

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC- Caseworker Visitation

Rule Number(s): 5101:2-42-65, 5101:2-48-17, 5101:2-52-08

Date: 5/26/15

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Rescinded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 three rules to be amended as a result of guidance received from the federal government in regards to who completes caseworker visitation. The following is a brief summary of the proposed changes:

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

OAC rule 5101:2-42-65, entitled "Caseworker visits and contacts with children in substitute care" provides guidance to agencies regarding who is to complete caseworker visits, as well as the required frequency and content of those visits. Paragraph (B) is being revised to clarify that a caseworker from the agency who has case management responsibility of the child's case must complete the visit. The paragraph adds that the caseworker assigned to the child's case shall complete a majority of the required monthly visits. Paragraph (C) was revised to allow the PCSA or PCPA to contract out the subsequent visits, if more than one visit per month is required for the case. Paragraph (D) was revised to add that the caseworker must document the caregiver's efforts to promote and allow normalcy for the child in placement by following the reasonable and prudent parent standard. Paragraph (E) was revised to add that visitation for interstate placements must follow the regulations of the interstate compact, and gives the website for where to locate those regulations.

OAC rule 5101:2-48-17, entitled "Assessor visits and contacts with children in adoptive homes prior to finalization" provides guidance to agencies regarding who is to complete assessor visits for children in a prefinalized adoption placement, as well as the required frequency and content of those visits. Paragraph (A) is being revised to clarify that an assessor from the agency who has full responsibility for case planning and case management of the child's case must complete the visits. The paragraph adds that the caseworker assigned to the child's case shall complete a majority of the required monthly visits. Paragraph (B) was revised to allow contracted agencies to complete subsequent visits if more than one visit per month is required for the case. Paragraph (E) was revised to add that visitation for interstate placements must follow the regulations of the interstate compact, and provide the website for where to locate those regulations.

OAC rule 5101:2-52-08, entitled "Interstate placement requirements for Ohio parents, legal guardians, or private entities when placing a child into another state or territory for adoption" provides private entities guidance regarding placements that cross state lines. Paragraph (B) was revised to give the specific website for where to find the Interstate Compact for the Placement of Children (ICPC) regulations. Paragraph (C) was revised to add that the regulations of the compact must be followed regarding supervision of the case, and provide the website for where to locate those regulations.

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

| Rule Number | Statutory Authority |
|-------------------|--------------------------------|
| Rule 5101:2-42-65 | ORC 5103.03, 5153.166 |
| Rule 5101:2-48-17 | ORC 3107.101, 3107.12, 5153.16 |
| Rule 5101:2-52-08 | ORC 5103.23 |

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.

These rules are being proposed to implement guidance received from the federal government in the Child and Family Services Review (CFSR) Onsite Review Tool. This tool is completed when the federal government reviews Ohio cases and determines our level of compliance with federal guidelines. The tool is located at http://www.acf.hhs.gov/sites/default/files/cb/cfsr_r3_osri.pdf, with information specifically about caseworker visitation located on page 66 of the document. The tool was recently revised to state that agencies with custody of children could not contract out their caseworker supervision responsibilities to a private agency that did not also have case management responsibility. Rule 5101:2-52-08 implements the Interstate Compact for the Placement of Children (ICPC), which is an agreement signed and entered into law by all 50 states, the District of Columbia, and U.S. Virgin Islands and is regulated at the Federal level. This rule is being revised to explain the caseworker visitation requirement in relation to ICPC placements across state lines.

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 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 purpose of the regulation in 5101:2-42-65 is to provide requirements to the custodial agency regarding caseworker visits and contacts with the child and the substitute caregivers, in an effort to ensure the child's safety and well-being, and to assess whether the placement and services continue to meet the child's needs in accordance with the case plan.

The purpose of the regulation in 5101:2-48-17 is to provide requirements to the custodial agency regarding assessor visits and contacts with children and caregivers in adoptive placements, to ensure the child's safety and well-being, and assess how the adoptive placement is progressing toward permanency for the child.

The purpose of the regulation in 5101:2-52-08 is to provide requirements to agencies when attempting to place a child in an adoptive home across state lines, to ensure the placement is made legally and in compliance with the interstate compact.

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 appropriate case management practices and ultimately the safe placement of children into substitute care.

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.

These rules were presented to several interest groups including the Ohio Association of Child Caring Agencies (OACCA), the Institute for Human Services (IHS) and at the public and private agency coordinator's meetings at the Central Ohio Regional Training Center. The information in the rules was also presented at the Foster Care licensing meeting in May 2015, and sent out to all adoption contacts at both public and private agencies. The rules were posted on the Ohio Rule Review website in March 2015, and went through the internal and external clearance process in March/April 2015. Two external comments were submitted from public agencies during the clearance process, however those did not result in further revisions to the rule.

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 as a result of new guidance from the federal government located in the CFSR Onsite Review Tool. During the various meetings this information was presented, stakeholders were aware that these revisions were a result of decisions and guidance made from outside ODJFS control. No private agency stakeholders commented during the clearance process.

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 process were satisfied with rule language outcomes and because the rules are driven by statute or federal guidance.

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 minimum standards to ensure the safety and well-being of all children entering substitute care homes.

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

There is no duplication in other rules. The rule in this package was reviewed by internal and external partners, as well as the PFOF Rule Review Board, for duplication and approval. The rule revisions were also reviewed by the internal 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. Additional training opportunities are planned for private and public agencies as the effective date of the rule gets closer.

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 5101:2-42, 5101:2-48, and 5101:2-52 contain administrative requirements for all agencies, both public and private. Requirements must be met by private agencies to obtain and/or maintain certification.

The adverse impact on the business community potentially involves approximately 128 private agencies:

5101:2-42-65- The adverse impact would involve the time and travel expenses required in having caseworkers visit with the child and the caregiving family. The rule requires the visits to be conducted in the home so that the caseworker can see the living environment and determine the child's safety and comfort level in the home. Depending on the location of the home in relationship to the agency, this may be a significant expense.

5101:2-48-17 – The adverse impact would involve the time and travel expenses needed in having assessors complete and document prefinalization visits with children in adoptive homes. This timeframe is also difficult to quantify as every child and every adoptive family have different dynamics; therefore, the amount of time spent in the home during the prefinalization period, and the amount of time spent documenting the visits will differ from family to family.

5101:2-52-08 – The adverse impact would involve the timeframes necessary in completing the required interstate documents and forwarding those documents to the Ohio ICPC office. If the agency chooses not to send documents electronically there would be postage costs involved as well.

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

To ensure the safety and well-being of children in substitute care placements, the adverse impact of this rule is necessary. The requirements set forth in this rule provide agencies with the

requirements for caseworker visitation of children in substitute care settings, including foster care, adoption, and placements that cross state lines. In order to ensure the caregiving family is meeting the child's needs, the caseworker who knows the child best should be the worker that sees the child every month to assess the placement, and is capable of making case management decisions. For interstate placements, the compact regulations would determine who completes supervision across state lines.

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. If significant noncompliance was discovered then it would be possible for an agency to have their license revoked, resulting in substantial business losses.

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. For placements across state lines, the Deputy Compact Administrator is available to assist the agency in completing that placement process. These rule revisions will be presented to agencies along with other foster care and adoption rules during the summer of 2015, as the effective dates draw near.