



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Department of Job and Family Services

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Child Care Center Licensing

Rule Number(s): 5101:2-12-05 and 5101:2-12-07

Date of Submission for CSI Review: \_\_\_\_\_

Public Comment Period End Date: \_\_\_\_\_

Rule Type/Number of Rules:

New/\_\_\_ rules

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

Amended/ 2 rules (FYR? N)

Rescinded/\_\_\_ rules (FYR?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.*

5101:2-12-05 "Denial, revocation and suspension of a licensed child care center application or license" outlines the parameters for denying an application and suspending or revoking a child care center license. The rule is being amended with the following changes to implement the Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly:

- Add that if an in-home aide certification is revoked, the applicant may not be granted a child care center license until five years have elapsed from the date of the revocation
- To amend the standards and procedures for the suspension of licenses

5101:2-12-07 "Administrator responsibilities, requirements and qualifications for a licensed child care center" outlines the education and responsibilities to become an administrator in a licensed child care center. The rule is being amended to implement the Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly to add that the administrator shall ensure the center does not discriminate in the enrollment of children upon the basis of race, color, religion, sex, disability, or national origin.

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- 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.**

5101:12-12-05: 5104.015 and 5104.042

5101:2-12-07: 5104.015 and 5104.016

- 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.*

Not applicable.

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

Not Applicable.

- 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)?**

5101:2-12-05: These changes allow ODJFS to suspend the license of any program that does not follow the federal and state background check requirements. Additionally, this allows that if the certificate of an in-home aide is revoked, that individual cannot open a center or family child care program. These changes are being promulgated to comply with the statutory requirements of Sections 5104.03, 5104.042 as revised by Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly.

5101:2-12-07: These changes require administrators to ensure that the center does not discriminate in the enrollment of children upon the basis of race, color, religion, sex, disability, or national origin. This is promulgated to comply with the statutory requirements of Sections 5104.09 as revised by Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly.

- 7. 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.

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- 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.*

Not applicable.

### **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.*

The policy subcommittee of the Child Care Advisory Council met to review these proposed changes on Thursday, August 15, 2019.

The rules are available for the public clearance process. Clearance began 08/13/2019 and will conclude 08/27/2019.

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

Anything identified during clearance will be incorporated as necessary prior to original filing the rules. As of 08/16/2019, no comments related to this package have been received through the clearance process.

No changes to the rules were identified and requested by the subcommittee.

- 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?**

Not applicable.

- 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?**

These changes are being promulgated to comply with the statutory requirements of Sections 5104.03, 5104.042 and 5104.09 as revised by Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly.

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**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.*

No, these changes are being promulgated to comply with the statutory requirements of Sections 5104.03, 5104.042 and 5104.09 as revised by Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly.

**14. 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 to ensure there is no duplication of our agency or other agency rules

**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.**

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 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**

**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**

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

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

If an applicant or child care center does not comply with the requirements of these rules, their application will be denied, or an existing license revoked. The adverse impact would include the loss of income for noncompliance of the requirements of these rules.

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**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 cost of lost income would be dependent on the business model of each child care center.

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

These changes are being promulgated to comply with the statutory requirements of Sections 5104.03, 5104.042 and 5104.09 as revised by Am. Sub. HB 166 of the 133<sup>rd</sup> General Assembly. The requirements for licensure ensure the safety and well-being of children in care.

**Regulatory Flexibility**

**18. 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.

**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 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](mailto:CHILDCAREPOLICY@jfs.ohio.gov)**

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1-877-302-2347 option 4

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

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

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