

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: FYR of OAC 5101:2-42, Part 4 – Amendment for Substitute Care

Rule Number(s): 5101:2-42-95

Date: 11/12/13

Rule Type:

☐ New

☒ Amended

☒ 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☐ Rescinded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.

5101:2-42-95 This rule sets forth the requirements for obtaining permanent custody and the termination of parental rights.

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

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5103.03, 5153.166

- 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.

No, this rule does not implement federal requirements.

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

This rule does not exceed federal requirements.

- 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)?**

The purpose of the regulation in 5101:2-42-95 is to set in place the requirements for PCSAs and PCPAs to petition the court to request permanent custody of a child when a parent has been convicted of a violent crime (etc.), the child has been determined deserted or the child has remained in agency custody for twelve or more months of a consecutive twenty-two month period.

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

This rule is monitored through ODJFS licensing specialists in a random sampling review.

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.

In 2012, the State was awarded a three-and-a-half-year federal grant through the U.S. Department of Health and Human Services, Children's Bureau. ODJFS, Office of Families and Children, in partnership with stakeholders (Partners for Ohio's Families), has been working to examine and reform the State's child welfare service delivery system and the relationship with both public and private child welfare agencies. The work is being conducted through the Midwestern Child Welfare Implementation Center (MCWIC), a member of the National Child Welfare Training and Technical Assistance Network.

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Representative from 88 county PCSAs, PCPAs and PNAs were invited to the table for discussion, input and revisions. It was decided that this rule would go forward with no changes. As a result of the Legal Department's review a suggestion to correct a revised code reference and additional language for clarity was inserted into the rule.

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

The rule went through the ODJFS clearance process from 10/7/2013 through 10/21/2013. No comments 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 rule 5101:2-42-95 as all parties involved were satisfied with the rule and because the rule is driven by statute's ORC 2151.27, 2151.413 and 2151.35.

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.*

ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the department set standards to ensure the well-being of every child in temporary custody.

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

The JCARR prong for invalidation: "Rules do not conflict with a rule of its own or another rule-making agency" has been an ongoing deterrent to duplication. JFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

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 rule does 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;

The rules of the Administrative Code in Chapter 5101:2-42 contain requirements for children in temporary custody and placed into substitute care by public and private agencies. Requirements must be met to obtain and/or maintain certification for PCPAs and PNAs. There are 196 PNAs, 88 PCPAs and 42 IV-E Courts.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

5101:2-42-95 – The requirements of the rule must be met to terminate the custodial rights of parents and place the child in agency custody into a permanent family or planned permanent living arrangement. Failure to do so will result in a loss of certification for non-compliance. The employer's time is involved in petitioning the courts; amending the case plan and submitting it to the court.

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 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 rights of parents and the safety of children in substitute care, the adverse impact of this rule is necessary.

Regulatory Flexibility

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

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There is no alternative means of compliance pertaining to rule 5101:2-42-95.

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 rule 5101:2-42-95, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation of license.

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.