

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: FYR OAC 5101:2-42-68

Rule Number(s): 5101:2-42-68

Date: February 27, 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☐ Rescinded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.

OAC 5101:2-42-68, "Necessity for continued substitute care placement: court reviews and hearing requirements," sets forth the requirements for agencies regarding continued substitute care placements and the frequency of assessing the continuation of placement.

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

5103.03, 5153.16

- 3. Does the regulation implement a federal requirement? No 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.

Not applicable.

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

This rule is not written as a requirement of Federal Law, nor does it exceed any 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)?**

This regulation is necessary to outline for public children services agencies (PCSAs) and private child placing agencies (PCPAs) the steps to determine the necessity of continued substitute care placement for each child. The goal of these requirements is to ensure a proper placement into safe, stable, nurturing environments for children in substitute care until each child can reunify with his or her parent, guardian, or custodian or a permanent placement is established.

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

Agencies undergo compliance reviews once every two years as part of the recertification process which includes compliance with the requirements of this rule. Agencies also receive compliance reviews at approximately the one year mark of the two-year certification period.

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.

Rule 5101:2-42-68 was reviewed during the Partners for Ohio's Families (PFOF) Initiative. Stakeholders included county agency staff, private agency staff, and foster parents. The clearance period for rule 5101:2-42-68 was 1/02/2014 through 1/16/2014.

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

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The PFOF committee reviewing this rule made recommendations for clarifying existing language. The committee recommended changes to update rule citations and the revision dates to referenced forms. All changes recommended by the PFOF committee were made.

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?

No other alternatives were considered for rule 5101:2-42-68 as all parties involved were satisfied with the rule.

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 the department set standards to ensure the well-being of every child in temporary or permanent custody.

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

The JCARR prong "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.

When the rule is final filed, a transmittal letter will be generated to all PCSAs and PCPAs explaining the changes to the rule and the rationale for the changes. The transmittal letters can be viewed at

[http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id\(59\)&docId=Document\(storage%3DREPOSITORY%2CdocID%3D%23node-id\(87890\)\)&locSource=input&docLoc=%24REP_ROOT%24%23node-id\(87890\)&version=8.0.0](http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id(59)&docId=Document(storage%3DREPOSITORY%2CdocID%3D%23node-id(87890))&locSource=input&docLoc=%24REP_ROOT%24%23node-id(87890)&version=8.0.0).

Certification reviews, which include monitoring the implementation of rule 5101:2-42-68, occur once every two years, and at the one-year mark during the two-year certification period.

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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. There are currently 26 certified private child placing agencies in Ohio.

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

The requirements of 5101:2-42-68 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 the JFS 1413 and conducting case reviews depends on so many different variables that it is nearly impossible to approximate. Variables include agency staffing and composition, training, and the number of children in care or custody. The JFS 1413 may have a standard set of questions, but each review is unique to each case. The amount of time required to complete a review would depend on many circumstances surrounding the needs of each child and adult family member. For example, the review includes safety re-assessment, case progress review, strengths and needs of each member, and risk re-assessment.

The agency is not subject to any court costs or filing fees for motions or subsequent review hearings. The rule reference change in paragraph (F) of this rule was made due to the rescinding and relocation of the cited rule. The rule citation change places no new requirement on agencies.

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?

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To ensure the safety of children in substitute care, the adverse impact of these rules is necessary. The requirements set forth in this rule provide safety nets for children in substitute care by determining the necessity for continued placement.

Regulatory Flexibility

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

There are no exemptions and no alternative means of compliance for rule 5101:2-42-68.

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?

There are no fines or civil penalties for non-compliance with this rule 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 regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of rule 5101:2-42-68.