



Common Sense Initiative

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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 (2)

Rule Number(s): 5101:2-12-02, 5101:2-12-03, 5101:2-12-04, 5101:2-12-05, 5101:2-12-06,
5101:2-12-07, 5101:2-12-08, 5101:2-12-10, 5101:2-12-14, 5101:2-12-15, 5101:2-12-22,
5101:2-12-25

Date of Submission for CSI Review: 7/8/2021

Public Comment Period End Date: 7/15/2021

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 11 rules (FYR? Y)

Rescinded/ 1 rules (FYR? Y)

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.

5101:2-12-02 "Application and amendments for a child care center license" outlines the process and requirements for applying for a child care center license and the process to amend a currently existing child care license. This rule is being amended with the following changes: clarified the application process, amendment process, and guidelines for moving to a different location or providing care in a temporary location. Also clarified required documents and information that is to be submitted in the Ohio Child Licensing and Quality System (OCLQS).

5101:2-12-03 "Compliance inspection and complaint investigation of a licensed child care center" outlines guidelines and timeframes for inspections and investigations of licensed child care centers. This rule is being amended with the following changes: clarified inspection requirements and criteria for moderate and serious risk non-compliances.

5101:2-12-04 "Building department inspection, fire inspection and food service requirements for a licensed child care center" outlines the separate requirements of building inspections, fire inspections and food service requirements for licensed child care centers. This rule is being

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amended with the following changes: clarified certificate of occupancy and fire inspection guidelines; and updated food service license, exemption and guidelines for utilizing meals or snacks provided by an off-site food processing establishment registered with the Ohio department of agriculture (ODA).

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. This rule is being amended with the following changes: added guidance surrounding family notification of intent to revoke the center's license and clarified that closing a license if the owner has changed is not subject to an administrative hearing.

5101:2-12-06 "Procedures for a licensed child care center operating under a provisional license" outlines the operating requirements during the provisional licensing period. This rule is being amended with the following changes: clarified the qualified administrator requirement for the center provisional license to be amended to a continuous license at the end of the provisional period.

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. This rule is being amended with the following changes: clarified and updated references to the Ohio professional registry (OPR) throughout the rule; clarified administrator training requirements, on-site hours, and cooperation with other government agencies; and clarified appendices.

5101:2-12-08 "Employee and child care staff member requirements for a licensed child care center" outlines the qualifications for employees and child care staff members in a licensed child care center. This rule is being amended with the following changes: clarified medical statement and immunization against tetanus, diphtheria and pertussis (Tdap), orientation requirements and whistle blower protection for employees and child care staff members; updated references to the OPR; and added new policy from House Bill 210 requiring tuberculosis (TB) screening and, if applicable, testing for child care center applicants. Clarified appendices and added a new appendix for reference in circumstances where an applicant tests positive for TB.

5101:2-12-10 "Training and professional development requirements for a licensed child care center" outlines the training and professional development requirements for licensed child care center staff. This rule is being amended with the following changes: clarified first aid, cardiopulmonary resuscitation (CPR) and child abuse and prevention training requirements and clarified health trainer, course content, and health training documentation requirements.

5101:2-12-14 "Transportation and field trip safety for a licensed child care center" outlines transportation and field trip safety requirements for a licensed child care center. This rule is being rescinded and adopted as new with the following changes: clarified health and safety requirements, vehicle inspections and field trip permission documentation; included the driver in passenger counts; and removed contracted drivers from rule.

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5101:2-12-15 "Child record requirements for a licensed child care center" outlines child record requirements for a licensed child care center. This rule is being amended with the following changes: clarified medical examination, health care plan, child care staff member health care plan training guidelines and child record documentation requirements.

5101:2-12-22 "Meal preparation/nutritional requirements for a licensed child care center" outlines procedures for meal preparation and nutritional requirements for a licensed child care center. This rule is being amended with the following changes: clarified guidelines for food groups and meal servings and ensured that supplemental food is to be on-site and that no child goes more than four hours without a snack or meal. Consolidated the fluid milk requirements into a new appendix for easy reference and updated the appendices.

