



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Developmental Disabilities

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

Developmental Specialist Certification

Rule Number(s): 5123:2-5-05 (Rescind) and 5123-10-05 (New)

Date of Submission for CSI Review: November 20, 2020

Public Comment Period End Date: December 18, 2020

Rule Type/Number of Rules:

☒ New/ 1 rule

☐ Amended/ ____ rules (FYR? ____)

☐ No Change/ ____ rules (FYR? ____)

☒ Rescinded/ 1 rule (FYR? Yes)

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 determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

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**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.

Rule 5123:2-5-05 (Early Intervention Services Certification Standards) establishes minimum qualifications through certification standards for staff employed as Developmental Specialists or early intervention supervisors. Rule 5123:2-5-05 is due for five-year review. The Department engaged Early Intervention stakeholders to comprehensively review the rule and make recommendations to the Department. As a result, the Department is rescinding rule 5123:2-5-05 and adopting replacement rule 5123-10-05 (Early Intervention Program - Developmental Specialist Certification). A Developmental Specialist is a professional trained to develop and implement strategies and interventions for infants or toddlers with developmental delay and disabilities birth through age two and their families.

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.

5123.04, 5123.0421, 5123.081, 5126.25

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.

Yes; in accordance with 34 C.F.R. 303.31, a state must establish certification, licensing, registration, or other comparable requirements for qualified personnel who provide evaluations, assessments, and Early Intervention services.

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

Not applicable; the rule does not exceed the federal requirement.

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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 Department is the designated lead agency for Ohio's Early Intervention program. As the lead agency, the Department has sole responsibility for promulgating rules and policies governing the program. The rule is required for Ohio to participate in the Early Intervention program in accordance with Part C of the Individuals with Disabilities Education Act. In accordance with 34 C.F.R. 303.31, a state must establish certification, licensing, registration, or other comparable requirements for qualified personnel who provide evaluations, assessments, and Early Intervention services. This rule ensures that Developmental Specialists have the necessary education, training, and experience to work with and improve outcomes for infants and toddlers with disabilities.

Additionally, Section 5126.25 of the Revised Code requires the Director of the Department to adopt rules establishing uniform standards and procedures for the certification and registration of persons who are seeking employment with or employed by a county board of developmental disabilities or an entity that contracts with a county board of developmental disabilities to operate programs and services for individuals with developmental disabilities.

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

The Department measures the success of the rule in terms of the health and welfare of infants and toddlers birth through age two and their families who benefit from strategies and interventions developed and implemented by qualified and competent Developmental Specialists.

The Department annually measures the quality of Individualized Family Service Plan outcomes as well as child and family well-being through:

- Family Outcomes (families understand their children's strengths, abilities, and special needs; families know their rights and advocate effectively for their children; families help their children develop and learn; families have support systems; families are able to gain access to desired services, programs, and activities in their community).
- Child Outcomes (children have positive social relationships; children acquire and use knowledge and skills; children take appropriate action to meet their needs).

Ohio's Developmental Specialists provide direct services to more families in Ohio than any other provider type. Child and family outcomes are directly related to the quality of services provided by this professional.

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.

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No.

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.

In August 2019, the Department convened the Developmental Specialist Rule Workgroup to comprehensively review rule 5123:2-5-05. The diverse group included Developmental Specialists, parents of infants and toddlers who received Early Intervention services, Early Intervention policy makers, higher education and professional development partners, and the Ohio Association of County Boards Serving People with Developmental Disabilities. The following persons participated in the Workgroup:

