

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Amendments to Children Services Licensing OAC Rules in chapter 5101:2-5 and 5101:2-9. CCN 7741

Rule Number(s): 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, 5101:2-9-03

Date: 6/30/15

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Rescinded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.

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Please include the key provisions of the regulation as well as any proposed amendments.

OAC rule 5101:2-5-02, entitled "Application for an agency to perform specific functions; amended applications," provides guidance to agencies on the requirements for requesting agency certification for functions related to foster care. Paragraph (I)(6) was amended to remove the timeframe of sixty days for the request of approval for implementing a change in a residential facility. The facility must now request the approval from ODJFS prior to implementing a change.

OAC rule 5101:2-5-03, entitled "Certification of an agency to perform specific functions," provides guidance to agencies on the types of certifications that foster care agencies may be certified for. Two grammatical changes were made to paragraph (F). No substantive changes were made.

OAC rule 5101:2-5-05, entitled "Agency appeal of findings of noncompliance," provides guidance to agencies on what an agency must do to appeal a finding of noncompliance. Paragraph (A) was amended to change the requirement for submission of an appeal from five days to ten days following the receipt of the summary of findings of noncompliance. An additional requirement for the licensing supervisor is to arrange a meeting in person or by phone if requested and render a decision within ten business days. A new paragraph (B) was added to prohibit any form of retaliation to an agency by an employee of ODJFS due to the filing of an appeal by the agency.

OAC rule 5101:2-5-06, entitled "Corrective action plans," provides guidance to agencies on what is needed to create and submit a corrective action plan for a finding of noncompliance. Paragraph (A) was amended to expand the number of days for submission of a corrective action plan from ten to fifteen days from the date of the exit interview. A sentence was added to allow ODJFS to grant an extension for submissions to go beyond the fifteen days.

OAC rule 5101:2-5-07, entitled "Denial or revocation of an agency's certificate or certification to perform specific functions; temporary certificates," provides guidance to agencies on the process and reasoning for denials and revocations of certification. Paragraph (F) was amended for clarification. No substantive changes were made.

OAC rule 5101:2-5-08, entitled "PCPA and PNA governance and administration," provides guidance to agencies on the requirements and responsibilities for agency directors and board members. Paragraph (B) was amended for clarification. No substantive changes were made.

OAC rule 5101:2-5-10, entitled "Child records," provides guidance to agencies on the requirements for the contents and storage of the records for children. Paragraph (C) was amended for clarification. No substantive changes were made.

OAC 5101:2-5-13, entitled "Required agency policies, plans and procedures," provides guidance to agencies on all policies a foster care agency is to implement. Paragraph (A)(28) was amended to require the recommending agency to notify the custodial agency immediately, but no later than twenty-four hours from the time the agency is notified of an unauthorized absence of a foster child. Paragraph (A)(29) was amended to clarify that the psychotropic medication policy is required for PCSAs only.

OAC rule 5101:2-5-16, entitled "Consideration to be given to child's religion," provides guidance to agencies on what the agency should consider when a child has religious backgrounds and practices. The title of the rule was amended to "Consideration to be given to child's religion, beliefs and practices". Paragraph (B) was amended to consider a child's dietary restrictions due to beliefs.

OAC rule 5101:2-5-17, entitled "Discharge summary," provides guidance to agencies on what is required when a child is discharged from a residential facility or specialized foster home. Paragraph (A) was amended for clarity. A new paragraph (D) was added to ensure that when a child is receiving pre-planned respite care services or is a short term direct placement on a recurring schedule addressed in the case plan, the discharge summary is required at six month intervals or at the conclusion of the service, whichever occurs sooner.

OAC rule 5101:2-5-22, entitled "Recommendations for initial foster home certification," provides guidance to agencies on the requirements for submission of a recommendation for certification of a foster home. Paragraphs (A) and (B) were amended for clarity. Paragraph (F) was removed because it is required in other rules and is duplicative.

OAC rule 5101:2-5-25, entitled "Changing the certification of a foster caregiver from one type of foster home to another," provides guidance to agencies on how to upgrade or downgrade a certification type for a foster home. Paragraph (D) was amended for clarity and paragraph (E) was amended to remove an outdated reference.

OAC rule 5101:2-9-02, entitled "Staffing requirements," provides guidance to agencies on staff ratios and other staffing issues in a residential facility. A new paragraph (K) was added to ensure a facility has at least one staff on site that is trained and authorized to apply the reasonable and prudent parent standard as required by H.R. 4980 of the 113th Congress.

OAC rule 5101:2-9-03, entitled "Staff development and evaluation," provides guidance to agencies on residential staff training and experience. Paragraph (D) was amended to require training in the prudent parent standard for existing staff. New paragraphs (I)(12), (I)(13) and (I)(14) were added to require new topics for orientation training for residential staff. These additions were the direct result of legislation.

