

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC- Chapter 48 Rules FYR

Rule Number(s): 5101:2-48-13, 5101:2-48-22, 5101:2-48-23, 5101:2-48-24

Date: 4/2/15

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☐ Rescinded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.

This Business Impact Analysis covers four amended rules. The revisions are a result of the five year review, as well as changes recommended from the Partners for Ohio's Families rule review

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that was completed in 2013 and included a collaboration of public and private agencies, as well as foster and adoptive parents. The following is a brief explanation of the proposed changes:

OAC rule 5101:2-48-13, entitled "Non-discrimination requirements for adoptive placements" provides guidance to agencies regarding discriminating actions that are prohibited when making placement decisions, as well as required actions when race, color, or national origin is intended to be a factor in the decision making process. There were no substantive changes to this rule. Form effective dates were updated throughout the rule and language was changed for grammatical purposes.

OAC rule 5101:2-48-22, entitled "Adoptive family case record" provides guidance to agencies regarding the documentation requirements for the case record for each potential adoptive family. Language in paragraph (B)(5) was changed to align with the requirements in rule 5101:2-48-12 regarding falsification. Other changes were not substantive. Form effective dates were updated and language was revised for grammatical purposes.

OAC rule 5101:2-48-23, entitled "Preservation of adoptive child case record" provides guidance to custodial agencies regarding the documentation requirements to be placed in the adoptive child's case record. Language in paragraph (B)(4) was added to meet the requirements of ORC 3107.12. There were no other substantive changes. Form effective dates were updated throughout the rule.

OAC rule 5101:2-48-24, entitled "Agency adoption review procedures" provides guidance to agencies on the requirements of the review process when a complaint is received from adoptive applicants or families. Paragraph (B) was broken out into sub-paragraphs for the ease of the reader. The language in paragraph (G) was revised to align with the requirements in rule 5101:2-48-12 regarding falsification.

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

| Rule Number | Statutory Authority |
|-------------------|----------------------------------|
| Rule 5101:2-48-13 | ORC 5103.03, 5153.16, 5153.166 |
| Rule 5101:2-48-22 | ORC 5101.141, 5103.03 , 5153.166 |
| Rule 5101:2-48-23 | ORC 5103.03, 5153.166, 3107.17 |
| Rule 5101:2-48-24 | ORC 2151.86, 3107.033, 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.

Rule 5101:2-48-13 enforces the Multiethnic Placement Act of 1994 and Title VI of the Civil Rights Act of 1964, which states that agencies shall not delay or deny any person the opportunity to become an adoptive parent on the basis of race, color or national origin of that person, or of the child involved; nor shall the agency delay or deny the placement of a child for adoption on the basis of race, color or national origin of the adoptive parent, or of the child involved. There are documentation requirements listed in rules 5101:2-48-22 and 5101:2-48-23 that are derived from this federal legislation.

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

Rule 5101:2-48-13 does not exceed federal requirements. Rules 5101:2-48-22, 5101:2-48-23, 5101:2-48-24 are not written as a requirement of federal law, nor do they 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)?

The rules, which are promulgated pursuant to the requirements of the Revised Code, establish regulations for the minimum standards to ensure the safety and well-being of children placed in adoptive homes.

Rule 5101:2-48-13 ensures that individuals who are interested in adopting children are not discriminated against in regards to race, color, or national origin. Agencies are required to document how any placement decision was made, and advised of specific examples of actions that they are not allowed to take in regards to an adoption. The rule also gives very specific criteria for the documentation required when race, color, or national origin can impact a placement decision.

Rule 5101:2-48-22 ensures that all homestudy information for the adoptive family case record is maintained by the agency, as the rule details exactly what documents are required to be kept in the record once a family first applies to become approved for adoption. This assures that all appropriate documentation is kept in the family record in the event the information is needed to be reviewed at any point in the future.

Rule 5101:2-48-23 ensures the permanency, security, and confidentiality of the adoptive child record by the custodial agency. The rule details which documents are required to be in the adoptive child record, as well as who is authorized to review the record after finalization.

Rule 5101:2-48-24 ensures that adoptive parents and applicants have an avenue to request a review of an agency decision regarding their situation. The rule outlines the timeframes an agency has to review the complaint, as well as the procedures for the agency review.