- Beth Amato, Delaware County Board of Developmental Disabilities
- Julie Anthony, Madison County Board of Developmental Disabilities
- Kelly Brooks, Warren County Board of Developmental Disabilities
- Rebekah Doak, Warren County Board of Developmental Disabilities
- Maggie Gons, Ohio Center for Autism and Low Incidence
- Kathy Greenawalt-Cherry, Miami County Board of Developmental Disabilities
- Sanna Harjusola-Webb, Kent State University
- Susan Jones, Ohio Association of County Boards Serving People with Developmental Disabilities
- Alleiah Keeley, Ohio Division for Early Childhood of the Council for Exceptional Children
- Jennifer Kinney, Erie County Board of Developmental Disabilities
- Erin Lucas, Zero to Three
- Ashley Lyons, Kent State University
- Laura Maddox, Ohio Center for Autism and Low Incidence
- Taylor Ording, Miami County Board of Developmental Disabilities
- Tina Overturf, Delaware County Board of Developmental Disabilities
- Beth Popich, Ohio Association of County Boards Serving People with Developmental Disabilities
- Erin Simmons, Early Intervention Advisory Council, Parent Representative
- Kim Travers, Kent State University
- Holly Weatherson, Belmont/Harrison/Noble County Boards of Developmental Disabilities
- Lori Wells, Belmont County Board of Developmental Disabilities
- Dena Woolum, Delaware County Board of Developmental Disabilities

The Workgroup met eight times in 2019 (August 5, August 29, September 5, September 25, October 7, October 23, November 4, and November 18) and three times in 2020 (January 13,

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September 2, and September 24).

On December 5, 2019, a panel of Early Intervention leaders discussed planned changes to the rule at the annual convention of the Ohio Association of County Boards Serving People with Developmental Disabilities.

On October 16, 2020, the draft rule was shared with Workgroup members in advance of clearance.

On November 19, 2020, an update on the rule was provided at the annual convention of the Ohio Association of County Boards Serving People with Developmental Disabilities.

Through the Department's rules clearance process, the rule will be disseminated to representatives of the following organizations for review and comment:

- Advocacy and Protective Services, Inc.
- The Arc of Ohio
- Autism Society of Central Ohio
- Councils of Governments
- Disability Rights Ohio
- Down Syndrome Association of Central Ohio
- Early Intervention Advisory Council and Stakeholder Group
- Early Intervention Biweekly Program Updates Recipient List
- Family Advisory Council
- The League
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Council on Home Care and Hospice
- Ohio Department of Medicaid
- Ohio Developmental Disabilities Council
- Ohio Health Care Association/Ohio Centers for Intellectual Disabilities
- Ohio Provider Resource Association
- Ohio Self Determination Association
- Ohio SIBS (Special Initiatives by Brothers and Sisters)
- Ohio Superintendents of County Boards of Developmental Disabilities
- Ohio Waiver Network
- People First of Ohio
- Values and Faith Alliance

The rules and the Business Impact Analysis form will be posted at the Department's website during the clearance period for feedback from the general public:

<https://dodd.ohio.gov/wps/portal/gov/dodd/forms-and-rules/rules-under-development/2-proposed-rules-for-review-and-comment>

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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The Department incorporated suggestions from members of the Developmental Specialist Rule Workgroup regarding:

- The scope of work for Developmental Specialists;
- Mechanisms to ensure qualified personnel while maintaining flexibility in hiring with the one-year certification (e.g., requiring evidence-based practice coaching for newly-hired Developmental Specialists who do not yet qualify for five-year certification);
- Minimum requirements for the Developmental Specialist orientation modules;
- Incentives for experienced Developmental Specialists to serve as evidence-based practice coaches;
- Timelines for Developmental Specialists to meet new training requirements; and
- Requirements for professional development.

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?

The Developmental Specialist certification requirements build upon requirements of the federal regulations for delivery of "special education" and scientific research related to how the development of infants and toddlers with delays and disabilities is best supported. Evidence-based practices related to Early Intervention services, family engagement, coaching, and personnel development, as well as practices recommended by the Division of Early Childhood (see especially *The Role of Special Instruction in Early Intervention*) may be found at the Early Childhood Technical Assistance Center (ectacenter.org). The Center is a program of the Frank Porter Graham Child Development Institute and is funded through the U.S. Department of Education's Office of Special Education Programs. It serves as a clearinghouse for resources and evidence for all special education related topics, including Early Intervention. Department staff and stakeholders accessed these resources to consider minimum requirements, scope of work standards, and coaching parameters.

