# CSI - Ohio
The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Ohio Department of Job and Family Services

**Regulation/Package Title:** OFC:FYR Chapters 5 and 7 CCN7184 Beck 4/12

**Rule Number(s):** 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15, 5101:2-5-34

**Date:** 12/4/12

**Rule Type:**

- ☐ New
- X Amended
- X 5-Year Review
- ☐ Rescinded

**The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.**

### Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   ***Please include the key provisions of the regulation as well as any proposed amendments.***

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OAC rule 5101:2-5-04.1, entitled "Acceptance of accreditation in lieu of certification requirements" provides guidance to agencies on what needs to be submitted to have a certification accepted by ODJFS. Paragraph (C) was removed as it was a directive for ODJFS and not an agency.

OAC rule 5101:2-5-14, entitled "Treatment or diagnostic services" provides guidance to agencies in regard to medical care and treatment. Paragraph (A) was restructured for clarity. No substantive changes were made.

OAC rule 5101:2-5-15, entitled "Volunteers and college interns" provides guidance to agencies in regard to requirements for using college interns and volunteers. Paragraph (E) was moved to the location of paragraph (D) to allow the rule to flow better. No substantive changes were made.

OAC rule 5101:2-5-34, entitled "PCPA and PNA case plans and administrative case reviews for direct placements" provides guidance to agencies in regard to the requirements for direct placements in private agencies. Paragraph (A) was amended to show the agency does not have to complete a case plan if the child is placed for less than thirty days. Other non-substantive changes were made for clarity.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

| Rule Number | Statutory Authority |
|---|---|
| Rule 5101:2-5-04.1 | ORC 5103.03 |
| Rule 5101:2-5-14 | ORC 5103.03 |
| Rule 5101:2-5-15 | ORC 5103.03 |
| Rule 5101:2-5-34 | ORC 5103.03 |

**3. 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.***

Rules 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15, 5101:2-5-34 do not implement a federal regulation and are not being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Each of the rules are specific to child welfare and even though there is no Federal requirement for these rules, the rules are needed to ensure the safety of the children in substitute care.

5. **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)?**

For rule 5101:2-5-04.1, the purpose of the regulation is to follow the permissive language of the state statute and allow agencies the opportunity to use a certification from another organization to meet the certification requirements of the department for a foster care agency.

For rule 5101:2-5-14, the purpose of the regulation is to ensure the medical needs of treatment level foster children are met.

For rule 5101:2-5-15, the purpose of the regulation is to ensure the safety of children in care by providing guidelines for the use of volunteers and college interns in certified foster care agencies.

For rule 5101:2-5-34, the purpose of the regulation is to develop case plans for children who are directly placed into foster care facilities by their parents or legal guardians.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Rule 5101:2-5-04.1 represents the opportunity for an agency to show how a function that is currently approved by another licensed entity meets the regulations for certification under the guidelines of ODJFS. The criteria will be measured against the current requirements for certification by the state. Rules 5101:2-5-14. 5101:2-5-15 and 5101:2-5-34 will be measured against the criteria specific to the rule content.

## Development of the Regulation

7. **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 rules were presented to several interest groups and individuals including Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association, representatives from county agencies and the Ohio Council of Behavioral Health and Family Services Providers.

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

The rules were reviewed by the interested parties and language was developed that was agreeable with all involved. However, The Ohio Council provided input for rule 5101:2-5-04.1 that ODJFS should create a new process that encourages and rewards obtaining National Accreditation that provides a consistent, top-down process that is quality and child/family outcome focused and cost effective for considering National Accreditation and that this rule should be revised to reflect that process. ODJFS responded that the department is willing to meet to address the issues present and even be present on a work group created by The Ohio Council to assist in developing language to aid in the process.

9. **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.

10. **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?**

There were no alternatives considered for rule 5101:2-5-04.1. The rule allows for the agency to work around policy provisions if the agency can show they meet the current required criteria. There were also no other alternatives considered for rules 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34 as all parties involved were satisfied with the rules.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.** ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

For rule 5101:2-5-04.1, ODJFS did not consider a performance based initiative, but rather followed permissive statutory language prescribing a process a foster care agency may follow to submit accreditation/certification from another recognized organization to ODJFS for determination as to whether those standards meet Ohio's certification requirements for a foster care agency. Rules 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34 are also specific because the safety of the children in care dictates a specified process to ensure compliance.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

There is no duplication as the rules are specific to foster care agencies and no other rules address these specific issues.

**13. 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.**

The rules do not prescribe anything that would not be applied consistently. ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

## Adverse Impact to Business

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- **a. Identify the scope of the impacted business community;**
- **b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- **c. Quantify the expected adverse impact from the regulation.**
  ***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.***

The rules of the administrative Code in Chapter 5101:2-5 contain requirements for foster care agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-5-04.1 – The reporting of information and other accreditation requirements to meet agency certification standards.

5101:2-5-14 – The reporting of treatment and diagnostic services in a foster child's record as part of the agency certification requirements.

5101:2-5-15 – The agency adhering to certification requirements with regard to volunteers and college interns working at the agency.

5101:2-5-34 – The agency adhering to certification requirements with regard to case plans and administrative reviews for direct placements.

The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. Under the direction of CSI, we reached out to stakeholders from the Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association, and the Ohio Council of Behavioral Health and Family Services

Providers for specific cost data. Of the shareholders who responded, the response was not fiscal in nature. No cost data was provided. The shareholder stated "…the clear sense was that professional judgment and agency policy should "set the parameters" and that it was difficult to "assign" a cost to the rules as varying circumstances and indirect costs impact each case/instance differently."

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

To ensure the safety of children in substitute care, the adverse impact of these rules is necessary.

## Regulatory Flexibility

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Rule 5101:2-5-04.1 allows for an agency to use another certification to meet Ohio certification requirements. The agency must show how the Ohio certification requirements are met.

For rules 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34, there is no alternative means of compliance.

**17. 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?**

Since rule 5101:2-5-04.1 is permissive, there are no fines or civil penalties for non-compliance. For rules 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

**18. What resources are available to assist small businesses with compliance of the regulation?**

ODJFS has a regional office with a licensing specialist that will be assigned to assist the agency in the entire application process including assistance with the proper information required by this rule if the agency chooses to use a certification to meet Ohio requirements.