



# REGULATION FOR THE 21<sup>ST</sup> CENTURY

## Progress Report

## Phase III

July 2009

## **History:**

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.

*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. (See Attachment 1.)*

The Bureau of Child Care and Development holds the philosophical belief and research confirms that a strong system of regulation is the foundation on which a quality early care and education program must be built. Only when children are cared for in safe and healthy environments will improved child outcomes be realized. The Bureau recognized that by leveraging the requirements in H.B. 11, child care licensing could be strengthened so that the goals of other initiatives such as Step Up To Quality and the Early Learning Initiative (phased out 2009) could be achieved.

## **Phase I Goals**

The original goals of the Regulation for the 21<sup>st</sup> Century workgroup were:

- To create a system that implicitly describes to providers what is expected and the consequences if those expectations are not met
- To provide parents with easily understood information so they can make good early care and education choices on behalf of their children
- To design a rater reliability system which includes a quality assurance component to insure the consistent application of licensing rules across the state

## **Phase I Process**

In the fall of 2005 the department convened the Regulation for the 21<sup>st</sup> Century workgroup (see Attachment 2). The workgroup met monthly for seven months and was facilitated by the National Child Care Information Center (NCCIC). The workgroup identified those rules (or portions thereof), that if violated, presented the most serious risk of harm to children. The criteria used to determine the serious risk non-compliances were:

- Must lead to the most serious risk of harm
- Must be observable, not inferable
- Must be defensible

The serious risk rules were introduced to providers in December 2006 and implemented in January 2007.

## **Phase I Results**

The serious risk non-compliances are identified in red on licensing inspection reports and are posted in red on the website (<http://jfs.ohio.gov/cdc/childcare.stm>). The serious risk non-compliances became the basis for entry into Step Up To Quality, Ohio's voluntary quality rating system. Serious risk non-compliances are the basis for consequences to a program's star rating. Programs can receive:

- A warning
- A suspension
- Rating removal

Using the data derived from the inspection reports, the most commonly cited serious risk non-compliances have been analyzed and are:

- Statement of Nonconviction and Criminal Records Check
- Administration of Medication
- Care of Children with Health Conditions
- Staff/Child Ratios

This data has led to resources being developed to assist providers in implementing systems to achieve and maintain licensing compliance. These resources include:

- Program Guide To Keeping Ohio's Children Safe and Healthy
- "Keys To Compliance"
- Monthly overview trainings on the Serious Risk Non-Compliances
- Medication "Prescription Pads"
- Medication Labels to create medication bags for children
- Convening of a workgroup to examine and revise the care of children with health care rules and forms
- Revisions of the Administrator's Training to include implementation of systems to prevent serious risk non-compliances

## **Phase II Goals**

In August 2007, the Regulation for the 21<sup>st</sup> Century workgroup reconvened to begin the work of Phase 2 (see Attachment 3). The goals of Phase 2 were twofold:

- To define the progressive sanctions matrix for serious risk rule non-compliances based on scope and severity. The overarching goal for assigning fines and sanctions is to assure that children in out-of-home settings are safe and healthy. The purpose is to drive compliance by clearly identifying those non-compliances which will lead to negative action and the consequences which will result from the rule non-compliances.
- To develop a model for a weighted licensing system. The overarching goal for developing a weighted licensing system is to assign value to licensing rules based on potential risk of harm to children, in order to drive provider compliance. A weighted licensing system will also provide information to parents/guardians in order to help them make more informed choices on behalf of their children.

## **Phase II Process**

Original members of the workgroup as well as additional stakeholders were convened for five meetings. The larger group was broken into two small break-out groups, each focused on one of the specific goals. The workgroup was again facilitated by Ohio's liaison from the National Child Care Information Center (NCCIC).

The break-out groups used the following criteria to guide them in their work:

- Keep it Simple – it is clear in researching fines/sanctions models used by other states that in order to implement a model effectively, it must be easily understood both by providers and by ODJFS staff
- Display best practice for regulation, which includes equity – all providers are treated the same regardless of demographics or value differences
- Limit subjectivity as much as possible – in order for the model to be implemented consistently, the system must be based on clearly defined and consistently applied criteria

## **Phase II Results**

### **Progressive Sanctions:**

In reviewing the work completed by the Phase I workgroup, it was decided that an agreed upon set of definitions must be established. Sanction models used by other states and departments were researched regarding definitions, sanctions assessed, scope and severity matrixes, and circumstances taken into account when making a sanction determination.

Using the established serious risk non-compliances as the rule violations which would have a sanction attached to them, the workgroup developed a progressive sanctions model. The model is based on the scope and severity of the non-compliances with specific sanctions identified ranging from technical assistance, fines, suspensions to closure (see Attachment 4). A glossary of terms relevant to progressive sanctions was also written to assure understanding and consistent application of the model (see Attachment 5).

### **Weighted Licensing:**

In examining the rules placed into the moderate and minimal categories by the Phase I workgroup, it became clear that the rules did not neatly fit into these two categories. The workgroup looked at licensing models used by other states. In addition valid and reliable instruments i.e. the Early Childhood Environment Rating Scales, Harms, Clifford, Cryer; and the Program Administration Scale, Talan and Bloom, were reviewed as a basis for Ohio's model to determine what elements of a weighted licensing system should be included.

