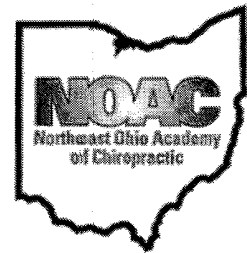


October 29, 2017

Joint Committee On Agency Rule Review  
The Ohio General Assembly  
Vern Riffe Center  
77 South High Street, Concourse Level Columbus, Ohio 43215



Re: ODJFS rule effecting Chiropractic Physicians 5101:2-12-08

Dear Chairman Duffy,

Here is the issue...

**5101:2-12-08**

"(A) What are the requirements of an employee in a licensed child care center?  
(1) An employee shall have on file a completed medical statement that meets the requirements detailed in appendix A to this rule."

**"Appendix A**

**Medical Statement Requirements for Administrator, Employees, and Child Care Staff**

**Members in a Licensed Child Care Center**

The following shall be contained in a medical statement:

- The date of the examination (must be within the previous twelve months).
- The signature, business address, telephone number of the licensed physician, physician's assistant, advanced practice registered nurse, certified midwife or certified nurse practitioner who completed the examination."

This rule has an adverse impact on chiropractic businesses as defined in ORC 107.52. A **license** is required to perform the exam referred to in rule 5101:2-12-08 and a **report of information** is required for this rule (namely an exam form must be filled out and signed by a health care provider and sent in to ODJFS). This meets 2 prongs of the Adverse Business Impact 107.52 (A and C). This Adverse Business Impact was not reported by ODJFS and CSI has not addressed it. **This rule should be referred back to CSI or invalidated (see below).**

**JCARR Prongs**

1. The rule exceeds the statutory authority of ODJFS they are not in a legal position to be licensing health care providers and deciding their scope of practice. This ODJFS rule fails to recognize, nor respect, appropriate state licensing authority of chiropractors. Ohio statutory law recognizes the ability and training of DCs to examine, diagnose, treat and refer. This rule does not follow the ORC regulating chiropractic physicians.

2. The rule conflicts with rules of the Ohio State Chiropractic Board which allows chiropractic physicians to perform examinations.

3. Rule 5101:2-12-08 conflicts with legislative intent. ORC 4743 allows chiropractors to do exams in Ohio. ODJFS has excluded chiropractic physicians from doing the exams. Chiropractors are the only profession being excluded from doing these exams. ODJFS is not following the legislative intent of ORC 4743 which allows chiropractors to do exams. ODJFS is discrimination against chiropractors. Please see the enclosed letter from the Ohio State Chiropractic Board.

6. ODJFS did not list the adverse impact on chiropractic businesses in their BIA. This rule has an adverse business impact on chiropractors of which there are over 2,500 in the State of Ohio in over 2,000 offices. ODJFS did not address their exclusion of chiropractors in the BIA. The rule's regulatory intent does not justify its adverse impact on business. There is no justification for the rule other than provider discrimination.

ODJFS is requiring the exam but not paying for the exam. The daycare worker or their employer is paying for the exam. ODJFS is saying chiropractors cannot do the exam. Nothing in the ORC is preventing ODJFS from allowing chiropractic physicians to do the examinations. Therefore ODJFS is regulating and limiting the scope of chiropractic practice. ODJFS **allows** MD and DO physicians to do the exams by this rule (OAC 5101:2-12-08). ODJFS is required by ORC 5104.0110 to also allow the following individuals to conduct the physical examinations: a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife. There is no ORC requiring ODJFS to let MDs and DOs do the exam. ODJFS could similarly **allow** chiropractic physicians to do the exams by rule 5101:2-12-08.

The Ohio State Chiropractic Board which is a rule making part of the Ohio government stated on 8/31/17...

*"It is well within the scope of chiropractic in Ohio for chiropractic physicians to perform physical examinations to complete medical statements such as the statement required for child care staff members."*

The Ohio State Chiropractic Board says I can do the exam and ODJFS says I cannot do the exam. Which is it?

