

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 2 – FYR of OAC Chapter 5101:2-42, Substitute Care, Part 2

Rule Number(s): 5101:2-42-05, 5101:2-42-08, 5101:2-42-09 , and 5101:2-42-19

Date: 1/10/2014

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☐ Rescinded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.

5101:2-42-05 Selection of a placement setting sets forth the requirements in the selection of a placement setting when a child cannot remain in their own home.

5101:2-42-08 Acceptance of temporary custody by agreement and court –appointed extensions sets forth the requirements of a temporary custody agreement between the

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Public Children Services Agencies (PCSAs) and Private Child Placing Agencies (PCPAs) and a parent upon the request of a secondary extension.

5101:2-42-09 Acceptance of permanent custody by permanent surrender sets forth the requirements of a permanent custody agreement between the PCSAs and PCPAs and a parent.

5101:2-42-18.1 Non-discrimination requirements for foster care placements sets forth the requirements not to deny or delay prospective foster parents or the placement of children into foster care on the basis of race, color or national origin of that person.

5101:2-42-19 Requirements for the provision of independent living services to youth in custody sets forth the requirements for PCSAs and PCPAs to prepare youth for the transition from agency custody to self sufficiency.

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

Rule Number	Statutory Authority
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5101:2-42-05	5103.03, 5153.16
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5101:2-42-08	5103.03, 5153.15, 5153.16
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5101:2-42-09	5101.03, 5103.15, 5103.16, 3107.083
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5101:2-42-18.1	5101.141, 5103.03
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5101:2-42-19	5101.141, 5103.03, 5153.166
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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.

No, these rules do 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.

These rules do 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 regulations in 5101:2-42-05 is to provide guidelines for PCSAs and PCPAs to explore maternal/paternal relatives, regarding their willingness to assume temporary custody or guardianship of a child.

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The purpose of the regulations in 5101:2-42-08 is to provide guidelines for PCSAs and PCPAs for temporary custody and court-approved extensions.

The purpose of the regulations in 5101:2-42-09 is to provide guidelines for parents, or other persons having custody of a child may enter into an agreement with a PCSA or PCPA to voluntarily surrender a child into the permanent custody of an agency when there is mutual agreement that a permanent surrender would be in the best interests of the child.

The purpose of the regulations in 5101:2-42-18.1 is to provide guidelines to prevent any discriminatory practices that may deny any person the opportunity to become a foster caregiver or prevent placement of a child into foster care on the basis of race, color or national origin (RCNO) of that person.

The purpose of the regulations in 5101:2-42-19 is to provide guidelines for PCSAs or PCPAs to prepare youth for the transition from agency custody to self-sufficiency.

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

These rules are all monitored through the certification process.

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.

Representatives from 88 county PCSAs, PCPAs and PNAs were invited to the table for discussion, input and revisions. It was decided that all rules would go forward with no changes.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency? [See above.](#)

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 alternatives considered for rules 5101:2-42-05, 5101:2-42-08, 5101:2-42-09, 5101:2-42-18.1, and 5101:2-42-19 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.

[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 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;

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.

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

5101:2-42-05 – The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State. These requirements include exploring relatives' willingness and ability to assume temporary custody/guardianship of the child; exploring placement with a suitable non-relative with ties to the child/family; assuring the placement home conditions are suitable with regard to cleanliness, proper heating/cooling, smoke detectors, etc.; that all persons in the home meet the foster care certification standards set forth in rule 5101:2-42-18; and that substitute care settings have been licensed, certified or approved by ODJFS. Identifying costs as they relate to time spent completing forms depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing levels, the number of children in care or custody, the individual needs of each family, and availability of appropriate placements. All placement activities are to comply with rules 5101:2-42-18.1 and 5101:2-48-13 of the OAC and with the guidelines of the Federal Multiethnic Placement Act.

5101:2-42-08 – The requirements of JFS 01645 must be met in order for PCPAs to obtain and/or maintain certification by the State. Identifying the costs to the PCPAs as they relate to time spent completing forms depends on many different variables. Variables include agency staffing and composition, the individual needs of the child and family, and the number of children in care or custody. The agency is not subject to any court costs or filing fees for making an extension request. The rule reference changes in paragraph (I) of this rule were made due to the rescinding and chapter relocation of the cited rules. The rule citation changes place no new requirements on agencies.

5101:2-42-09 - The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State. Identifying the costs to the PCPAs as they relate to time spent completing forms, such as a case plan, depends on many different variables. These variables include:

- individual needs of the family
- holding family meetings
- the agency composition and number of assessors employed at the agency

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- case plan preparation and identified services and needs
- the timeliness of documents processed in juvenile court

There is no cost associated with juvenile court filings.

5101:2-42-18.1 - The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State. Identifying the costs to the PCPAs as they relate to time spent conducting assessments regarding whether a child has individual needs involving race, color or national origin are nearly impossible to approximate. As each child and case is different, many variables including whether or not an assessment is necessary, are involved in making such determinations. When an assessment is deemed necessary, the child is referred to an outside provider and the cost would be billed as a Medicaid service. If the assessment is deemed necessary, then the agency is required to complete the JFS 1688 and the provider is required to complete the JFS 1608. Each, as well as the JFS 1611, are directly related to the requirements set forth in the Federal Multiethnic Placement Act of 1994.

5101:2-42-19 – The PCPA must develop procedures to implement and track healthcheck procedures and comprehensive health care for children in placement. Failure to do so will result in a loss of certification for non-compliance. Identifying costs as they relate to time spent conducting life skills assessments depends on so many different variables, that it is nearly impossible to approximate. Each assessment is unique to each child and the amount of time required to complete it would depend on many circumstances surrounding the individual needs of the child. For example, the assessments include academic support, academic counseling, study skills, tutoring, career preparation, job coaching, job seeking skills, budgeting, fiscal management, housing management, food preparation, hygiene skills, laundry, health education, and mentoring. In addition, there is no cost to an agency for obtaining the required credit reports.

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 safety of children in substitute care, the adverse impact of these rules is necessary. The requirements set forth in the rules provide safety nets for children in substitute care by:

- considering the least restrictive placement that is in the best interest and consistent with the special needs of each child
- ensuring children are only placed in settings that are licensed, certified and approved
- exploring the appropriateness of and the ability of relatives to assume custody of a child
- determining appropriate placements based on the needs of each child
- ensuring a child's placement is not delayed or denied on the basis of race, color, or national origin
- preparing a child to live independently upon reaching the age of majority

Each form discussed in the rules of this packet is available in Forms Central on the Ohio Department of Job and Family Services website at <http://www.odjfs.state.oh.us/forms/inter.asp>. Agencies are provided information about forms initially during the New Agency Administrators Training, and then subsequently during the ODJFS Quarterly Licensing Meetings and through assistance with their assigned ODJFS licensing specialist.

Regulatory Flexibility

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

For rules 5101:2-42-05, 5101:2-42-08, 5101:2-42-09, 5101:2-42-18.1, and 5101:2-42-19, 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 5101:2-42-05, 5101:2-42-08, 5101:2-42-09, 5101:2-42-18.1, and 5101:2-42-19, 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.