CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: New Children Services Licensing Rules in Chapter 5101:2-9 as a result of the passage of HB 483 CCN 7610

Rule Number(s): 5101:2-9-37, 5101:2-9-38

Date: 12/4/14

Rule Type:

X 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Rescinded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 5101:2-9-37, entitled "Information to be provided by residential facilities" provides guidance to agencies for the requirements the facility needs to communicate with the local community at initial certification and recertification.

OAC rule 5101:2-9-38, entitled "Community engagement plan" provides guidelines to agencies on what a residential facility must include in their community engagement plan.

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

Rule Number	Statutory Authority
Rule 5101:2-9-37	ORC 5103.02, 5103.03, 5103.05
Rule 5101:2-9-38	ORC 5103.02, 5103.03, 5103.051

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 5101:2-9-37 and 5101:2-9-38 do not implement a federal regulation and are not being established 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. The 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)?

The purpose of these rules is to establish the directives of Am. Sub. HB 483, 130th GA that sets forth the new requirements of a "Community Engagement Plan" and to ensure adherence to the plan by each Private Child Placing Agency (PCPA), Private Noncustodial Agency (PNA), and Public Children Services Agency (PCSA). This plan sets forth protocols for the community in which a residential facility is located to communicate concerns or other

pertinent information directly to the agency or entity and establishes procedures and time frames for responding to incidents involving a child at the facility back to neighbors or the police. Prior to these rules, there was no process for the exchange of relevant information to be shared between foster care agencies and surrounding community residents.

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

   The success of these rules can be measured by how well the "Community Engagement Plan" works to ensure the direct communication of concerns between residential facilities and the surrounding members of the community per the legislative mandates of Am. Sub. H.B. 483, 130th GA.

   Orientation procedures for training residential facility staff on implementing the Community Engagement Plan are also outlined in rule as they are integral to the success of the Community Engagement Plan.

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 stakeholders and interest groups including Ohio Association of Child Caring Agencies (OACCA), Public Children's Services Associates of Ohio (PCSAO) and the Neighbors Seeking Responsible Group Homes (NSRGH). 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 rule also went through the clearance process on July 31, 2014 through August 14, 2014. There were five comments made during the clearance process. Brett Couch, a licensing specialist for ODJFS wanted a time frame to be applied to the implementation of the rule. A time frame was added to the rule. The remaining four comments were from members of the NSRGH expressing they wanted more specifics in the rules.

Charles Edwards, a Huber Heights resident stated: "*While this is a step in the right direction, this has no specific rules in this, and is extremely VAGUE! It needs to be more refined with clear set rules.*"

Pan Gaven of NSRGH commented: "*Specific detailed rules are needed. I do not see that this has been accomplished, but only the test of the legislation has been used. Specific rules around placement of youth in a residential home are needed from a standpoint of risk to the community as well as other youth within the home. The rules need to address if on going issues are present at a residential group home what will the process to correct on going issues at the location.*"

Joya Neff, also of NSRGH, stated: "*5101:2-9-37 - There is inconsistency between (A) and (A) (1). If a facility has commenced operations ten day prior as noted in (A), the statement "A written notice that a facility will be operating …" in (A) (1) is in error. An easy correction would be to add to (A) "A residential facility shall, within ten days after commencement of operations, provide in writing the following…". Then delete (A) (1).*

Our residents' group is quite discouraged that definitions and clarifications were totally absent from the Rules. Just lifting the language of the Statute is not enough. For example, using the phrase above, "has commenced operations" is unclear. Does that mean when the provider establishes a facility? When the court places youth? Etc. WeI would suggest a substitution of that language to "has received licensure (or certification)". That would be a clear definition.

5101:2-9-38 - (A)(1)(2) Implementing the way in which a provider will engage the community is paramount in our effort and we would hope there be clear definition of what steps will be taken, not just that it will be in protocols, which leaves open the opportunity to skip some steps in that engagement. We would expect to see in those protocols the requirement of a written record of such things as who made the initial contact, date, and time, and a description of the concern, the response made, by whom and the date and time. Lastly, how will the community be advised of those protocols?

