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 9 CCN7314 Beck 4/13

Rule Number(s): 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-27, 5101:2-9-31, 5101:2-9-35

Date: 4/24/13

Rule Type:

- ☐ New
- X Amended
- X 5-Year Review
- X Rescinded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 5101:2-5-38, entitled "Payment of foster caregiver training stipends: reimbursement of training allowances to recommending agencies" provides guidance to agencies regarding stipend payments to foster caregivers and the reimbursement of the stipends to the agency. Paragraph (B) was amended to clarify when the stipend payment to the foster caregiver was required to be made. The paragraph was also amended to clarify the agency responsible for making the stipend payment to the caregiver. Paragraph (C) was amended to clarify the amount of the lump sum stipend payment to be made when a caregiver becomes certified. Paragraph (D) was amended to require the agency that records a training allowance is also the agency responsible for making the stipend payment to the caregiver. Paragraph (K) was added to clarify that if and agency fails to pay a stipend to a foster caregiver within the required timeframes of this rule it will result in the forfeiture of any stipend reimbursement or allowance payment owed to the agency. Other non-substantive changes were made for clarity.

OAC rule 5101:2-9-04, entitled "General maintenance of a residential facility" provides guidance to agencies on what a residential facility should do to keep the facility in running order. No substantive changes were made.

OAC rule 5101:2-9-07, entitled "Emergency planning and preparedness" provides guidance to residential facilities in regard to what is required when an emergency situation arises. Paragraph (C) was amended to add that periodic fire and emergency evacuation drills must occur at varying times and shifts.

OAC rule 5101:2-9-09, entitled "Emergency medical plan and first aid supplies" provides guidance to residential facilities in regard to what is needed to be kept at the facility for first aid and the plan in case first aid is needed. No substantive changes were made.

OAC rule 5101:2-9-15, entitled "Residential facility handbook for residents and their families" provides guidance to residential facilities in regard to the contents and distribution of the handbook for residents. Paragraph (B) was amended to add language that states a residential facility must document the handbook was provided and explained in the child's case record. A new paragraph (C) was added to require that any revisions to the handbook must be provided to the custodial agency, custodial parent or guardian of a resident and submitted in writing to each resident no later than fourteen days after the revision.

OAC rule 5101:2-9-18, entitled "Recreation and leisure activities and equipment" provides guidance residential facilities in regard to recreational activities and equipment. Paragraph (A) was amended to require a residential facility to have a recreational program. Paragraph (C) was amended to reinforce that all off-site activities are in compliance with rule 5101:2-9-02 of the Administrative Code.

OAC rule 5101:2-9-26, entitled "Living rooms and lounges" provides guidance to residential facilities in regard to room dimensions and furniture required for living rooms and lounges. Paragraph (D) was removed because it referenced variance requests which are no longer granted. New paragraphs (D), (E) and (F) were added from rule 5101:2-9-27 as the rule is being rescinded. No other changes were made other than the combining of the two rules.

OAC rule 5101:2-9-27, entitled "Dining areas" provides guidance to residential facilities in regard to dining room requirements. This rule is being rescinded and added to rule 5101:2-5-26. No substantive changes were made to the original language.

OAC rule 5101:2-9-31, entitled "Laundry facilities" provides guidance to residential facilities in regard to laundry requirements. No substantive changes were made.

OAC rule 5101:2-9-35, entitled "Additional programmatic requirements regarding behavior management" provides guidance to residential facilities in regard to additional requirements on behavior management. Paragraph (B) was amended to remove references to unusual incidents. The paragraph was also amended to add that the designee of the administrator can also be notified if a high number of restraints and incidents of isolation occur.

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

Rule Number	Statutory Authority
Rule 5101:2-5-38	ORC 5103.0316
Rule 5101:2-9-04	ORC 5103.03
Rule 5101:2-9-07	ORC 5103.03
Rule 5101:2-9-09	ORC 5103.03
Rule 5101:2-9-15	ORC 5103.03
Rule 5101:2-9-18	ORC 5103.03
Rule 5101:2-9-26	ORC 5103.03
Rule 5101:2-9-31	ORC 5103.03
Rule 5101:2-9-35	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 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31, 5101:2-9-35 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.**

These rules are not written as a requirement of Federal Law, nor do they exceed any Federal requirements. Each of the rules is specific to child welfare and follows state statute 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 5101:2-5-38, the purpose of the regulation is to follow the language of ORC 5103.0312 and pay a stipend to foster caregivers for attending training sessions. The rule also specifies how the agency can be reimbursed for paying the training stipend and how private agencies can be paid a training allowance for incurring allowable costs involved in training.

