

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC:FYR Chapter 5101:2-5 CCN 7488 Beck 01/14

Rule Number(s): 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29,
5101:2-5-36, 5101:2-5-37, 5101:2-5-40

Date: 01/15/14

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☒ Rescinded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.

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OAC rule 5101:2-5-13.1, entitled "Disaster preparedness plan requirements", provides guidance to agencies on the minimum process for the agency to continue to operate during a disaster. The rule was updated for clarity. No substantive changes were made.

OAC rule 5101:2-5-23, entitled "Form and duration of a foster home certificate", provides guidance to agencies regarding the foster home certificate. This rule is being rescinded. It was a directive for ODJFS, not foster care agencies.

OAC rule 5101:2-5-27, entitled "Termination of a foster home certificate", provides guidance to agencies on items regarding the termination of a foster home certificate. Paragraph (B) was amended to update the current procedure for terminating a foster home certificate if an agency has not yet implemented the statewide automated child welfare information system (SACWIS).

OAC rule 5101:2-5-28, entitled "Cause for denial of initial certification, denial of recertification or revocation of a foster home certificate", provides guidance to agencies regarding the reasons a foster home certificate might be denied or revoked. Paragraph (E)(1) was amended to add what an agency is required to do to begin an investigation of noncompliance.

OAC rule 5101:2-5-29, entitled "Foster home records", provides guidance to agencies regarding foster home records. Paragraph (C)(4) was amended regarding the log kept by the agency for foster homes and requires the agency to add the reason for the removal of a foster child from a foster home to the log when a child is removed or discharged.

OAC rule 5101:2-5-36, entitled "Additional requirements for an agency that acts as a representative of ODJFS in recommending treatment foster homes for certification", provides guidance to agencies regarding requirements for treatment foster homes. Paragraph (I) was amended for clarity.

OAC rule 5101:2-5-37, entitled "Additional requirements for an agency that acts as a representative of ODJFS in recommending medically fragile foster homes for certification", provides guidance to agencies regarding requirements for medically fragile foster homes. The rule was amended for clarity. No substantive changes were made.

OAC rule 5101:2-5-40, entitled "Preplacement and continuing training programs", provides guidance to agencies regarding the requirements for an agency wishing to implement and maintain a foster care training program. Paragraph (A) was amended to allow for an agency administrator or designee to approve the agency training plan and submit it to ODJFS. Paragraph (C) was amended to replace "agency director" with "agency administrator or designee". Paragraph (D) was amended for clarity. Paragraph (G) was amended for clarity.

Paragraphs (H), (J) and (L) were amended to reference the required training topics described in rule 5101:2-5-33. Paragraph (O) was amended for clarity.

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

Rule Number	Statutory Authority
Rule 5101:2-5-13.1	ORC 5103.03, 5103.07, 5153.166
Rule 5101:2-5-23	ORC 5103.03
Rule 5101:2-5-27	ORC 5103.03
Rule 5101:2-5-28	ORC 5103.03
Rule 5101:2-5-29	ORC 5103.03
Rule 5101:2-5-36	ORC 5103.03
Rule 5101:2-5-37	ORC 5103.03
Rule 5101:2-5-40	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 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, and 5101:2-5-40 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 5101:2-5-13.1, the purpose of the regulation is to have a plan for the minimum process necessary for the agency to continue to operate during a disaster. This regulation is needed to ensure the continued care for children placed under the agency's oversight.

For rule 5101:2-5-23, the purpose of the regulation is to give information of the internal process for the foster home certificate. The rule is being rescinded as it is an internal process.

For rule 5101:2-5-27, the purpose of the regulation is to guide agencies on items regarding the termination of a foster home certificate. This regulation is needed so that an agency is aware of the items that must be met for the safety of the children in their care.

For rule 5101:2-5-28, the purpose of the regulation to provide agencies with information regarding the reasons a foster home certificate might be denied or revoked. This regulation is needed to eliminate an agency that might pose harm and safety issues to the children placed in its care.

For rule 5101:2-5-29, the purpose of the regulation is to provide agencies with guidelines for the safe keeping and content of foster home records. This regulation is needed to ensure the confidentiality of the information of the foster caregivers as well as the children in care.

For rule 5101:2-5-36, the purpose of the regulation is to ensure agencies have additional guidelines for foster homes that provide care for treatment level foster children. This regulation is needed to ensure children placed with the agency that need more intensive care, receive the services needed to carry on with their daily life.

