

Attachment 1 Phase I Final Report

H.B. 11 – The director of job and family services shall recommend standards for imposing sanctions on persons and entities that are licensed or certified under this chapter and that violate any provision of this chapter. The standards shall be based on the scope and severity of the violations. The director shall provide copies of the recommendations to the governor, the speaker and minority leader of the house of representatives, the president and minority leader of the senate and, on request, shall make copies available to the public.

Background:

In May 2005, House Bill 11 required the Department of Job and Family Services to put forth recommendations that would attach fines and sanctions to licensing non-compliances. The department assembled key stakeholders from across the state to staff a workgroup to elicit such recommendations (see Attachment 1, Workgroup Participants). Assistance from the National Child Care Information Center (NCCIC) was requested. NCCIC staff provided pertinent research, best practices across states, and facilitated several meetings.

Process:

The overarching goal for assigning fines and sanctions is to make sure that children in out-of-home settings are safe and healthy by driving compliance when a program demonstrates a willful and/or repeated pattern of serious non-compliance. The first task of the workgroup was to identify those licensing rules (or portions thereof) to which fines and sanctions should be attached. The workgroup divided licensing rules into three categories based on risk to children: Serious, Moderate, and Minimal. The group decided that fines and sanctions would be attached to the categories of rules (or portions thereof) identified as serious.

The workgroup then divided the serious rules (or portions thereof) into three overarching categories: Lack of Supervision, Administrative Negligence, and Environmental Hazards. Each of these three classes of serious risk were then further divided into three areas, for a total of nine identified risk areas (See Attachment 2, Serious Risk Rule Violations).

Work Product:

The bureau had four guiding principles:

- Serious needed to mean serious and therefore, needed to be limited to those non-compliances presenting the greatest risk of imminent harm to children.
- Opportunity for misinterpretation and/or misunderstanding had to be removed. Therefore, the serious non-compliances needed to be self-defining. For example, under Lack of Supervision it states children shall never be left alone; it is clear exactly what is expected without any further clarification.
- The serious non-compliances are either in or out, based on observation. Therefore there can be absolutely no exceptions. Exceptions weaken compliance.
- Early intervention is essential when a program begins to demonstrate an inability to maintain compliance. Therefore, serious risk violations will be the basis for determining which programs receive strategic technical assistance.

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Sanctions and Fines:

The goal in developing a system of fines and sanctions is to change practice by clearly identifying those non-compliances which will lead to negative action. During the process of identifying those rules which could lead to serious risk of harm to children, it became clear that there are those violations that lend themselves to a continuum of progressive negative action(s), based on the scope and severity of the non-compliance(s), and those violations which lend themselves to an immediate fine. It was also determined that the ability to issue a summary suspension was an essential component of the enforcement process. Summary suspension would give the department the ability to quickly take action in cases where serious risk was evident, while providing a center the needed time to make required changes to the program.

Sanctions:

Rules have been identified, that if violated, would present a serious risk of harm to children. The specific sanction which would be assessed for these rule violations would be determined by the scope and severity of the violation. A matrix has been developed that indicates sanctions to be assessed, dependant upon where the violation was placed on the matrix (See Attachment 3, Matrix of Fines/Sanctions). Sanctions suggested by the workgroup include: revocation, loss of ability to conduct certain program elements (transportation, swimming, infant care), limiting the ability to enroll new children, fines, reduction of license capacity, placing a center on probation, additional licensing inspections completed, and content specific training. The use of a specific fine or sanction would not preclude the use of additional fines or sanctions. For example, a center could have a fine or sanction assessed, and a recommendation could also be put forth to revoke the center's license.

Fines:

The workgroup determined that there were some rule violations which would lead to an immediate civil penalty being assessed (see Attachment 4, Rules Leading to Immediate Civil Penalties). It was felt that penalties needed to be significant enough to make a difference. The group determined that for some violations, the age of the child involved should be a factor in the fine amount, as younger children are more vulnerable to harm. A thorough review of practices in other states found that the identified serious risk rules are aligned with the rules to which other states assess fines/sanctions. In addition, the average amount of fines assessed range from \$100 – \$500 per violation.

Issuance of Summary Suspension:

If any of the following serious risk violations were to occur, the department would have the ability to issue a summary suspension, for a period of at least forty-five days. At the conclusion of the summary period, the center would need to complete the required corrective action plan. In addition, the center would need to demonstrate that appropriate systems had been devised and implemented to assure the non-compliance would not occur again. The serious risk non-compliances that could lead to summary suspension are: a child is left completely alone; a child care staff member is employed with a prohibitive conviction; a center fails to report suspected abuse and/or neglect;

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medication is improperly dispensed, which leads to serious harm; and children are cared for in an unlicensed space that causes serious harm.

Stakeholder Input:

The specific rules (or portions therefore) that the workgroup identified as presenting a serious risk of harm have been further evaluated based on the following three questions:

- Would a violation result in harm, or imminent risk of serious harm, to a child?
- Is the violation observable, and not inferable?
- Are the non-compliances defensible, by either state and/or national data, which supports them being designated a serious risk rule?

These rules were reviewed and approved by the Child Care Advisory Council at their monthly meeting on July 19, 2006. The serious risk rules were shared at the Step Up To Quality Key Informant meeting on July 25, 2006.

Next Steps:

The work of assigning fines and sanctions to serious risk rule violations is the first phase of work in Regulation for the 21st Century. Phase two is to take the rules identified as moderate and minimal and define levels of compliance for each in order to assign points. Phase Three is to train licensing staff to inter-rater reliability to insure consistent application of rules statewide.

In order for the department to have the ability to assess fine and sanctions, there is a need to obtain statutory authority. Approximately 22 states currently use fines and/or sanctions are part of their regulatory system. The authority to do so is written into their statute with language such as that found in the following excerpt from Tennessee.

Tennessee Code Annotated 71-3-509

(4) The provisions of this subsection (b) shall be discretionary with the department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(c) (1) If the department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to this part, the department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from fifty dollars (\$50.00) for minor violations up to a maximum of one thousand dollars (\$1,000) for major violations or violations resulting in death or injury to a child as defined in the rules of the department. Each day of continued violation constitutes a separate violation.

A strong regulatory system supports program quality which leads to improved developmental and readiness outcomes for Ohio's children.