

**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 Family Child Care (OAC Chapter 5101:2-13 and Chapter 5101:2-14)**

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of Job and Family Services (ODJFS) submitted a draft rule package consisting of 23 amended¹ rules, one new rule, and 67 rescinded rules to the CSI Office. The rules in the package also include 27 appendices. 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 family child care centers, Type A and Type B homes. The goal of the restructuring of the regulations was to align the different licensed homes to the same standards and to also align those standards with the child care center regulations when it was appropriate. Ohio Revised Code 5104.01 defines Type A home as “a permanent residence of the administrator in which

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 Therefore, the Legislative Service Commission requires that each existing rule be rescinded and replaced by a new rule that has the same rule number.

child care or publicly funded child care is provided for seven to twelve children at one time or a permanent residence of the administrator in which child care is provided for four to twelve children at one time if four or more children at one time are under two years of age.” A Type B home is “a permanent residence of the provider in which child care is provided for one to six children at one time and in which no more than three children are under two years of age at one time.”² According to the BIA, there are approximately 3,516 licensed family child care providers in Ohio. In order to be licensed and remain in compliance, each Type A and Type B home must comply with Ohio Administrative Code Chapter 5101:2-13. 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, disciplinary actions for the children, 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 Type A and Type B providers. 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. The BIA describes in detail the costs to the impacted industry, including increases in licensing fees to Type B homes. During the CSI public comment period, five stakeholders submitted comments. The comments addressed the new licensing fees for Type B homes, the impacts and prescriptive nature of the requirements, and questions regarding specific language. ODJFS responded to the comments providing clarity, explanations, and justifications for the requirements.

When ODJFS submitted this rule package addressing ODJFS-licensed family child care centers, it also submitted separate rule packages that regulated child care centers. The review of the child care center regulations resulted in conversations with representatives of several child care center providers and ODJFS. In the CSI recommendation for the child care center rule packages, the concerns of the stakeholders were discussed in detail. The concerns include the impact of the prescriptive regulations to the child care center community; similar to one of the comments received for this rule package. The CSI Office concluded ODJFS may move forward with filing the rule package in order to meet the September 1 deadline but ODJFS must develop a stakeholder plan, which includes participation from the CSI Office, to address stakeholder concerns. The goal is for ODJFS, stakeholders, and the CSI Office to 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. It was recommended by both child care center provider representatives and ODJFS that representatives of Type A and Type B homes be invited to the review because the standards prescribed in the regulation are similar and will be necessary to amend both licensing frameworks for consistency.

The CSI Office recommends ODJFS move forward with filing the rule package and work to engage Type A and Type B home providers to participate in the stakeholder conversations

² Ohio Revised Code 5104.01(TT) and (UU)

between child care centers and ODJFS. The review will begin within a reasonable time of filing the rule package with JCARR.

Recommendations

The CSI Office recommends ODJFS move forward with filing the rule package contingent on ODJFS developing a stakeholder workgroup that includes child care centers, Type A homes, and Type B homes.

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.