

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Job and Family Services

Regulation/Package Title: Background Check Rule Revisions for Family Child Care Chapter 5101:2-13

Rule Number(s): 5101:2-13-02, 5101:2-13-03, 5101:2-13-05, 5101:2-13-07, 5101:2-13-08, 5101:2-13-09

Date: 6/30/2017

Rule Type:

☒ New
☒ Amended

☐ 5-Year Review
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

5101:2-13-02 "Application and amendments for a family child care provider license" outlines the process and requirements for applying for a family child care license and the process to amend a currently existing family child care license. This rule is being amended to delete the requirements for county agency to review the BCI and FBI checks for providers as it will now be done by ODJFS. Appendix A to this rule has been amended to reflect the updated requirements for background checks that are to be submitted at the time of application.

5101:2-13-03 "Compliance inspection and complaint investigation of a licensed family child care provider" outlines guidelines and timeframes for inspections and investigations of licensed family child care providers. This rule is being amended to clarify language regarding types of inspections. The appendix to this rule has also been amended with updated language to reflect the new background check process (rule 5101:2-13-09), the updated concealed weapons requirements in Ohio (rule 5101:2-13-12), to clarify the moderate risk noncompliance (MRNC) for using vehicles that do not meet the requirements of rule 5101:2-13-14 of the Administrative Code (rule 5101:2-13-14) and to clarify when the MRNC also applies to playpens (rule 5101:2-13-20).

5101:2-13-05 "Denial, revocation and suspension of a family child care application or license" outlines the parameters for denying an application or revoking or suspending a family child care license. This rule is being amended to include the updated background check requirements for denying or revoking a license.

5101:2-13-07 "Provider responsibilities, requirements and qualifications for a licensed family child care provider" outlines the requirements to be a licensed family child care provider. This rule is being amended to delete old background check language and to require the JFS 01174 "Adjudicated a Delinquent Child Statement" be updated as necessary. Appendix C to the rule is being amended to clarify the breastfeeding policy requirements and to specify that the requirement is only for programs that serve infants or toddlers.

5101:2-13-08 "Employees, child care staff members and substitute responsibilities and qualifications for a licensed family child care provider" outlines the requirements for those working in a family child care home. This rule is being amended to clarify the staff orientation training requirements as well as the language for substitute child care staff members. Appendices B and C to the rule are being amended to remove references to the old background check requirements and remove training requirements language that can be found in rule 5101:2-13-10 of the Administrative Code.

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5101:2-13-09 "Background check requirements for a licensed family child care provider" is being replaced as a new rule due to the number of revisions and rearrangement of the paragraphs and to update the appendix to include language regarding sealed records. This rule outlines the new background check requirements that must be completed before working in a family child care home. Appendix A to the rule is being amended to clarify that for rehabilitation, three years does not need to elapse for misdemeanors that were sealed.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 5104.013

ORC 5104.017

ORC 5104.018

ORC 5104.041

ORC 5104.042

3. 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, the Child Care Development Block Grant (CCDBG) requires the following five background checks be completed for each individual who owns, works or applies to work in a child care program:

Bureau of Criminal Investigations (BCI)

Federal Bureau of Investigation (FBI)

National Sex Offender Registry

State Sex Offender Registry

Statewide Automated Child Welfare Information System (SACWIS)/Child Welfare

4. 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.

5. 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 minimum health and safety standards and administration of licensed child care environments, staffing, child records and administrative policies and procedures.

6. 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 providers and through materials submitted to address noncompliances. Stakeholders also provide continuous input into the regulation and their ability to comply with the rules.

Development of the Regulation

7. 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 department received suggested rule changes from the Ohio Alliance of Early Learning Advocates in November 2016 and from stakeholder meetings held on January 31, 2017 and March 17, 2017. These meetings were convened at the request of the Office of Common Sense Initiative to gather stakeholder feedback after the December 31, 2016 effective date of the rewritten child care licensing rules. The draft rules were also reviewed by the Child Care Advisory Council's Policy Subcommittee on April 27, 2017. Comments from each of these meetings were incorporated prior to the public Clearance process. The proposed rules and forms were in Clearance from May 16, 2017 through May 30, 2017. ODJFS received comments from ten individuals. New input will continue to be carefully considered during and immediately following the public hearing comment period.

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

Some of the changes in this package were identified by the stakeholders during the January and March meetings. The CCAC policy committee supported the changes as well. Comments received during the Clearance process focused more on additional changes which ODJFS will review for future rule amendments. Comments that didn't align with the federal requirements of the Child Care Development Block grant were not incorporated.

9. 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.

10. 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?

These rules were promulgated to comply with the statutory requirements of ORC 5101.017 and 5101.018.

11. 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.

12. 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 prior to the Clearance process to ensure there is no duplication of our agency or other agency rules.

13. 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 an internal system to process background checks. ODJFS help desk staff provides support and assistance to licensed child care providers and families regarding the provisions of the rules. Formal notification of the rules is provided to child care providers, families and others by use of an emanual for child care which is located at <http://emanuals.jfs.ohio.gov/index.stm>. Email updates from ODJFS can be received by signing up at <http://www.odjfs.state.oh.us/subscribe/> as well as an RSS feed at <http://www.odjfs.state.oh.us/ccupdates>.

Adverse Impact to Business

14. 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;

There are 235 Type A and 3202 Type B family child care providers in Ohio.

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

The costs will vary by provider. These rules do not create any new costs. Costs already in place include license fees, equipment, BCI and FBI checks, employer time for completion of forms and documentation.

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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 new rule contains the existing requirements and accompanying estimated costs to licensed child care homes.

5101:2-13-09 – Licensed family child care providers are required to submit fingerprints for themselves, adult residents of the home and staff to undergo a BCI and FBI check. The average costs for a BCI is \$32.00 and the average cost for a FBI check is \$34.00. Costs will vary depending on the number of people in the home and staff a provider employs. Changes to the background check process will save money for individuals that switch child care providers/centers as the checks will move with the individual.

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

Regulatory Flexibility

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

No. Licensing standards for family child care providers are mandated by the Ohio Revised Code.

17. 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.

18. What resources are available to assist small businesses with compliance of the regulation?

ODJFS provides technical assistance through technical assistance staff, technical assistance documents, video conferences, emails, eblasts, RSS feeds, eManual, help desks and through the Ohio Child Care Resource and Referral Association.

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ODJFS provides the following:

Child Care in Ohio Website located at <http://jfs.ohio.gov/CDC/childcare.stm>

Child Care Policy Helpdesk

CHILDCAREPOLICY@jfs.ohio.gov

1-877-302-2347 option 4

EManual for child care located at: <http://emanuals.jfs.ohio.gov/index.stm>

Email updates from ODJFS can be received by signing up at:

<http://www.odjfs.state.oh.us/subscribe/>

RSS feeds sign up at: <http://www.odjfs.state.oh.us/ccupdates/>