



## Common Sense Initiative

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

**Sean McCullough**, Director

### 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):**

**Rule Changes for the Publicly Funded Child Care (PFCC) Ohio Benefits Implementation**

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

**Date of Submission for CSI Review:** 10/8/21

**Public Comment Period End Date:** 10/15/21

**Rule Type/Number of Rules:**

New/\_\_\_ rules

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

Amended/\_\_\_1\_\_\_ rules (FYR? \_\_\_No\_\_\_)

Rescinded/\_\_\_ rules (FYR?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

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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.

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.*

5101:2-16-09 "Provider responsibilities for publicly funded child care" outlines the requirements for eligible providers wishing to sign a provider agreement with ODJFS to provide publicly funded child care. The rule is being amended to implement changes due to the passage of Amended Substitute House Bill 110 of the 134th General Assembly, to remove revision dates from form citations, and to correct reference errors in paragraphs (E)(6), (E)(8) and (F)(1).

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.

5104.30, 5104.38

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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.*

This rule, in part, sets forth the requirements for a child care provider entering into a provider agreement with ODJFS to provide publicly funded child care under the federal Child Care Development Fund. A child care provider may provide child care services without the provider agreement, as this is separate from licensing, but must enter into the agreement if the provider seeks public reimbursement for services.

- 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)?**

The public purpose of the language in this rule is to allow eligible child care providers who wish to request and receive payment for care provided to children who are eligible for publicly funded child care.

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

ODJFS will measure the success of this rule by reviewing the number of eligible providers who provide and receive reimbursement for publicly funded child care.

- 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

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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 August 4, 2021.

The rules were also available for the public clearance period from August 17, 2021 through August 31, 2021.

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

CCAC did not provide feedback on rule 5101:2-16-09.

On August 17, 2021 through August 31, 2021, ODJFS made the proposed rules available for public comment. No comments were made on rule 5101:2-16-09.

**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 Federal requirement and 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.**

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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/>.

### **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 5007 child care 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 the loss of an agreement to provide publicly funded child care. There will also be administrative time required to comply with the rule provisions, as noted below.

**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.*

Child care providers licensed or certified by ODJFS who wish to provide publicly funded child care must complete a provider agreement and for those providers not licensed by ODJFS, the provider must request approval to be eligible to sign a provider agreement.

- Based on the preparedness of the child care provider, the on-line provider agreement takes about thirty minutes to complete.
- A border state provider must complete an online form and upload the required documents. Depending on the preparedness of the program, this should take approximately thirty minutes to complete.

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- An ODE program needs approximately thirty minutes to complete the JFS 01140. ODE programs must upload staff information, so the length of time needed beyond thirty minutes is dependent on the number of staff in the program.
- To request approval for the enhanced rate for a child with special needs, a child care provider must submit the JFS 01231. The JFS 01231 takes approximately thirty minutes to complete.

**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 sections 5101.30 and 5104.38 of Ohio Revised Code.

**Regulatory Flexibility**

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

No. These rules do not provide an exemption or alternate means of compliance for small businesses.

**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 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, monthly county meetings, trainings, emails, eManual, and help desks.

ODJFS provides the following: Child Care Policy Helpdesk:  
[CHILDCAREPOLICY@jfs.ohio.gov](mailto:CHILDCAREPOLICY@jfs.ohio.gov) 1-877-302-2347 option 4.

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

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