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

The success of these regulations will be measured against the criteria specific to the content in each rule in assuring the safe placement of children into adoptive homes.

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 Partners for Ohio Families (PFOF) meetings that the Office of Families and Children (OFC) conducted during 2011-2012. 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 were also posted on the Ohio Rule Review website in February 2015, and went through the internal and external clearance process in February 2015. No comments were received through these processes.

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 updated with involvement from OACCA, OFCA, the interested parties' involvement and language was developed that was agreeable to all. There were no comments received during the clearance process, or while the rules were posted on the Ohio Rule Review website.

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 these rules as all parties involved in the PFOF and clearance process were satisfied with rule language outcomes 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.

No. ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the department set minimum standards to ensure the safety and well-being of all children entering adoptive homes.

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 adoption agencies and no other rules address these specific issues. These rules were reviewed by the PFOF Rule Review Board for duplication and approval, as well as 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.

ODJFS licensing specialists and technical assistance specialists monitor agencies to ensure the regulations are applied consistently. PFOF regional teams have also been developed to offer technical assistance and improve consistency statewide.

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.

The rules of the Administrative Code in Chapters 5101:2-48 contain requirements for adoption agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact on the business community involves 58 private child placing agencies:

5101:2-48-13- The timeframes involved are in completing the required documentation of whether there is a justified reason for race, color, or national origin to play a part in the decision-making process. If it is determined there is adequate reason, then the agency must contract with a licensed professional for an independent assessment to confirm. This contract amount would depend on the type of licensed professional contracted with, as well as the hourly rate of the professional and time it would take him/her to review the child's materials and interview the child. This requirement is derived from the ODJFS Corrective Action and Resolution Plan as a result of the Multiethnic Placement Act (MEPA) and Title VI of the Civil Rights Act of 1964. It should be noted that the requirement to contract with a licensed professional agency is for custodial agencies only. When discussed with the ODJFS staff member who reviews compliance in this area, it was learned that no private agency has had to complete this requirement since it became effective.

5101:2-48-22 – The timeframes involved are to ensure that all documentation from the homestudy process is kept in the physical hard copy adoptive family file. As these documents are all required for completion of the adoption homestudy, there are no mandates to complete anything new. This rule simply lists what needs to be located in the physical file, therefore the business impact for following the rule would be minimal.

5101:2-48-23 – The timeframes involved are to ensure that all of the child's background information is kept in the physical hard copy of the adoptive child's file. Similar to the previous rule, all of these documents are required in other rules; this rule contains no new mandates to complete any new requirement. This rule simply states what needs to be located in the physical file, therefore the business impact would be minimal.

5101:2-48-24 – The timeframes involved include developing the written procedures the agency will implement when a complaint is received regarding adoption, as well as the timeframes involved in implementing those procedures, and reviewing the information to handle the complaint.

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 and well-being of children in permanent adoptive placements, the adverse impact of these rules is necessary. The requirements set forth in the rules provide safety nets for children in adoption by:

- Ensuring that families and children are not discriminated against in regards to their race, color, or national origin (RCNO).
- Ensuring that the children who truly should have a placement reviewed in regards to the child's RCNO or the family's RCNO have the capacity to have this done by a licensed professional who is not employed by the agency.
- Ensuring legal adoptions that comply with the federal Multiethnic Placement Act and Title VI of the Civil Rights Act of 1964.
- Ensuring that all adoptive family and adoptive child files are complete and organized and contain all necessary information for permanent maintenance and record-keeping.
- Ensuring that adoptive applicants and families have the ability to request a review of their situation in the event that they have a complaint or issue with an agency decision.

Regulatory Flexibility

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

No, there are 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 these rules there are no fines or civil penalties for non-compliance from ODJFS, though there is a possibility of financial sanctions against the state of Ohio for not following the Multiethnic Placement Act or Title VI of the Civil Rights Act of 1964. This failure to adhere to federal standards could then result in funding cuts for all agencies statewide.

18. What resources are available to assist small businesses with compliance of the regulation?

ODJFS has regional offices with technical assistance specialists and licensing specialists that will be able to assist agencies in completing adoption homestudies and providing required supervision visits and postfinalization services. Policy developers are also available to give technical assistance regarding the requirements of these rules.