



# Common Sense Initiative

Mike DeWine, Governor  
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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: Revisions to 5101:2-12-08 and 5101:2-13-08

Rule Number(s): 5101:2-12-08, 5101:2-13-08

Date of Submission for CSI Review: 10/3/23

Public Comment Period End Date: 10/10/23

**Rule Type/Number of Rules:**

New/\_\_\_ rules

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

Amended/ 2 rules (FYR? N)

Rescinded/\_\_\_ rules (FYR?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

5101:2-12-08 "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: lower the minimum age requirement of child care staff members from 18 years old to 16 years old, allow high school students and graduates to work in child care if they are enrolled in specific child care technical or training programs, and establish limitations on child supervision and safety for high school child care staff members.

5101:2-13-08 "Employees and child care staff members responsibilities and qualifications for a licensed family child care provider" outlines the qualifications and responsibilities for all staff members and employees in a family child care home. This rule is being amended with the following changes: lower the minimum age requirement of child care staff members from 18 years old to 16 years old, allow high school graduates under the age of 18 to work in child care, and establish limitations on child supervision and safety for child care staff members under age 18.

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.**

5101:2-12-08      5104.016, 5104.0110

- 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 lead agencies, such as the Department of Job and Family Services, to regulate specific health and safety topics related to the care of 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 implements a federal requirement, but 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 guidelines for child care staff members working in licensed child care programs.

- 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 providers 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.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The Child Care Advisory Council 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. The council reviewed these rules on 9/27/2022 and 10/27/2022.

These rules were also available for the public clearance period from 05/16/2023 through 05/23/2023.

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

The Child Care Advisory Council did not have any input requiring changes to the rules.

We received two comments during the public clearance period; however, it did not affect the draft rule being proposed. The two stakeholders suggested ODJFS change the draft rule language for child care staff members working in licensed family child care homes, so that high school students under age 18, in addition to high school graduates under age 18, can be considered for employment.

We informed the stakeholders that their suggestions may be considered during the next five-year rule review for these licensing rules.

**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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

These rules were promulgated to comply with the statutory requirements of ORC 5104.; therefore, alternative regulations were determined to be inappropriate.

**13. 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.

**14. 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, child day camps, 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**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

There are approximately 3,892 licensed child care centers throughout Ohio.

There are approximately 270 Type A and 2034 Type B family child care providers throughout Ohio.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

There are no anticipated new costs of compliance as a result of these rules. The actual amount cannot be estimated because costs will vary from program to program depending on their business model. There will be costs associated with onboarding new child care staff members.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

Changes have been made for clarity and readability.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The regulatory intent justifies the impact child care programs may incur because these licensing standards are mandated to ensure the health and safety of children. Ohio Revised Code requires child care centers and family child care providers 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 and family child care providers 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 provides technical assistance through technical assistance staff, technical assistance documents, emails, eblasts, eManual, and help desks.

ODJFS provides the following:

Child Care Policy Help Desk:  
CHILDCAREPOLICY@jfs.ohio.gov  
1-877-302-2347 option 4

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