(B) Because several of our group are professionally licensed and are required to <u>document</u> the hours of continuing education we obtain to maintain our licensure, we understand the need to be specific as to what is involved in the term "document." We would expect more than the staff signing a paper. We would expect the content of the specific session of training be defined, the name of the instructor, the date, time and the length of time of the session. Each staff attending the session should make a written comment that the content was understood and provide a signature. That data should become part of the staff's record. Easy and solid."

This prompted a workgroup meeting with the NSRGH, OACCA and PCSAO. Each rule was reviewed and the following changes were made and agreed upon by the workgroup:

Rules 5101:2-9-37 and 5101:2-9-38 – Paragraphs (A) and (B) in both rules were amended to include time frame for implementation of the requirements.

Rule 5101:2-9-38 was amended in paragraph (C) to include specifics about orientation training for staff. Time frames were established for the completion of the training requirement. Also language was added stating if the training is conducted by an external provider, the training shall include a transfer of learning component. The transfer of learning component may include a pretest, a posttest, or a discussion following the training.

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 to address the issues presented. There were changes made that gave more detail than the requirements listed in statute. These changes were:

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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 5101:2-9-37 and 5101:2-9-38 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 5101:2-9-37 and 5101:2-9-38, 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. The rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure there was no duplication of 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 all regulations are applied consistently and that technical assistance is offered 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.**
  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.

a. Scope of impacted business community:

Ninety-three agencies will be impacted by the requirements of these rules. The agency number may vary slightly due to monthly openings or closings of facilities. This number includes both public and private agencies because public agencies are required to have the residential facilities certified as if they were operating as a Private Non-custodial Agency (PNA). (OAC 5101:2-5-02 (D)).

b. Nature of adverse impact:

Loss of certification if the agency doesn't adhere to the statutory requirements of the rules.

c. Quantify adverse impact:

Adverse impact would entail administrative time spent reporting information necessary for rule compliance.

Information agencies are required to report to all county, municipal or township law enforcement agencies, emergency management agencies and fire departments with jurisdiction over the facility within a written notice of operation includes the listing below:

1) Address of facility
2) Type of facility
3) Facility contact information
4) Copy of procedures for emergencies
5) Copy of facility's medical emergency plan
6) Copy of facility's Community Engagement Plan

Time involved capturing this information could vary depending on the depth and scope of the Community Engagement Plan. Estimates for completion of this process range from six to ten hours. If the agency employs individuals at $10 an hour, the cost of compliance may range from $60 to $100, but could go even higher depending on the complexity of any given plan.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Agency is carrying out the directives of Am. Sub. H.B. 483 of the 130th General Assembly. ORC 5103.05 mandates ODJFS to promulgate rules outlining the process and regulation of the Community Engagement Plan.

Background:

In 2014, ODJFS was legislatively charged to write rules surrounding a Community Engagement Plan for foster care residential facilities due to an incident in Franklin County wherein a Blendon Township woman was stabbed to death while jogging in a park near her home. Police charged Jordan T. Stewart, 16-year-old group home resident, with the slaying. Jane E. Juergens was found dead with multiple stab wounds on the main trail of Ridgewood Park. She lived on Saddle Lane E., not far from the park. Stewart was charged with a delinquency charge of murder in Juergens' death. Stewart lived in a group home with three other boys at 5548 Copenhagen Dr., which is near the park. He was assigned to the group home, run by Consumer Support Services, by Franklin County Children Services.

ODJFS has worked in conjunction with both private and public agency representatives, as well as other interest groups, to create rules governing the Community Engagement Plan.

Regulatory Flexibility

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

For rules 5101:2-9-37 and 5101:2-9-38, 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 5101:2-9-37 and 5101:2-9-38 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.