



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:

Michael Lynch 614-466-8376 Michael.Lynch@jfs.ohio.gov

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

OFA: 2021 Child Care Pandemic Rules

Rule Number(s): 5101:2-12-02.2, 5101:2-12-02.3, 5101:2-13-02.2, 5101:2-14-02.2

Date of Submission for CSI Review: 12/18/2020

Public Comment Period End Date: 12/25/2020

Rule Type/Number of Rules:

New/ 4 rules

Amended/ rules (FYR? No)

No Change/ rules (FYR?)

Rescinded/ rules (FYR?)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.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

5101:2-12-02.2 “Transitional Pandemic Requirements for a Licensed Child Care Center” outlines specific transitional pandemic procedures and gives guidance on when they should be followed. Licensed child care centers are to follow all of the licensing requirements of Chapter 5101:2-12. The center is to follow updated handwashing procedures for employees, staff, and children. The center may use non-permanent sinks to meet the handwashing requirements of this chapter. The center is to also assess for the COVID-19 symptoms listed in appendix A to the rule and follow all isolation or quarantine protocols. Isolation or quarantine protocols will be completed in coordination with the local health department or in compliance with the Ohio department of health (ODH) and United States centers for disease control and prevention (CDC) guidelines. The center will ensure that all administrators, child care center staff members, employees, and school-age children wear a face covering that covers the individual’s nose and mouth while indoors, unless not medically or developmentally appropriate. The center will report all COVID-positive tests to their local public health department and to ODJFS. There are new procedures if the center needs to divide a room into smaller spaces to serve multiple groups of children. The transitional pandemic rule is valid until the governor of Ohio rescinds the state of emergency and or directs ODJFS to return to full child care licensing requirements.

5101:2-12-02.3 “Temporary Pandemic School-Age Child Care Centers” outlines a newly created license for programs serving school-age children. Temporary pandemic school-age child care centers will follow all of the licensing requirements of Chapter 5101:2-12 with the exceptions and additions detailed in new rule. The center will follow all application requirements in rule 5101:2-12-02 of the Administrative Code with a separate timeline for administrator qualifications documentation requirements and food service documentation requirements. There is no registration fee and change of location fee for these program types. Additionally, the Ohio School-Age Administrator Professional Endorsement is an available qualification for temporary

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

pandemic school-age child care center administrators. The center will follow inspection requirements for temporary pandemic school-age child care centers and will not provide weekend, evening or overnight care. The center may provide transportation pursuant to rule 5101:2-12-14 of the Administrative Code to and from the children's homes, the children's school, or to and from another licensed child care program. This includes walking with the children. Children in care at the temporary pandemic school-age child care center are not permitted to go on field trips, routine trips, or participate in swimming or water activities. Programs without on-site outdoor space are permitted to walk to the approved off-site outdoor play space. The temporary pandemic school-age child care center license is valid until the governor of Ohio rescinds the state of emergency or June 30, 2021, whichever occurs first. If the executive order is rescinded by the governor of Ohio before June 30, 2021, the center may choose to voluntarily close or apply for a child care license.

5101:2-13-02.2 “Transitional Pandemic Requirements for a Licensed Family Child Care Provider” outlines specific transitional pandemic procedures and gives guidance on when they should be followed. Licensed family child care providers are to follow all of the licensing requirements of Chapter 5101:2-13, in addition to exceptions and additions detailed in the new rule. The provider is to follow updated handwashing procedures for employees, staff, residents, and children. The provider may use non-permanent sinks to meet the handwashing requirements of this chapter. The provider is to also assess for the COVID-19 symptoms listed in appendix A to the rule and follow all isolation or quarantine protocols. Isolation or quarantine protocols will be completed in coordination with the local health department or in compliance with the Ohio department of health (ODH) and United States centers for disease control and prevention (CDC) guidelines. The family child care provider will ensure that all child care staff members, employees, residents and school-age children wear a face covering that covers the individual’s nose and mouth while indoors, unless not medically or developmentally appropriate. In addition, the provider will report all COVID-positive tests to their local public health department and to ODJFS. The transitional pandemic rule is valid until the governor of Ohio rescinds the state of emergency and or directs ODJFS to return to full family child care licensing requirements.

5101:2-14-02.2 “Transitional Pandemic Requirements for a Certified In-Home Aide” outlines specific transitional pandemic procedures and gives guidance on when they should be followed. Certified In-Home Aides (IHA) are to follow all of the certification requirements of Chapter 5101:2-14, in addition to exceptions and additions detailed in the new rule. The IHA is to follow updated handwashing procedures, and ensure children follow handwashing procedures. The IHA is to assess themselves for the COVID-19 symptoms listed in appendix A to the rule prior to going to the child’s home. The IHA will ensure children and residents of the home are assessed for the COVID-19 symptoms listed in appendix A to the rule and follow all isolation or quarantine protocols. Isolation or quarantine protocols will be completed in coordination with the local health department or in compliance with the Ohio department of health (ODH) and United States centers for disease control and prevention (CDC) guidelines. The IHA will wear a face covering that covers their nose and mouth while indoors, unless not medically appropriate. In addition, the IHA will report all COVID-positive tests to their local public health department and

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

to ODJFS. The transitional pandemic rule is valid until the governor of Ohio rescinds the state of emergency and or directs ODJFS to return to full certified in-home aide requirements.

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.

5101:2-12-02.2 - 5104.015, 5104.016, 5104.032, 5104.05

5101:2-12-02.3 - 5104.015, 5104.016, 5104.03, 5104.05

5101:2-13-02.2 - 5104.017, 5104.018

5101:2-14-02.2 - 5104.019

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.

No, these rules do not implement a federal requirement.

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

These regulations 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)?

These rules, promulgated pursuant to the requirements of the Ohio Revised Code, establish operating, health and safety guidelines during the COVID-19 pandemic for licensed child care centers, temporary pandemic school-age child care centers, in-home aides, and family child care homes. The rules establish a new temporary pandemic license for centers serving school-age children only.

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 non-compliances. Stakeholders also provide continuous input into the regulation and their ability to comply with the rules.

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 council will review these rules on 12/22/2020.

These rules are also available for the public clearance period from 12/17/2020 through 12/31/2020.

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

Any comments received from CCAC and during the public Clearance period will be taken into consideration prior to original filing the rules.

- 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 rules were promulgated to comply with the statutory requirements of ORC 5104.; 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 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 and family child care homes. ODJFS help desk staff provides support and assistance to licensed child

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 4,168 licensed child care centers, approximately 20 licensed temporary pandemic school-age programs, 235 Type A, and 3202 Type B family child care providers, and approximately 20 certified in-home aides throughout Ohio.

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

The costs associated with these rules can vary based on the cost of the handwashing materials, the time necessary to report information to ODJFS and the local health department, and the costs for a divider if the provider chooses to use one.

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 costs of a provider to comply with the requirements of the rules can vary greatly based on a number of factors and variables, including, but not limited to facility or home size, business model, number of children enrolled in the program as well as the impact of COVID-19 on the child care staff and enrolled children.

17. 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, temporary pandemic school-age child care centers, in-home aides, and family child care homes to be regulated. Additionally, the COVID-19 pandemic has required child care program to adjust to reduce the impact of the pandemic.

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, temporary pandemic school-age child care centers, in-home aides, and family child care homes are mandated by the Ohio Revised Code.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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
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/>