For rule 5101:2-9-04, the purpose of the regulation is to ensure the grounds and buildings of the residential facility are in working order per the statutory requirements of ORC 5103.03.

For rule 5101:2-9-07, the purpose of the regulation is to ensure the residential facility is prepared for any emergency situation such as a fire or flood.

For rule 5101:2-9-09, the purpose of the regulation is to have a plan in place for the administration of first aid and what supplies are needed to be kept at the facility for first aid.

For rule 5101:2-9-15, the purpose of the regulation is to provide all residents with a facility handbook which provides information on how the facility operates.

For rule 5101:2-9-18, the purpose of the regulation is ensure residents at a facility have a recreational program and that the equipment used is kept in working order and safe.

For rule 5101:2-9-26, the purpose of the regulation is provide residents at a facility a living and dining space with minimum room dimensions and furniture required for dining areas, living rooms and lounges.

For rule 5101:2-9-31, the purpose of the regulation is to ensure there are proper laundry areas in a residential facility.

For rule 5101:2-9-35, the purpose of the regulation is to provide guidelines to residential facilities regarding behavior management.

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

Rules 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 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 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. These interest groups were part of the Midwest Child Welfare Implementation Center (MCWIC) meetings that OFC conducted during 2012. The meetings were held in person and also allowed for online input toward rule suggestions and changes. The group discussed and came to conclusions on each rule. The rules also went through the clearance process on February 15, 2013. There were a few comments made and responses were provided to the stakeholders. No additional questions were received.

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 and revised with the interested parties' involvement and language was developed that was agreeable to all. There were two comments received during the clearance process. The first was from Geoffery Collver of Disability Rights Ohio. Geoffery wanted rule 5101:2-5-35 to be more specific with additional requirements and suggestions. He provided examples with his comment. The response from ODJFS was: "The issues you present regarding

rule 5101:2-9-35 are addressed in the agency policy rule. The specific location is OAC 5101:2-5-13 (A)(14)."

The second comment was received from Melanie Allen of Sandusky County Children's Services. Melanie felt that rule 5101:2-5-38 was not clear and wanted it to be clarified. ODJFS took her suggestion and made the rule more clear. The new draft of the rule was included in the response provided to Melanie. ODJFS also requested she contact us if she had any additional suggestions or comments. None were received.

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 other alternatives considered for rules 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 as all parties involved were satisfied with the rules and because the rules are driven by statute..

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 rules 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35, ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the department set standards to ensure every institution and association that receives, or desires to receive and care for children, or places children in private homes is effectively and appropriately administering proper standards for safety. ODJFS also, according to statute, must be satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with. These rules 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. These rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure they do not duplicate any existing Ohio regulations.

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 Chapters 5101:2-5 and 5101:2-9contain 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:

5101:2-5-38 – The timeframes involved in paying stipends to foster caregivers for training and the request for reimbursements and training allowances. The rule requires the report of information: by entering training information into SACWIS and registering updates to training history in the system.

5101:2-9-04 – The agencies adhering to certification requirements for foster care residential facilities with regard to the maintenance of the structures, grounds, furnishings and equipment used by or located on the grounds of a residential facility.

5101:2-9-07 – The agencies adhering to certification requirements with regard to emergency planning and preparedness for foster care residential facilities. These procedures must be developed in consultation with, and approved by, a local or state fire inspector, and must include specific instructions and procedures for the evacuation of buildings, the assignment of staff during emergencies, and a contingency plan for the care of residents who have been evacuated.

5101:2-9-09 – The agencies adhering to certification requirements with regard to emergency medical plans and first aid supplies for foster care residential facilities.

5101:2-9-15 – The agencies adhering to certification requirements with regard to a residential facility handbook for residents and their families containing information about visitations, complaints and children's rights.

5101:2-9-18 – The agencies adhering to certification requirements with regard to recreation and leisure activities and equipment for foster care residential facilities.

5101:2-9-26 – The agencies adhering to certification requirements with regard to living rooms and lounges for foster care residential facilities.

5101:2-9-31 – The agencies adhering to certification requirements with regard to requirements for laundry facilities for foster care residential facilities.

5101:2-9-35 – The agencies adhering to certification requirements with regard to behavioral requirements for foster care residential facilities.

The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance.

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.

For rules 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35, 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?

For rules 5101:2-5-38, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 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.