



## Common Sense Initiative

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

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### 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):

OFA: Child Care Center Licensing Rules FYR (1)

Rule Number(s): 5101:2-12-11, 5101:2-12-13, 5101:2-12-16, 5101:2-12-17, 5101:2-12-18,

5101:2-12-19, 5101:2-12-20, 5101:2-12-21, 5101:2-12-23, 5101:2-12-24

Date of Submission for CSI Review: 6/25/21

Public Comment Period End Date: 7/2/21

Rule Type/Number of Rules:

New/\_\_\_ rules

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

Amended/ 10 rules (FYR? Y)

Rescinded/\_\_\_ rules (FYR?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

5101:2-12-11 "Indoor and outdoor space requirements for a licensed child care center" outlines requirements for indoor and outdoor space in a licensed child care center. This rule is being amended with the following changes: clarified language about outdoor space, natural barriers, outdoor equipment, and fall zones; added that a playground on the premises that is regulated by another state agency is exempt from the on-site outdoor space fence and natural barrier requirements; and added that functionally linked play equipment may be used.

5101:2-12-13 "Sanitary equipment and environment for a licensed child care center" outlines the requirements for a licensed child care center to maintain sanitary equipment and a sanitary environment. This rule is being amended with the following changes: clarified language about storage of accumulated trash, handwashing sinks, and toothbrushing requirements; clarified cleaning and sanitizing descriptions and guidelines; and clarified handwashing procedures enacted during the COVID-19 pandemic for child care staff members, employees, and children.

5101:2-12-16 "Emergency and health-related plans for a licensed child care center" outlines medical, dental, first aid and communicable disease procedures, incidents and injuries and

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disaster planning for a licensed child care center. This rule is being amended with the following changes: clarified language about posting a weather alert plan, conducting emergency lockdown drills, posting of the JFS 08087 "Communicable Disease Chart," serious incidents and emergency transportation of a child. Also clarified language in appendices; added communicable disease reporting procedure and added annual written disaster plan training and documentation guidelines.

5101:2-12-17 "Programming and materials for a licensed child care center" outlines daily activities and materials for a licensed child care center. This rule is being amended to clarify language about provision of equipment, materials, and furnishings.

5101:2-12-18 "Group size and ratios for a licensed child care center" outlines the requirements for staff to child ratios and grouping in a licensed child care center. This rule is being amended with the following changes: clarified language about the attendance record requirement; and added guidelines surrounding transition agreement documentation and when preschool children may transition to the school-age group.

5101:2-12-19 "Supervision of children and child guidance for a licensed child care center" outlines the requirements for supervision of children and acceptable and unacceptable discipline for a licensed child care center. This rule is being amended with the following changes: added that child care staff members are to be familiar with the needs of each child and added that when a child is expelled from the center for behavioral reasons, the expulsion is to be submitted in the Ohio Child Licensing and Quality System (OCLQS).

5101:2-12-20 "Sleeping and napping requirements for a licensed child care center" outlines the requirements for the use of cribs, mats, cots and other sleep surfaces for a licensed child care center. This rule is being amended with the following changes: clarified that the JFS 01235 "Sleep Position Waiver Statement for Child Care" is valid for one year and corrected a rule reference.

5101:2-12-21 "Evening and overnight care for a licensed child care center" outlines the evening and overnight care guidelines for a licensed child care center. This rule is being amended to clarify that the center is to ensure that each child has a clean individual washcloth, towel, and toothbrush if the child has a bedtime routine occurring at the program.

5101:2-12-23 "Infant care and diaper care for a licensed child care center" outlines requirements when caring for infants in a licensed child care center. This rule is being amended to add that non-latex gloves are to be used if the center uses gloves while diapering.

5101:2-12-24 "Swimming and water safety requirements for a licensed child care center" outlines swimming and water activities requirements for a licensed child care center. This rule is being amended to clarify when the center is to have written permission from the parent.

- 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.**

Rule Number	Statutory Authority
5101:2-12-11	5104.016
5101:2-12-13	5104.015
5101:2-12-16	5104.015
5101:2-12-17	5104.015
5101:2-12-18	5104.016
5101:2-12-19	5104.016, 5104.015
5101:2-12-20	5104.015
5101:2-12-21	5104.015
5101:2-12-23	5104.015
5101:2-12-24	5104.015

- 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, Child Care and Development Fund (CCDF) rules require that all child care providers have background checks and that all publicly funded providers are inspected annually, meet training requirements, and are regulated on specific health and safety topics. In Ohio, licensing rules do not differentiate between publicly funded and non-publicly funded programs because the requirements benefit all children. The proposed regulations are being adopted to comply with the requirements of the Child Care and Development Block Grant Act of 2014.

