MEMORANDUM

TO: Michael Lynch, Ohio Department of Job and Family Services

FROM: Mark Hamlin, Director of Regulatory Policy

DATE: July 31, 2015

RE: **CSI Review – Children Services Licensing (OAC 5101:2-5-02, 5101:2-5-03, 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-08, 5101:2-5-10, 5101:2-5-13, 5101:2-5-16, 5101:2-5-17, 5101:2-5-22, 5101:2-5-25, 5101:2-9-02, and 5101:2-9-03)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of fourteen amended rules submitted by the Ohio Department of Job & Family Services (ODJFS) related to children services licensure. The rules have been reviewed by ODJFS pursuant to the five-year review requirement in Ohio statute. The rules were submitted to the CSI Office for review on June 30, 2015, and the comment period closed on July 7, 2015. No comments were submitted during the CSI review period.

The rules in this package outline a broad range of requirements for agencies, foster homes, and other facilities and participants in the placement of children. Agencies regulated by ODJFS include Private Noncustodial Agencies (PNAs), Public Children Services Agencies (PCSAs), and Private Child Placing Agencies (PCPAs). The rules include application and licensure requirements for agencies, sanctions for failure to comply with the rules (including denial or revocation of licensure), authority for ODJFS to inspect foster homes, organizational requirements for agencies, case record and recordkeeping requirements, and staffing requirements for residential facilities. All of these requirements – as they relate to PNAs, PCPAs, and private foster homes and facilities –

constitute adverse impacts to business under ORC 107.52.

In the Business Impact Analysis submitted with the rule package, ODJFS describes a stakeholder outreach that involved in-person meetings with a broad range of stakeholders as part of the 2012 Midwest Child Welfare Implementation Center (MCWIC), which helped shape the proposed changes to the rules. In subsequent stakeholder outreach, including the ODJFS Clearance process and the CSI comment period, the Department received limited feedback.

One proposed amendment to Rule 5101:2-5-05 states:

> (B) Any form of retaliation by ODJFS employees against agency administrators, designee or employees of agencies, who make appeals regarding findings of non-compliance, is prohibited.

In a follow-up discussion with ODJFS staff, the CSI Office was assured that this language is not the result of any specific incident, nor does it imply that retaliation is allowed in any other instances. Instead, the proposed amendment is the result of input from the MCWIC meetings, where stakeholders felt that this explicit language would give agencies greater comfort in filing appeals when appropriate. It is a foundational principle of the CSI Office that retaliation against businesses for exercising their rights under the law, including challenging the actions of regulatory agencies, should never be tolerated. Therefore we do not oppose including the specific language described above, but there should be no implication that such retaliation in the past and/or in any other regulatory area is authorized.

It is understood that the placement of children to settings outside their homes requires a significant level of regulation and oversight by ODJFS. So while the draft rules in this package are prescriptive and include a number of significant impacts to businesses, the CSI Office agrees that the impacts are justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Job & Family Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.