

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 7449 02/14

Rule Number(s): 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11, 5101:2-5-18

Date: 2/12/14

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☐ Rescinded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 5101:2-5-04, entitled "Recertification of an agency to perform specific functions" provides guidance to agencies for the requirements the agency needs to meet in order to be recertified. Paragraph (A)(3) was amended due to a legislative update that changes the required audit type for the first agency audit from "government auditing standards" to "American institute of certified public accountants" standards. Paragraph (A)(4) was amended to change the required audit type for subsequent agency audits from "government auditing standards" to "American institute of certified public accountants" standards. Paragraph (A)(5) was amended to define "American institute of certified public accountants" standards. New paragraphs (B), (C) and (D) were created to establish a fiscal watch period for agencies that cannot readily show they are fiscally accountable. Paragraph (E) was amended to ensure the agency submits the required documentation electronically to ODJFS.

OAC rule 5101:2-5-09.1, entitled "Criminal records check required for certain prospective employees and certified foster caregivers" provides guidance to agencies for the requirements the agency needs to conduct criminal record checks for prospective employees and foster caregivers. Paragraph (Q) about the criminal record check being valid for one year was removed. ODJFS feels that this is a parameter for BCII to establish, not ODJFS. Paragraph (U) was also removed due to the language being removed from statute. Several other paragraphs were re-arranged for clarification. No other substantive changes were made.

OAC rule 5101:2-5-11, entitled "Complaint handling" provides guidelines to agencies on how ODJFS investigates complaints made against the agency. Paragraph (A) was amended to give ODJFS discretion on when to begin to conduct an investigation.

OAC rule 5101:2-5-18, entitled "Waivers and variances" provides guidance to agencies on how and when they can request a waiver for foster home requirements. Paragraph (A)(1) was removed regarding a waiver for the fingerprint requirements for a criminal record check for persons that were physically unable to be fingerprinted. The removal was a result of a legislative change.

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

Rule Number	Statutory Authority
Rule 5101:2-5-13	ORC 5103.03
Rule 5101:2-5-09.1	ORC 2151.86
Rule 5101:2-5-11	ORC 5103.03, 5153.16
Rule 5101:2-5-18	ORC 5103.02, 5103.03

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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, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18 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. These rules are specific to child welfare and follow 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 5101:2-5-04, the purpose of the regulation is to ensure foster care agencies comply with the requirements the agency needs to meet in order to be recertified. Without these requirements, agencies could be operating in a manner that could pose a threat to the safety and well-being of children placed in their care.

For rule 5101:2-5-09.1, the purpose of the regulation is to ensure foster care agencies comply with the requirements the agency needs to conduct criminal record checks for prospective employees and foster caregivers. The agency must comply with section 2151.86 of the Revised Code which requires the criminal background checks. Failure of the agency to comply would be a violation of the law, but also could endanger the children in placement.

For rule 5101:2-5-11, the purpose of the regulation is to ensure foster care agencies are aware of how ODJFS investigates complaints made against the agency.

For rule 5101:2-5-18, the purpose of the regulation is to ensure foster care agencies are aware of how and when they can request a waiver for foster home requirements. The agency may have special circumstances that might warrant waiving a rule requirement. This rule gives the flexibility in certain situations for ODJFS to approve this.

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

Rules 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18 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 the Office of Families and Children 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 November 18, 2013. There was one comment made and the response was provided to the stakeholder. 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 rule was reviewed and revised with the interested parties' involvement and language was developed and altered to address the issues presented. There was one comment received during the clearance process. The comment was from Lore Pierzchala of Bellefaire JCB. Mr. Pierzchala made a comment concerning the frequency of the criminal background checks. He feels the rule is too lenient and should require more frequent checks. ODJFS responded by stating "The background check requirements come specifically from statute in ORC 2151.86. Your agency may complete the checks more often if it chooses to do so."

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 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18 as the parties involved were satisfied with the rule and because the rule is 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 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18, 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 rule were reviewed by the legal staff at ODJFS prior to the clearance process to ensure they did 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.

These 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:

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- 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.

Rules 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18 of the Administrative Code contain requirements for foster care agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-5-04 – The agency adhering to certification requirements with regard to the requirements the agency needs to meet in order to be recertified, the cost of getting a financial statement audit and the cost of completing corrective action and business plans.

5101:2-5-09.1 – The agency adhering to certification requirements with regard to for the requirements the agency needs to conduct criminal record checks for prospective employees and foster caregivers. The agency may incur a cost for BCII check if the agency chooses to submit the checks electronically. The BCII checks are a requirement of section 2151.86 of the Revised Code.

5101:2-5-11 – The agency adhering to certification requirements with regard to how ODJFS investigates complaints made against the agency.

5101:2-5-18 – The agency adhering to certification requirements with regard to how and when an agency can request a waiver for foster home requirements.

The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. With the new legislation changing the agency audits from GAGAS audits to GAS audits, the agencies will notice a substantial savings, however, there will still be a cost involved for this audit procedure. Costs can vary from a few hundred dollars to several hundred dollars depending on the complexity of the audit. This audit is a requirement of section 5103.0323 of the Revised Code.

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.

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Regulatory Flexibility

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

For rules 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18 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 5101:2-5-04, 5101:2-5-09.1, 5101:2-5-11 and 5101:2-5-18 there is no fine 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.