JFS 01231 takes approximately one hour to complete.

Rule 5101:2-16-11 – A child care provider may request a review if a provider improper payment has been notified. A written appeal takes about 30 minutes to complete.

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Rule 5101:2-16-12 - Child care providers must maintain child care records on-site. The amount of time required for record keeping is dependent upon the number of children enrolled with the program.

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

Any adverse impact these rules may impose are necessary to meet the requirements of sections 5101.30 and 5104.38 of Ohio Revised Code and further ensure the integrity of the publicly funded child care program. ODJFS must ensure proper expenditure of federal funds.

**Regulatory Flexibility**

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

These rules do not provide an exemption or alternate means of compliance for small businesses.

**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.

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

ODJFS provides technical assistance through technical assistance staff, TA documents, emails, RSS feeds, the eManual, and a Help Desk.

ODJFS provides the following:

Child Care Help Desk

[childcarepolicy@jfs.ohio.gov](mailto:childcarepolicy@jfs.ohio.gov)

1-877-302-2347

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

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