A great deal of research has been conducted regarding professional development of Early Intervention service providers. See for example:

- Reforming Personnel Preparation in Early Intervention: Issues, Models, and Practical Strategies (Winton, P.J., McCollum, J.A., and Catlett, C.) and
- Personnel Standards in Early Childhood Special Education (Division of Early Childhood of the Council of Exceptional Children).

These and other resources informed the requirements and definitions incorporated into the rule and a request for proposal for development of training in evidence-based practice coaching (ultimately developed by The Ohio State University's Nisonger Center).

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?

The Department considered continuing to certify Early Intervention Supervisors but determined that doing so would necessitate requiring additional training and skills related to

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supervision of Developmental Specialists. Instead, the certification standards for Early Intervention Supervisors was eliminated as this position is not required under the federal regulations and stakeholders did not support imposing additional requirements.

The Department considered maintaining the same requirements for one-year Developmental Specialist certification as set forth in currently effective rule 5123:2-5-05, but stakeholders, including parents, agree that this standard is too lenient; new rule 5123-10-05 continues to allow an entity, including a county board of developmental disabilities, to hire a person who does not yet meet the requirements for five-year certification, but that person must now meet those requirements within two years rather than five years, and must receive evidence-based practice coaching from a trained Developmental Specialist who holds five-year certification.

While there was interest from stakeholders in requiring Developmental Specialists with one-year certification to complete the new *Principles of Special Instruction* training prior to obtaining initial five-year certification, the Department ultimately determined to make this requirement consistent for all Developmental Specialists by instead requiring completion of the training for renewal of five-year certification.

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 federal Individuals with Disabilities Education Act, which requires a state to utilize "certification, licensing, registration, or other comparable requirements" for personnel working in Early Intervention, is inconsistent with a performance-based regulation. A new track was added, however, for persons to obtain five-year Developmental Specialist certification. The track described in paragraph (C)(2)(b)(iii) of rule 5123-10-05 is intended for persons who have relocated to Ohio and who met federal requirements for the provision of special instruction in another state.

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

The Department is the designated lead agency for Ohio's Early Intervention program. As the lead agency, the Department has sole responsibility for promulgating rules and policies governing the program. Indeed, it is precisely because comparable regulation does not exist that the Department must establish this certification.

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.

Existing certifications issued pursuant to rule 5123:2-5-05 will remain in place until they expire.

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Department staff are developing forms and templates for use by the field to meet the new evidence-based practice coaching requirements and will review all applications to ensure the requirements are met.

Persons holding five-year certification have until their next scheduled renewal to complete new training requirements.

The Department will distribute information about the rule via the Department's Early Intervention website, publications, written guidance, and live chats or webinars to ensure that certified Developmental Specialists are aware of the new rule and the process for obtaining renewal certification. Department staff charged with implementing the new rule have been involved throughout the rule development process.

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

The rule governs persons seeking and holding Developmental Specialist certification. Approximately 654 persons currently hold Developmental Specialist Certification:

- 104 persons hold one-year certification.
- 550 persons hold five-year certification.

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

The adverse impact of replacement rule 5123-10-05 is similar to the adverse impact of existing rule 5123:2-5-05 and includes:

- The time it takes for a person seeking Developmental Specialist certification to complete required college courses or seminars and training.
- The fees associated with completing college courses or seminars.
- The time it takes an applicant to gather and submit information and documents to the Department and complete the application process.
- The time it takes for persons holding five-year Developmental Specialist certification to complete professional development.
- Potential for having one's Developmental Specialist certification denied, suspended, or revoked for good cause.

Rule 5123-10-05 includes a new requirement for an employer of Developmental Specialists to provide evidence-based practice coaching to newly employed Developmental Specialists who do not yet qualify for five-year certification. The employer may incur costs associated with arranging for qualified Evidence-Based Practice Coaches.

