
DEPARTMENT OF CHILDREN AND YOUTH

Creation of the Department

- Creates the Department of Children and Youth to serve as the state’s primary children’s services agency and establishes the position of Director of Children and Youth.
- Requires the Department to facilitate and coordinate the delivery of children’s services in Ohio.
- Requires the Directors of Children and Youth, Job and Family Services (ODJFS), Education and Workforce, Health, Developmental Disabilities, Medicaid (ODM), Mental Health and Addiction Services (OhioMHAS), and Development to develop a plan to transfer children’s services duties, functions, programs, and staff resources to the new department by January 1, 2025.
- Transfers various programs and duties from ODJFS, Education and Workforce, Health, Developmental Disabilities, and OhioMHAS to the Department of Children and Youth on January 1, 2025, and makes conforming changes throughout the Revised Code.
- Accelerates the requirement for transferring agencies to complete their regulatory restriction reductions relating to children and youth to be completed before January 1, 2025, instead of June 30, 2025, which is the deadline for other agencies under continuing law.

Residential infant care center services

- Beginning in FY 2024, requires the Department, in coordination with ODM, to establish a bundle of funding for nonmedical maternal and child health programmatic services provided by residential infant care centers to infants born substance-exposed and their families.
- Not later than June 30, 2025, requires the Department and ODM to establish a permanent reimbursement model for services provided by residential infant care centers.

Department of Children and Youth

(R.C. 5180.01 and 5180.02 (primary), 121.02, 121.03, 121.35, 121.37, 121.40, 3109.15, 3109.16, 3109.17, 3109.179, 5101.34, 5101.341, and 5101.342; Sections 130.10 to 130.16 and 423.10 to 423.140)

The act creates the Department of Children and Youth to serve as the state’s primary children’s services agency and establishes the position of Director of Children and Youth as a member of the Governor’s cabinet. The Department must facilitate and coordinate the delivery of children’s services in Ohio, including services provided by government programs that focus on the following:

- Adoption, child welfare, and foster care services;

- Early identification and intervention regarding behavioral health, including early intervention services, early childhood mental health initiatives, multi-system youth services, and family support services administered through the Ohio Family Children First Cabinet Council, Ohio Commission on Fatherhood, and Children’s Trust Fund Board;
- Early learning and education, including child care and preschool licensing, early learning assessments, Head Start, preschool special education, publicly funded child care, and the Step Up to Quality program;
- Maternal and child physical health, including infant vitality, home visiting, maternal and child health, maternal and infant support, and Medicaid-funded child health services.

Administering the Department

The Director of Children and Youth, the Department’s chief executive and appointing authority, must administer the Department and implement the delivery of children’s services, including by doing the following:

- Adopting rules in accordance with state law;
- Approving and entering into contracts, agreements, and other business arrangements on the Department’s behalf;
- Making appointments to the Department and approving actions related to departmental employees and officers, including their hiring, promotion, termination, discipline, and investigation;
- Directing the performance of employees and officers;
- Applying for grants and allocating any funds awarded;
- Any other action as necessary to implement the act’s provisions.

As part of administering the Department and implementing the delivery of children’s services, the act grants the Director the authority to organize the Department for its efficient operation, including by creating divisions or offices within it. The Director also may establish procedures for the Department’s governance and performance, employee and officer conduct, and the custody, preservation, and use of departmental books, documents, papers, property, and records. The act requires the Director or Director’s designee to fulfill any duty or perform any action that, by law, is imposed on or required of the Department.

The act also requires each state and local agency involved in the delivery of children’s services to comply with any directive issued by the Director and to collaborate with the Department.

If a law permits or requires the Director to adopt an administrative rule, the act requires the Director to do so in accordance with the Administrative Procedure Act (APA), unless the authorizing law specifies a different procedure. There are two general statutory rulemaking procedures, one in the APA and the other in R.C. 111.15. The primary difference between the two is that the APA requires notice and a public hearing before adopting a proposed rule; R.C. 111.15 does not.

Children’s Trust Fund Board, Commission on Fatherhood, and Family and Children First Cabinet Council

The act maintains the Children’s Trust Fund Board and Ohio Commission on Fatherhood, but transfers them from the Department of Job and Family Services (ODJFS) to the Department of Children and Youth. It also includes the Director of Children and Youth in the membership of the Ohio Family and Children First Cabinet Council.

Transitional language related to transfer

The act addresses the transfer of duties, functions, and programs to the Department as well as other issues relating to its creation, including by doing the following:

- Requiring the Directors of Children and Youth, ODJFS, Education and Workforce, Health, Developmental Disabilities, Medicaid (ODM), Mental Health and Addiction Services (OhioMHAS), and Development or their designees to identify duties, functions, programs, and staff resources related to children’s services within their departments;
- Requiring the Directors to develop a detailed organizational plan to implement the transfer of the identified duties, functions, programs, and resources to the new department by January 1, 2025, and enter into a memorandum of understanding regarding the transfer;
- Specifying that any business commenced but not completed by January 1, 2025, within the other departments that is slated to be transferred to the new department is to be completed by the new Department or its Director in the same manner, and with the same effect, as if completed by the other departments;
- Transferring all employees and staff resources identified by the Directors on January 1, 2025, or an earlier date chosen by them, and specifying that they retain their same positions and benefits;
- Authorizing the Directors to jointly or separately enter into contracts for staff training and development to facilitate the transfer;
- Specifying that no validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer but is to be administered by the Department of Children and Youth;
- Specifying that no action or proceeding pending on the date of the transfer is affected by the transfer and is to be prosecuted or defended in the name of the Department or Director;
- Specifying that all rules, orders, and determinations relating to children’s services programs made or undertaken before the transfer continue in effect as rules, orders, and determinations of the new Department until modified or rescinded by it;
- Transferring to the new Department all records, documents, files, equipment, assets, and other materials of the transferred programs and staff resources;

- Requiring the OBM Director to make budget and accounting changes to implement the transfer of duties, programs, and functions.

