

**MEMORANDUM**

TO: Michael Lynch, Ohio Department of Job and Family Services

FROM: Sydney King, Regulatory Policy Advocate

DATE: October 3, 2013

RE: **CSI Review – No Change Indian Child Welfare Act (OAC 5101:2-53)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of one rule under review by the Ohio Department of Job and Family Services (ODJFS) in accordance with the five-year review requirement of ORC 119.032. The rule provides requirements in order to implement the Indian Child Welfare Act. The Indian Child Welfare Act sets federal requirements that apply to state child custody proceedings involving American Indian children who are a member of or eligible for membership in a tribe. The rule package was filed with the CSI Office on September 11, 2013, and the comment period for the rules closed on September 16, 2013. No comments were received during the public comment period.

Rule 5101:2-53-07 describes the responsibilities of the public children services agencies (PCSAs) and private child placing agencies (PCPAs) when an American Indian child has been permanently surrendered for adoption by the parent or custodian. No changes were made to this rule.

According to the BIA, the rules were reviewed during the Partners For Ohio's Families (PFOF) Initiative. The PFOF committee made no recommendations for this rule. Stakeholders also had an

opportunity to comment during the ODJFS policy clearance process from April 6, 2013 through April 30, 2013. No comments were received during this period.

ODJFS performed additional outreach to ODJFS licensing staff and Ohio Association of Child Caring Agencies (OACCA) to obtain the cost estimates for implementing the ICWA regulations and procedures. However, the BIA indicates that cases involving ICWA regulations are rare. Therefore, licensing staff and OACCA have been unable to determine any private child placing agencies that have had experience implementing the ICWA regulations.

ODJFS states that the potential adverse impact on PCPAs is the administrative costs associated with compliance. Rules 5101:2-53-07 requires the agency to notify the designated agent of a child's tribe or tribal court in the event of a permanent surrender of the child or parental consent to adoptive placement of the child. This potential adverse impact is necessary in order to comply with federal regulations.

The CSI Office is not suggesting any changes with respect to the rules or the BIA for the following reasons:

- The potential adverse impact on businesses is justified.
- No comments were received during the public comment period.
- The BIA submitted by ODJFS is accurate and complete and does not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office.

Recommendation

For the reasons explained above this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office