Appendix A of 5101:2-12-08 covers all the health care provider types that under state law do examinations EXCEPT the chiropractic physician. ODJFS is not adhering to legislative intent by going against ORC 4743 and the Ohio State Chiropractic Board. A chiropractic physician's ability to examine is in ORC and OAC. ODJFS is in effect licensing and franchising certain health care provider types to perform these exams to the exclusion of chiropractic physicians. The Ohio State Chiropractic Board licenses chiropractic physicians and has rules and law that cover the scope of practice of a

chiropractic physician. ODJFS has decided to not license chiropractic physicians by this rule.

By excluding chiropractic physicians ODJFS in effect is creating an additional medical license in order to perform its exams. ODJFS has decided to license MDs and DOs to do these exams by their rule. ODJFS has decided NOT to license chiropractic physicians to do these exams. ODJFS is illegally regulating the scope of chiropractic practice. ODJFS does not have the legal authority to do this.

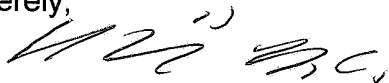
What does ODJFS say about this? Well they have said nothing to the NOAC. They received a stakeholder letter from the NOAC and the Ohio State Chiropractic Board but they only bothered to reply to the Ohio State Chiropractic Board. All aspects of the ODJFS reply to the Ohio State Chiropractic Board (see attached) was addressed in this letter.

ODJFS has not even bothered to provide the NOAC a reason for its exclusion of chiropractors in rule 5101:2-12-08.

The Northeast Ohio Academy of Chiropractic (NOAC) is a 501c 6 regional Cleveland association that represents chiropractic physicians. The NOAC is a stakeholder for this issue. All chiropractic physicians have the training to do these exams. **JCARR needs to send this rule back to CSI or invalidate it.** This rule has an adverse impact on chiropractic businesses. ODJFS is providing a franchise to certain health care provider types to perform these exams to the exclusion of chiropractic physicians.

The physical examination required of daycare providers is well within the scope of chiropractic physicians in Ohio and for this reason the NOAC's position is that chiropractic physicians be included in your list of providers who may conduct physical examinations of daycare providers.

Sincerely,



Matthew Gajkowski DC  
Vice President  
Northeast Ohio Academy of Chiropractic

Enclosures: Ohio State Chiropractic Board letter regarding 5101:2-12-08  
ODJFS reply e-mail to the Ohio State Chiropractic Board

10/1/2017

Comments on rule 5101:2-12-08 Ohio Administrative Code

**From:** Kelly.Caudill <Kelly.Caudill@chr.state.oh.us>  
**To:** gruppen <gruppen@aol.com>  
**Subject:** Comments on rule 5101:2-12-08 Ohio Administrative Code  
**Date:** Thu, Sep 28, 2017 11:40 am

---

Kelly Caudill  
Executive Director  
Ohio State Chiropractic Board  
[www.chirobd.ohio.gov](http://www.chirobd.ohio.gov)

Please complete our customer service satisfaction survey: <https://www.surveymonkey.com/s/HQVL86T>

This message, including any attachment(s), is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. This message and any response to it may constitute a public record, and may be available upon request in accordance with Ohio public records law (ORC 149.43).

---

**From:** Lee, Cara  
**Sent:** Friday, September 08, 2017 11:33 AM  
**To:** Caudill, Kelly <Kelly.Caudill@chr.state.oh.us>  
**Cc:** Lynch, Michael <Michael.Lynch@jfs.ohio.gov>; Rammon, Trudy <Trudy.Rammon@jfs.ohio.gov>; Chestnut, Tracey <Tracey.Chestnut@jfs.ohio.gov>  
**Subject:** Comments on rule 5101:2-12-08 Ohio Administrative Code

Thank you for the comments you submitted regarding child care licensing rule 5101:2-12-08, of the Ohio Administrative Code. ODJFS follows the Ohio Revised Code (ORC) in determining who may sign the child and employee medical statements required for licensed child care centers. ODJFS allows physicians, as defined in section 4731. ORC to conduct the physical examinations and is required by section 5104.0110 ORC to also allow the following individuals to conduct the physical examinations: a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife.

For your convenience, I have included the language from the ORC below.

