

**MEMORANDUM**

TO: Trudy Rammon, Ohio Department of Job and Family Services

FROM: Sydney King, Regulatory Policy Advocate, Lt. Governor's Office

DATE: August 31, 2016

RE: **CSI Review – Licensed Child Care Centers (OAC Chapter 5101:2-12)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC § 107.54.

Analysis

The Ohio Department of Job and Family Services (ODJFS) submitted a draft rule package consisting of 23 amended¹ rules, one new rule, and 24 rescinded rules to the CSI Office. These rules were initially submitted to the CSI Office in two separate rule packages, but because the subject matter is consistent, they are being combined in this recommendation. The rule packages were submitted July 26, 2016 and the CSI public comment period closed August 2, 2016. At the time of filing the rule packages with the CSI Office, ODJFS communicated a September 1, 2016 deadline to file with the Joint Committee on Agency Rule Review (JCARR) in order to implement a new licensing software system for child care centers and home care providers.

The rule package represents a restructuring of the regulatory framework for ODJFS-licensed child care centers. Rule 5101:2-12-02 defines a child care center as “any place that is not the permanent residence of the licensee or administrator in which child care is provided, with or without compensation, for seven to twelve children at one time, or any place in which child care is provided for thirteen or more children at one time.”² According to the BIA, there are approximately 4,157 licensed child care centers throughout Ohio. In order to be licensed and

¹ All 23 rules are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that each existing rule be rescinded and replaced by a new rule that has the same rule number.

² Rule 5101:2-12-02(A)

remain in compliance, each child care center must comply with Ohio Administrative Code Chapter 5101:2-12. The regulations range from the child care center license application process to equipment, transportation, and program requirements. The rules are highly prescriptive and detail requirements addressing staff qualification, professional development and training, indoor and outdoor equipment, health and sanitation, transportation and field trip safety, child records and documentation, programming and materials, group ratios, sleeping and napping, evening care, meal preparation, infant and diaper care, medication administration, and water safety.

According to the BIA, the rule package was reviewed by several committees, which included representatives of the child care center industry. ODJFS also requested comment from stakeholders via email twice during the draft language development. ODJFS states that the rules were amended based on the stakeholder input received. During the CSI public comment period, five stakeholders submitted comments. One of the comments represents several child care center providers and provider groups.

During the review, the CSI Office met and discussed the rule packages and the rule review process at length with representatives of several child care providers and ODJFS. The comments and discussions focused on the stakeholder outreach and whether the current draft language was communicated in detail to the child care centers. The child care providers submitted examples of specific rule language that is concerning to them and explained that compliance at the licensing level is difficult; either the language does not allow flexibility or there are interpretation issues by licensing specialists. The stakeholders also expressed that the impact is much more costly than detailed in the BIA. Although ODJFS responded to the comments by providing explanations and justifications for the language, stakeholders continue to express concern with the rule package as a whole and the impact of the prescriptive regulations to the child care center community.

In Governor Kasich's Executive Order 2011-01K, the CSI Office was tasked with reviewing business impacting regulations and determining if the adverse impacts to the business community are justified by the regulating agency's public purpose. When reviewing rule packages, the CSI Office often engages in several conversations with the business community and the regulating agency to understand the impact and the purpose supporting the regulation. This review can take time but is often necessary to flesh out the impacts and agency justifications, and sometimes to facilitate appropriate changes to the rules. As mentioned above, ODJFS has a September 1, 2016 deadline which does not allow sufficient time to fully vet all of the concerns expressed by stakeholders. However, stakeholders have expressed a willingness to allow the proposed rules to continue through the process and engage in a longer-term effort to work with the state to address their concerns.

For this reason, the CSI Office recommends ODJFS move forward with filing the rule package contingent on ODJFS developing a stakeholder plan, which includes participation from the CSI Office, to address stakeholder concerns. Within a reasonable time of filing the rule package with

JCARR; ODJFS, stakeholders, and the CSI Office will engage in a technical review of the language to discuss stakeholder and agency concerns in an effort to move toward consensus about the appropriate way to regulate these businesses.

While there continue to be differences of opinion between ODJFS and many of the child care center businesses affected by these regulations, the CSI Office believes that both sides are operating in good faith and the workgroup described above has the opportunity to be productive in achieving the type of balance described in Executive Order 2011-01K.

Recommendations

The CSI Office recommends ODJFS move forward with filing the rule package contingent on ODJFS developing a stakeholder workgroup, to include impacted businesses and the CSI Office, to vet the concerns expressed in this rule review.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Job and Family Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.