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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.

To work as a Developmental Specialist, a person must obtain and maintain certification in accordance with the rule. There is no fee for the certification, however obtaining and maintaining a certification requires successful completion of college courses or seminars, training, and professional development. Persons wanting to assume these roles do so freely.

Department staff estimate that applying for initial Developmental Specialist certification takes an applicant two to four hours to gather and submit information and documents. Applying for renewal certification is expected to take less time as applicants are familiar with the process.

The cost associated with completing college courses or seminars required for initial five-year Developmental Specialist certification varies. Department-approved 30-hour seminars are a less costly alternative to college courses and all six are available for as little as \$50 each.

Persons holding Developmental Specialist certification are required to complete web-based training which is provided by the Department free of charge:

- Developmental Specialist Orientation Modules (approximately one hour each for a total of 10 hours required prior to obtaining certification); and
- Principles of Special Instruction (15 to 20 hours required prior to renewing five-year certification).

Persons holding five-year Developmental Specialist certification are required to complete professional development to renew certification. Professional development is available free of charge from the Department and other sources.

Persons holding five-year Developmental Specialist certification who choose to serve as Evidence-Based Practice Coaches are required to complete web-based training in Evidence-Based Practice Coaching (4 hours) which will be provided by the Department free of charge.

The impact of having one's Developmental Specialist certification denied, suspended, or revoked would vary based on multiple factors which are unique to the certification holder's situation.

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An employer that chooses to hire Developmental Specialists who do not yet qualify for five-year certification must provide the new hires with evidence-based practice coaching. There may be associated costs that will vary based on multiple factors such as:

- Whether the employer employs staff who hold five-year certification and are eligible to serve as Evidence-Based Practice Coaches or must arrange for evidence-based practice coaching through another means;
- Whether staff who hold five-year certification have already completed the Department-provided training for evidence-based practice coaches; and
- The wages paid to Developmental Specialists.

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

As the lead agency charged with implementation of Part C of the Individuals with Disabilities Education Act, in accordance with 34 C.F.R. 303.31, the Department must establish certification, licensing, registration, or other comparable requirements for qualified personnel who provide evaluations, assessments, and Early Intervention services.

A Developmental Specialist is the professional trained to provide special instruction as part of an individualized family service plan team. This interventionist provides expertise in:

- Infant and toddler development;
- Promoting an infant's or toddler's acquisition of functional skills across developmental areas, including cognitive processes and social interaction;
- Adapting a child's learning environment and activities;
- Developing individualized, evidence-based strategies which promote planned interactions and active participation of caregivers, children, materials, and the specific environment that leads to achieving individualized family service plan outcomes; and
- Providing parents, other family members, and caregivers with information, skills, and support related to enhancing a child's development.

Regulatory Flexibility

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

Yes. Permitting one-year Developmental Specialist certification described in paragraph (C)(1) is an alternative that enables an entity to employ a person who can begin performing Developmental Specialist duties with oversight from the employer and an evidence-based practice coach arranged by the employer while s/he completes requirements for five-year certification. Paragraph (C)(1) provides two alternative paths to obtain one-year Developmental Specialist certification. Paragraph (C)(2) provides three alternative paths to obtain five-year Developmental Specialist certification.

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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?

It is the policy of the Department to waive penalties for first-time or isolated paperwork or procedural regulatory noncompliance whenever appropriate. The Department believes the waiver of these penalties is appropriate when:

1. Failure to comply does not result in the misuse of state or federal funds;
2. The regulation being violated, or the penalty being implemented, is not a regulation or penalty required by state or federal law; and
3. The violation does not pose any actual or potential harm to public health or safety.

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

Department staff are available to provide technical assistance to applicants for and holders of Developmental Specialist certification and employers of Developmental Specialists.

Questions should be directed to provider.certification@dodd.ohio.gov.