A model was developed in which all of the rules, including the serious risk rules would be placed into one of four program elements:

- Safe Places
- Healthy Places
- Nurturing Places

- Learning Places

A program element score would be assessed based on level of compliance with the rules placed into each of the program elements. Centers would also be able to earn extra points based on identified best practices that went beyond licensing requirements (see Attachment 6). In this model, each point value would be clearly defined; allowing providers to understand what changes would need to be made in order to achieve a higher score.

### **Phase III Goals**

In February 2009, the Regulation for the 21<sup>st</sup> Century workgroup reconvened to begin the work of Phase 3. This year the Governor's State of the State address focused on streamlining and improving Ohio's education system from preschool through higher education. A part of his proposal moves the Bureau of Child Care and Development as well as other state agencies early childhood programs to the Department of Education. To prepare for this change, there will be a transition team that will review the work of the various state agencies and make recommendations.

One part of the Governor's plan is to increase compliance with standards that promote the health and safety of young children, provide families with information to use when selecting a setting for their child and establish the foundation for Ohio's definition of quality in all out of home settings by:

- Creating a single regulatory process for all early care and education programs;
- Increasing minimum licensing requirements and professional development for lead teachers; and
- Developing a legislative vehicle for licensing family child care providers through the Center of Early Childhood Development.

The goals of Phase 3 were:

- Review all licensing rules for essential health and safety practices, not best practices.
- Utilize the quality rating and improvement system, Step Up To Quality, for best practices.
- Review and make recommendations on the current licensing structure knowing that there will be one licensing structure within the next biennium.

### **Phase III Process**

The work of Phase III was conducted by BCCD staff without stakeholder involvement due to the short timeline. The group developed a vision: An integrated system that includes Health, Safety and Quality. The group divided into two workgroups and researched best practices and other states as a framework.

### **Pre-Licensure Work:**

This work focused on reducing the harm to children and the administrative burdens/costs associated with pursuing the revocation process by requiring potential

owners of child care programs (centers and Type A's) to demonstrate, prior to receiving a child care license, their capacity to provide safe, healthy and nurturing programs for children by completing all stages of the application process successfully.

### **Amendment Work:**

In addition this group was charged to review the licensing amendment process to reduce administrative burdens related to processing amendments while allowing the program flexibility to be responsive to market forces.

### **Risk Assessment Tool:**

The work of this group was to create elements of a risk assessment to develop a framework for a monitoring schedule for Ohio's licensed centers. The tool would be developed in a "report card" format utilizing the following criteria: quantitative system, asset based, attached to rule compliance, is clear and easy to understand. This assessment tool would be used to determine the future number of licensing inspections per year as well as influence the progressive sanctions work.

### **Phase III Results**

The **Pre-Licensure recommendations** (see attachment 7) created three primarily stages prior to licensure: Suitability, Eligibility and Application Submission and three types of licensure: Conditional Licensure, Restricted Licensure, and Permanent Licensure.

The **Amendment recommendations** (see attachment 7) identified action steps to identify the number and causal relationships in order to make informed data driven decision before making changes.

The **Risk Assessment Tool recommendations** (see attachment 8) describes use of the asset based philosophy for the purpose of developing a formula for compliance frequency and determination of placement in the Risk Assessment Matrix that will impact the number and type of inspections, fines and sanctions, and possible enforcement activity.

Once Risk Assessment Model is developed, it will need to be introduced to all providers; possibly via focus groups. Licensing staff will need to be trained on the use of the tool in order to assure consistent application. New software used by specialists to complete inspections will need to be developed in order to implement the new Risk Assessment model. The automated data entry system to collect information for statistical analysis and reporting will need to be updated.

There were lengthy discussions on identifying the essential health and safety practices of our child care rules. However, due to Executive Order #2208-04S, it was decided that the Policy Section would take the lead on this work, seeking input and feedback from licensing staff. BCCD will use the framework of Regulation for the 21<sup>st</sup> Century to review all the rules and prioritize which requirements are serious risk, essential to health and safety and which should be eliminated from rule. This work will be accomplished

during the mandated five year review of rules as well in the transition of rules from ODJFS to ODE.

**Special Notes:**

- The department will need to obtain statutory authority in order to have the ability to assess fines and sanctions. Approximately 22 states currently use fines and/or sanctions as part of their regulatory system. The department has reviewed the language granting authority in other states and has developed draft language for potential introduction in Ohio.
- The bureau would like to require all licensed programs to participate in Step Up To Quality, Ohio's quality rating and improvement (QRIS) system. All licensed programs would be rated one star. The SUTQ system would change from a three star to a four star program.
- BCCD will utilize the five year review to streamline rules and highlight serious risk non-compliances in effort to make the rules even more user-friendly for our customers as well as in preparation for the consolidation of ODJFS and ODE rules as the Center for Early Childhood Development is formed over the next several months.