For rule 5101:2-5-37, the purpose of the regulation is to ensure agencies have additional guidelines for foster homes that provide care for medically fragile level foster children. This regulation is needed to ensure children with extensive medical needs have the care to properly address their needs.

For rule 5101:2-5-40, the purpose of the regulation is to provide guidelines of a training program for a foster care agency to ensure the agency is in compliance with statutory requirements. This regulation is needed to ensure the agency is providing adequate training to foster caregivers so that the home can properly and adequately provide care for the children placed there.

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

Rules 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, and 5101:2-5-40 will be measured against the criteria specific to the rule content.

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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 January 6, 2014. 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 was one comment received by Barbara Farley. Ms. Farley's comment was "Hello I am a concerned citizen. I am currently taking classes to become a foster parent. I also have a Concealed Carry License. Please do not make me choose to either protect my family OR be a foster parent by trying to enforce rules on me concerning concealed carry. I have a right to bear arms and protect my family. I am a responsible gun owner. Thank you." The response from ODJFS was: "Hello Barbara, Thank you for your concern. OAC rules 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37 and 5101:2-5-40 do not address concealed weapons."

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 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, and 5101:2-5-40 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 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, and 5101:2-5-40, 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.

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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:

5101:2-5-13.1 – The agencies adhering to certification requirements with regard to emergency planning in case of a disaster. As a state supervised, county administered CPS system, planning for disaster response and recovery in Ohio occurs at both the state and county levels. Program Instruction, ACYF-CB-PI-07-05 issued by the U.S. Department of Health and Human Services, Administration for Children and Families on February 28, 2007 delineates the criteria for disaster preparedness and recovery plans. This rule is the result of the Federal requirement.

5101:2-5-27 – The agencies adhering to certification requirements for terminating a foster care certificate including the time involved in preparing the proper forms and submission of information to ODJFS.

5101:2-5-28 – The agencies adhering to certification requirements with regard to the denial or revocation of a foster home, including:

- (1) Reviewing the foster home certificate, if applicable, and if appropriate, recommend that ODJFS revoke or deny the certificate.
- (2) Reviewing the appropriateness of the placement in the foster home of any child of whom the agency has temporary, legal, or permanent custody. After review, the agency may, consistent with any court order, remove the child from the foster home in which the child is residing and place the child in another certified foster home or other appropriate placement.
- (3) If the agency does not have temporary, legal, or permanent custody of a foster child residing in the foster home, notifying the entity that has custody of the child that it has received a notice under paragraph (R) of rule 5101:2-7-02 or paragraph (H) of rule 2-7-14 of the Administrative Code.
- (4) Assessing the foster caregiver's need for training because of the conviction, plea of guilty, or adjudication described in paragraph (A) of this rule and providing any necessary training unless the agency action is to recommend revocation of the certificate.

(5) If the foster caregiver has failed to comply with the provisions of paragraph (R) of rule 5101:2-7-02 or paragraph (H) of rule 5101:2-7-14 of the Administrative Code, the agency shall immediately notify ODJFS and ODJFS shall revoke the foster home certificate per ORC 5103.0319.

5101:2-5-29 – The agencies adhering to certification requirements with regard to the keeping of foster home records which might include making copies and housing of the files.

5101:2-5-36 – The agencies that choose to certify treatment foster homes, adhering to certification requirements with regard to guidelines and requirements for treatment level foster homes which would include the time involved in creating a service plan the address the child’s needs for a treatment foster home.

5101:2-5-37 – – The agencies that choose to certify medically fragile foster homes, adhering to certification requirements with regard to guidelines and requirements for medically fragile level foster homes which would include the time involved in creating a service plan the address the child’s needs for a medically foster home. This might also include the cost of any special medical equipment and services for this type of child.

5101:2-5-40 – The agencies adhering to certification requirements with regard creation and implementation of a foster care training program including the cost of the time to complete a training program and present it to ODJFS for approval. Pre-placement training requirements are specific to ORC section 5103.039.

The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. ODJFS 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. Chapter 5103 of the Revised Code charges ODJFS with the direction of oversight for children in care. Specifically ORC 5103.03 grants ODJFS the authority to write rules in order to “...pass upon the fitness of every institution and association that receives, or desires to receive and care

for children, or places children in private homes.” To accomplish this result, 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 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, and 5101:2-5-40, 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 5101:2-5-13.1, 5101:2-5-23, 5101:2-5-27, 5101:2-5-28, 5101:2-5-29, 5101:2-5-36, 5101:2-5-37, and 5101:2-5-40 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.