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

The 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)?**

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These rules, promulgated pursuant to the requirements of the Ohio Revised Code, establish regulations for health, safety, supervision, and programming standards for licensed child care centers. These rules do not include any regulation that could inhibit small business in Ohio.

**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 centers 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.

**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. Members include for-profit and non-profit child care centers; parents; family child care home providers; county department of job and family services agencies staff; individual representatives of the teaching, child development, and health professions and other individuals interested in the welfare of children; and ex-officio members from other state agencies. The council reviewed these rules on January 12, 2021.

These rules were also available for the public clearance period from March 2, 2021 through March 16, 2021.

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

CCAC feedback was taken into consideration and implemented where appropriate. On March 2, 2021 through March 16, 2021, ODJFS made the proposed child care center licensing rules available for public comment and received five total comments from two individuals. Public comments were incorporated where appropriate after the ODJFS clearance process. Concerns were raised in relation to the serious incident reporting policy language. CCAC reviewed

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this part of the rule at two different rule review sessions to assist ODJFS in determining the most appropriate language.

**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.; 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. Rules were developed to implement state mandates under Ohio Revised Code 5104. Intended to increase the health, safety, and general well-being of children in child care.

**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 care centers, family child care providers and families regarding the provisions of the rules. Formal notification of the rules is provided to child care centers, family 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/>.

**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 of 3,892 licensed child care centers throughout Ohio.

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

There are no anticipated new costs as a result of this rule. Costs already in place include requirements for maintaining indoor and outdoor play equipment, cleaning and sanitizing products, materials for child activity and development, and employer time for completion of forms or documentation.

**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 following rules contain the existing requirements and accompanying estimated costs to licensed child care centers. Estimated costs were based on research conducted during the drafting of these rules.

5101:2-12-11 – Child care centers are required to obtain a location with adequate space that determines the number of children that can be served. The cost will vary depending on the location of the space that is purchased or leased as well as location (prices in Columbus, Ohio will be higher than in Fairfield County, for example).

5101:2-12-13 – Child care centers are required to use cleaning and sanitizing products and maintain liquid soap and paper towels. The cost will vary depending on the amount and type of products used.

5101:2-12-16 – Child care centers are required to obtain supplies and materials representative of the rule requirements. Cost will vary depending on the type of materials purchased, the number of children served, and the policy of the child care center.

5101:2-12-17 – Child care centers are required to obtain supplies and materials representative of the rule requirements. Cost will vary depending on the type of materials purchased, the number of children served, and the policy of the child care center.

5101:2-12-18 – Child care centers will need appropriate staff for ratio and group size and for completing attendance records. The costs will vary depending on the number of staff and children enrolled in the program.

5101:2-12-19 – Child care centers will need appropriate staff for supervision. The costs will vary depending on the number of staff and children enrolled in the program.

5101:2-12-20 – Child care centers are required to obtain and maintain cots, or mats for children who sleep or nap at the child care center. Costs range from \$12.00 to \$600.00 depending on the type of sleeping surface purchased. Child care centers are required to

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obtain and maintain cribs for infants who sleep or nap at the child care center. Cribs range in price from \$200.00 up, depending on the type of crib.

5101:2-12-21 – Child care centers are required to provide bedding if overnight care is provided. The costs will vary depending on the number of children served and what the center provides for care compared to what the parent provides.

5101:2-12-23 – Child care centers may provide items and materials associated with diapering if not supplied by the parent. The costs will vary depending on what items (such as diapers and wipes) the child care center purchases when not provided by the parent.

5101:2-12-24 – Child care centers may have an on-site swimming pool or wading pool. Costs involved in obtaining and maintaining these will vary depending on the size.

**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 centers may incur because these licensing standards are mandated to ensure the health and safety of children. Ohio Revised Code requires child care centers to be regulated.

**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 enforces the rules set forth by the Ohio Revised Code and the Ohio Administrative Code. ODJFS provides technical assistance through licensing specialists, technical assistance staff, technical assistance documents, video conferences, trainings, emails, eblasts, eManual, and help desks.

ODJFS provides the following:

Child Care Policy Helpdesk:  
**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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