



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: 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):

Step Up To Quality (SUTQ) Date Change

Rule Number(s): 5101:2-16-09

Date of Submission for CSI Review: 4/13/2020

Public Comment Period End Date: 4/21/2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___X___ 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Rescinded/___ rules (FYR?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.**

Rule 5101:2-16-09 "Provider responsibilities for publicly funded child care" is being proposed for amendment to update the date from July 1, 2020 to September 1, 2020 for when a provider who operates a licensed child care program providing publicly funded child care services must be rated through the SUTQ program.

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.**

ORC 5104.30, 5104.38

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?**

This rule, in part, sets forth the requirements for a child care provider to provide publicly

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funded child care under the federal Child Care Development Fund.

- 5. 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.

- 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)?**

The public purpose of the language in this rule is to describe a publicly funded child care provider's responsibilities including being rated through the state's Step Up To Quality program.

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

The Ohio Department of Job and Family Services is ensuring that providers of publicly funded child care services are rated through the SUTQ program through reporting, system tracking, and licensing specialist teams.

- 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?**

Not applicable. This is verbatim from Ohio legislative law.

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 Child Care Advisory Council (CCAC) consists of twenty-two voting members appointed by the director of Ohio Department of Job and Family Services as prescribed in section 5104.08 of the Ohio Revised Code.

The CCAC policy subcommittee reviewed the proposed changes on April 13, 2020. The rules were in Clearance from April 10, 2020 through April 24, 2020.

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

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No additional input was received from stakeholders.

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?

This rule was promulgated to comply with the statutory requirements of ORC 5104.31; therefore, alternative regulations were determined to be inappropriate.

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. The concept of performance-based regulations were determined to be ill-suited for rules in this context.

14. 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.

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 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/>.

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/>.

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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**
Providers participating in the publicly funded child care program.
- b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
Non-compliance may result in loss of an agreement to provide publicly funded child care services.
- 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 – The rule increases expenses for child care providers who are required to be rated to continue receipt of publicly funded child care funds to comply with step up to quality rating requirements. The amount of any increase in cost depends on individual program business practices. However, the rule also provides for a corresponding increase in reimbursement rate for providers as they join the program and continue to increase their rating within the program. The proposed changes to the rule would have no impact on provider costs or expenses.

17. 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 section 5104.31.

Regulatory Flexibility

18. 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.

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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?

This is not applicable.

20. 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

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>