5101:2-12-25 "Medication administration for a licensed child care center" outlines the requirements for administering medication for a licensed child care center. This rule is being amended with the following changes: clarified requirements for JFS 01217 "Request for Administration of Medication for Child Care;" clarified administering and storing prescription and non-prescription medications, medical foods, topical products and lotions; and clarified the documentation requirement for administration of medication when school-age children administer their own medication.

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
5101:2-12-02	5104.015
5101:2-12-03	5104.015, 5104.043
5101:2-12-04	5104.015
5101:2-12-05	5104.015, 5104.042
5101:2-12-06	5104.015
5101:2-12-07	5104.015, 5104.016
5101:2-12-08	5104.016
5101:2-12-10	5104.015
5101:2-12-14	5104.015
5101:2-12-15	5104.015
5101:2-12-22	5104.015
5101:2-12-25	5104.015

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- 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)?**

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.**

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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 May 19, 2021.

These rules were also available for the public clearance period from May 21, 2021 through June 4, 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 May 19, 2021 through June 4, 2021, ODJFS made the proposed child care center licensing rules available for public comment and received fifty-three total comments from eighteen individuals. Public comments were incorporated where appropriate after the ODJFS clearance process. Concerns were raised in relation to the new health training requirements. ODJFS made changes to the rule to clarify the application of the policy.

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.

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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.

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 these rules. Costs already in place include employer time for completion of forms or documentation and maintaining requirements for staff health and professional development trainings.

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.

5101:2-12-02 – A license fee is a charge of \$50.00 and license amendment for a permanent change of location fee is a charge of \$50.00. Time is involved in completing the online application and JFS 01250, and an actual amount cannot be estimated because costs will vary from center to center depending on their business model.

5101:2-12-03 – There will be costs associated with the center having to provide

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written materials to address non-compliances as well as completing the JFS 01155 for appealing a non-compliance, if applicable.

5101:2-12-04 – Building approvals from the Ohio department of commerce or from the local certified building department are required. The cost is difficult to determine because fees vary depending on the size of the building and types of inspections needed. Fire inspection(s) is required. Local fire departments or the state fire marshal provide these at costs ranging from \$0.00 up to \$100.00. Food service licensure and/or Ohio department of agriculture (ODA) food processing establishment registration is required. The cost is difficult to determine because fees vary depending on the type of food service license/ODA registration that is obtained.

5101:2-12-05 – If a center's license is suspended, the center must provide written notification to all parents. There will be time and costs associated with this process.

5101:2-12-06 – All provisional licensed child care centers must comply with all of the Chapter 5101:2-12 requirements. The costs associated with these requirements are detailed in the other rules in this chapter.

5101:2-12-07 – The actual amount cannot be estimated because costs will vary from center to center depending on their business model. There will be costs associated with Administrator time to fill out forms, create policies and procedures and attend the ODJFS Administrator Rules Training.

5101:2-12-08 – The actual amount cannot be estimated because costs will vary from center to center depending on their business model. There will be costs associated with child care staff members time spent viewing the required orientation training.

5101:2-12-10 – Child care administrators and child care staff members are required to take health and safety trainings as well as six hours of professional development each year. Costs will vary depending on the number of staff a program employs.

5101:2-12-14 – Child care centers that provide transportation must follow standard vehicle safety requirements including maintenance of the vehicles. Inspections by Automotive Service Excellence (ASE) mechanics or federal motor carrier safety administration (FMCSA) safety inspectors are offered at a cost ranging from \$50.00 up to \$120.00 depending on the type of vehicle; some vehicles are exempt from this requirement. Requirements for the type of vehicles used is not being changed. There is no fee to do the new driver training, there is time involved as the training must be repeated yearly.

5101:2-12-15 – Child care centers are required to maintain child files. There are no new costs associated with this requirement and costs vary depending on the number of children enrolled.

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5101:2-12-22 – Child care centers may provide meals and snacks according to their policies or parents may provide the meals or snacks. Child care centers will incur costs to purchase the food that meet the rule requirements. Costs will vary depending on the number of meals and snacks that are served. Programs that participate in the Child and Adult Care Food Program (CACFP) receive financial assistance to cover the cost of food.

5101:2-12-25 – Child care centers may administer medication, centers may incur costs completing the JFS 01217 and ensuring that a medical professional has completed it when needed. Costs vary depending on center policy.

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
1-877-302-2347 option 4

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

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