Thank you for your submitted testimony,  
Cara Lee

**4731.053 Administrative rules for physician's delegation of medical task:**

(A) As used in this section, "physician" means an individual authorized by this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

**4734.15 Scope of practice of chiropractic - permissible titles:**

(C) An individual holding a valid, current license to practice chiropractic is entitled to use the title "doctor," "doctor of chiropractic," "chiropractic physician," or "chiropractor" and is a "physician" for the purposes of Chapter 4123. of the Revised Code.

**5104.0110 Rules requiring a physical examination.**

To the extent that any rules adopted for the purposes of this chapter require a health care professional to perform a physical examination, the rules shall include as a health care professional a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife.

Cara Pasqualone Lee  
Child Care Policy  
Office of Family Assistance  
Ohio Department of Job and Family Services  
614-752-0310  
[Cara.Lee@jfs.ohio.gov](mailto:Cara.Lee@jfs.ohio.gov)



State of Ohio  
**Ohio State Chiropractic Board**

---

August 31, 2017

Ohio Department of Job and Family Services  
Office of Legal and Acquisition Services  
30 East Broad Street, 31st Floor  
Columbus, OH 43215-3414

Please accept the following testimony from the Ohio State Chiropractic Board in regard to rule 5101:2-12-08 (Employee and Child Care Staff Member Requirements in a Licensed Child Care Center) concerning the requirements outlined in paragraph (A)(1) of the rule that excludes chiropractic physicians from completing a medical statement for child care staff members.

It is well within the scope of chiropractic in Ohio for chiropractic physicians to perform physical examinations to complete medical statements such as the statement required for child care staff members.

Chiropractic physicians conduct many types of physical examinations, such as school sports physicals, employment physicals, and commercial motor vehicle driver physicals required by the US Department of Transportation. For your review, I have attached the Ohio High School Athletic Association's Pre-participation Physical Evaluation form and the U.S. Department of Transportation Federal Motor Carrier Safety Administration Medical Examination Report Form that demonstrates the physical examinations required for these activities far exceed what is required of child care staff member examinations.

The Board respectfully requests chiropractic physicians be included in the list of providers who may conduct physical examinations of child care staff members to remove the inequitable language that prohibits a chiropractic physician from performing duties within their scope of chiropractic practice.

Should you have any questions or need further information, please do not hesitate to contact our Executive Director, Kelly Caudill, at the contact information listed below or at [kelly.caudill@chr.state.oh.us](mailto:kelly.caudill@chr.state.oh.us).



September 29, 2017

Larry Wolpert  
Executive Director  
Joint Committee On Agency Rule Review  
77 South High Street, Concourse Level  
Columbus, Ohio 43215

Mr. Wolpert and JCARR Staff:

On behalf of the people with intellectual and developmental disabilities, their families, friends, interested citizens and professionals in the disability field whom we represent through our membership, The Arc of Ohio thanks the Joint Committee On Agency Rule Review for the opportunity to provide testimony regarding the proposed rule 5123:2-9-03.

The Arc of Ohio supports the proposed rule changes and is appreciative to the Ohio Department of Developmental Disabilities (DODD) for listening to the testimony of the people with intellectual and developmental disabilities and their families who would be impacted by this rule.

The Arc of Ohio believes DODD has greatly improved the rule to allow more flexibility and fewer hurdles to access the services of Independent Providers by the people and families who depend on them for their services and support. These improvements include an increase of the limit of hours that can be worked without prior authorization, an increase of exceptions that allow the limit to be exceeded and clarification of those exceptions, the addition of an informal appeals process, as well as further clarification of the role of the county board in this process.

Because of the improvements referenced above, The Arc of Ohio believes this rule will have an overall positive impact for the people who receive the services referenced in this rule and for the people and families who depend on DODD, local county boards of developmental disabilities and Independent Providers for support.

Thank you for your time and the consideration of these comments,

A handwritten signature in black ink, appearing to read "Gary C. Tonks".

Gary Tonks  
Chief Executive Officer, The Arc of Ohio

A handwritten signature in black ink, appearing to read "Steve Beha".

Steve Beha  
Associate Director, The Arc of Ohio