

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: Independent Living Services

Rule Number(s): 5101:2-42-88

Date: 4-20-2015

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☐ Rescinded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

This rule is being amended solely to implement the federal mandates of Public Law 113-183, the "Preventing Sex Trafficking and Strengthening Families Act" (9/2014), which requires the custodial agency to report a child in the custody of the agency to law enforcement and to the National Center for Missing and Exploited Children if the child is absent without leave from substitute care placement.

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Please briefly describe the draft regulation in plain language.

1. 5101:2-42-88 entitled "*Requirements when a child in substitute care disrupts from placement or is absent without leave (AWOL)*" sets forth the requirements for Public Children Service Agencies (PCSAs) and Private Child Placing Agencies (PCPAs) when a child in substitute care is disrupted from placement. This rule has been amended to include requirements in documentation and services offered if a child is missing, abducted or found to be a victim of sex trafficking.

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

Rule Number	Statutory Authority
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5101:2-42-88	5103.03, 5153.16
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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?**

Yes, this rule implements the provision of Public Law 113-183, the "Preventing Sex Trafficking and Strengthening Families Act" (9/2014).

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

This rule does 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)?**

This rule sets forth the requirements for PCSAs and PCPAs when a child in substitute care is disrupted from placement. This rule has been amended to include requirements in documentation and services offered if a child is missing, abducted or found to be a victim of sex trafficking. If the state and county agencies failed to comply, the federal government could possibly impose fines and incur the loss of public welfare funding.

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

The agency will measure the success of the amendments to this regulation through consistent compliance with the federal mandates of Public Law 113-183.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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The proposed changes to this rule were open for a pre-clearance comment period for 30 days; and a two week clearance comment period from March 25, 2015 to April 8, 2015 for all 88 county public and private constituents/agencies.

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

Attached is the stakeholder and the question he posed to the Department. As a result of the stakeholder input, the consideration given to changing the wording requiring the agency to ensure documentation of the AWOL report with law enforcement or the NCMEC has been addressed. The department is amending the rule at this time to incorporate federal mandates.

Name	Comment
Chip Spinning Franklin Co.	<p>5101:2-42-88 (D): often times the network placement provider has already made notification to law enforcement at the time of AWOL. Suggest revising rule to state the PCSA/PCPA will ensure the notifications have occurred (i.e. the PCSA/PCPA can notify themselves or can have confirmation the placement provider has done so) so as to avoid duplication of work and confusion in contacting Law enforcement twice and possible creation of duplicate reports. Suggest edit below:</p> <p>(D) If a child is absent without leave (AWOL) from a substitute care placement, the PCSA or PCPA shall immediately, and in no case later than twenty four hours after receiving notification, shall ensure contact is made to contact both:</p> <p>-----</p> <p>(D)(1)- We can contact law enforcement but we have no control over it being entered into the database by them. Suggest:</p> <p>(D)(1) Law enforcement regarding and ensure the AWOL report so Law enforcement can enter it will be entered into the national crime information center (NCIC) database.</p>

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 alternatives were considered. The rule is being amended to strictly adhere to the federal mandates in Public Law 113-183.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

The changes to the amended rule strictly adhere to the federal mandates in Public Law 113-183.

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

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 rule does not prescribe anything that would not be applied consistently. ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and staff 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:

a. Identify the scope of the impacted business community;

Requirements must be met to obtain and/or maintain certification for 28 PCPAs and 133 PNAs

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

The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. There may be a cost to reporting AWOLS, updating case plans, documenting contacts made to law enforcement, and maintaining case records. 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 and the number of children in the agency's care. It is estimated that one phone call to the local law enforcement agency and the national center for missing and exploited children to report a child in care, followed by documentation will add an additional thirty to forty-five minutes per report.

c. Quantify the expected adverse impact from the regulation.

The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance.

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

The justification is being made in order to be in compliance with the federal mandates of Public Law 113-183.

Regulatory Flexibility

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

For this rule 5101:2-42-88, 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 rule 5101:2-42-88 there is no fine or civil penalty 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.