Collective bargaining

The act specifies that the creation of the new Department and transfer of programs, duties, and employees are not appropriate subjects for public employees' collective bargaining.

Authority regarding employees

The act authorizes the Director of Children and Youth to establish, change, and abolish positions for the Department and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to state law governing public employees' collective bargaining.

This authority includes assigning or reassigning an exempt employee to a bargaining unit classification if the Director determines that the bargaining unit classification is the proper classification for that employee. If an employee in the E-1 pay range is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the Director, or in the case of a position transferred outside of the Department, the Director of Administrative Services, must assign the employee to the appropriate classification and place the employee in Step X. The employee is not to receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Actions of the Director of Children and Youth taken under this authority are not subject to appeal to the State Personnel Review Board.

Retirement incentive plan

The act authorizes the Directors included in the transition workgroup, with the approval of OBM, to establish a retirement incentive plan for employees of the departments who are members of the Ohio Public Employees Retirement System and whose job duties will be transferred to the new Department. Any such plan must remain in effect until December 31, 2024.

Transferring and renumbering administrative rules

The act requires the Directors transferring children's services duties and programs to the new Department to complete, before January 1, 2025, a reduction in regulatory restrictions related to children's services. The reduction is required under continuing law and formerly was to be completed no later than June 30, 2025. The act prohibits a transferring Director from treating a transfer to the new Department as a reduction for purposes of satisfying the requirement.

Under continuing law, a "regulatory restriction" is any part of an administrative rule that requires or prohibits an action. Rules that include the words "shall," "must," "require," "shall not," "may not," and "prohibit" are considered to contain regulatory restrictions.²⁷

²⁷ R.C. 121.95.

On and after January 1, 2025, if necessary to ensure the integrity of the numbering of the Administrative Code, the Legislative Service Commission Director must renumber the rules related to children's services programs transferred to the Department to reflect the transfer.

From the date the reduced rules related to children's services are transferred to the new Department until June 30, 2025, the Department must comply with the regulatory reduction requirements that apply to all cabinet-level and certain other agencies under continuing law. These include a requirement that the Department not adopt a regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions (known as the "two-for-one rule"). The law also requires these agencies to reduce their number of regulatory restrictions in accordance with a statutory schedule.

Beginning July 1, 2025, continuing law prohibits these agencies, including the new Department, from adopting a new regulatory restriction if adoption would cause a statewide cap on such restrictions calculated by JCARR to be exceeded. Under the act, JCARR is to include the reduced rules transferred to the new Department, minus any reductions achieved by the Department between January 1, 2025, and June 30, 2025, when calculating the statewide cap.

Like all agencies subject to the reduction requirements, beginning July 1, 2025, the new Department must contact JCARR before submitting a proposed rule containing a regulatory restriction. JCARR must determine whether adopting the restriction would cause the state to exceed the cap. If JCARR determines that adopting the restriction would cause the cap to be exceeded, the Department may not adopt it.

Conforming amendments

In Sections 130.12 to 130.16, the act makes extensive conforming changes throughout the Revised Code to reflect the transfer of the following children's services programs to the Department of Children and Youth effective January 1, 2025:

- Adoption;
- Child care;
- Child welfare, including foster care;
- Early childhood education (note that the Department of Education and Workforce retains authority over preschool teachers and staff, but the Department of Children and Youth will license preschool programs);
- Early intervention services under Part C of the federal Individuals with Disabilities Education Act;²⁸
- Help Me Grow and home visiting;

²⁸ 20 United States Code (U.S.C.) 1431 *et seq.* and regulations implementing that part in 34 Code of Federal Regulations (C.F.R.) part 303.

- Maternal and infant vitality, including the Commission on Infant Mortality, shaken baby syndrome education, and safe sleep screening and education;
- Preschool special education.

It also adds the Director of Children and Youth to various boards and commissions involving children's services, such as the Child Care Advisory Council, the Commission on Infant Mortality, and the Ohio Home Visiting Consortium.

Delegation of legislative authority

There are a number of Ohio programs and duties impacting children and youth that are not expressly transferred to the new Department by the act. Examples include child support and paternity establishment, the Youth and Family Ombudsman's office, the Children's Health Insurance Program, the Program for Medically Handicapped Children, child fatality and fetal-infant mortality review boards, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), among others.

With regard to the workgroup of directors described above and the organizational plan and memorandum of understanding to transfer children's services programs to the new Department, it is unclear to what extent that plan could assign other children's services programs and duties not included in this act to the new Department without amending the Revised Code. Under the Ohio Constitution, legislative authority is vested in the General Assembly.²⁹

Residential infant care center services

(Section 423.20)

Beginning in FY 2024, the act requires the Department of Children and Youth, in coordination with ODM, to establish a bundle of funding for nonmedical maternal and child health programmatic services provided by residential infant care centers to infants born substance-exposed and their families. Additionally, not later than June 30, 2025, the Department and ODM must establish a permanent reimbursement model for services provided by residential infant care centers. The permanent model must include reimbursement for nonmedical services described above and medical services.

²⁹ Ohio Const., art. II, secs. 1 and 26.