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

| Rule Number | Statutory Authority |
|------------------|---------------------------------|
| Rule 5101:2-5-02 | ORC 5103.03, 5153.16 |
| Rule 5101:2-5-03 | ORC 5103.03, 5153.16 |
| Rule 5101:2-5-05 | ORC 5103.03 |
| Rule 5101:2-5-06 | ORC 5103.02, 5103.03 |
| Rule 5101:2-5-07 | ORC 5103.03 |
| Rule 5101:2-5-08 | ORC 5103.03 |
| Rule 5101:2-5-10 | ORC 5103.03 |
| Rule 5101:2-5-13 | ORC 5103.03, 5103.0316 |
| Rule 5101:2-5-16 | ORC 5103.03 |
| Rule 5101:2-5-17 | ORC 5103.03 |
| Rule 5101:2-5-22 | ORC 5103.02, 5103.03, 5103.0324 |
| Rule 5101:2-5-25 | ORC 5103.03, 5103.0316 |
| Rule 5101:2-9-02 | ORC 5103.03 |
| Rule 5101:2-9-03 | ORC 5103.03, 5153.16, 5101.141 |

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 5101:2-5-02, 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 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.

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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)?

For rule 5101:2-5-02, the purpose of the rule is to ensure the safety of children in care by setting guidelines for establishing agencies that meet the requirements set in statute.

For rule 5101:2-5-03, the purpose of the rule is to follow through with statute by certifying agencies to perform specific functions based on the level of care provided to foster children placed into care of the agency.

For rule 5101:2-5-05, the purpose of the rule is to explain the process on how to appeal a finding of non-compliance for a foster care agency.

For rule 5101:2-5-06, the purpose of the rule is to outline the requirements for a corrective action plan when a foster care agency is found to be out of compliance and is cited with a rule violation.

For rule 5101:2-5-07, the purpose of the rule is to explain the reasons and the process of a denial or revocation of an agency's certificate to operate.

For rule 5101:2-5-08, the purpose of the rule is to provide guidance and organization for governance of their agencies. This ensures the agency administration is staying in touch with the rules and laws required to operate.

For rule 5101:2-5-10, the purpose of the rule is to provide and store proper documentation in a child's record.

For rule 5101:2-5-13, the purpose of the rule is to provide agencies with requirements for subjects for policies that the agency develops. This allows the agency to have input on the specific policies that affect them. All agency policies are reviewed and approved by ODJFS.

For rule 5101:2-5-16, the purpose of the rule is to ensure the foster child has the opportunity to feel free to practice their religious beliefs without being deprived of the right to do so.

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For rule 5101:2-5-17, the purpose of the rule is to provide the agency with guidelines for discharging children from care and to document specific items related to the process.

For rule 5101:2-5-22, the purpose of the rule is to provide the agency with guidelines and procedures for recommending certifications for foster caregivers.

For rule 5101:2-5-25, the purpose of the rule is to provide guidance to the agency concerning the process for upgrading or changing the certification type for foster caregivers.

For rule 5101:2-9-02, the purpose of the rule is to give requirements to agencies for staffing ratios and other staffing guidelines in residential facilities.

For rule 5101:2-9-03, the purpose of the rule is to specify requirements for training the staff in residential facilities.

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 the completion of the statutory requirements, all necessary for the agencies to maintain their certification.

For rule 5101:2-5-02, the completion of the rule requirements required for the agency to apply to perform functions related to foster care.

For rule 5101:2-5-03, the completion of rule requirements for the agency to be certified to perform specific functions related to foster care licensing.

For rule 5101:2-5-05, the completion of rule requirements required to file an appeal of an agency finding during an inspection.

For rule 5101:2-5-06, the completion of rule requirements required to complete a corrective action plan related to a finding of non-compliance.

For rule 5101:2-5-07, the completion of rule requirements to prevent the agency from having their certification denied or revoked due to non-compliance with statutory or rule violations.

For rule 5101:2-5-08, the completion of rule requirements for hiring an administrator, selecting a governing body and the functions for each.

For rule 5101:2-5-10, the completion of rule requirements for maintaining a record for each child placed with the agency.

For rule 5101:2-5-13, the completion of rule requirements for developing and implementing agency policies for various items.

For rule 5101:2-5-16, the completion of rule requirements allowing a child to be given religious consideration regarding the child's beliefs.

For rule 5101:2-5-17, the completion of rule requirements regarding the discharge of a child from the care of the agency.

For rule 5101:2-5-22, the completion of rule requirements required for the agency to recommend certification of a foster care giver.

For rule 5101:2-5-25, the completion of rule requirements required for the agency to change the type of certification of a foster caregiver from one type to another.

For rule 5101:2-9-02, the completion of rule requirements regarding the proper staffing of a residential facility.

For rule 5101:2-9-03, the completion of rule requirements required for the training and development of residential staff.

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 the 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 Midwest Child Welfare Implementation Center (MCWIC) meetings that the Office of Families and Children conducted during 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 also went through the clearance process on April 16, 2015 through April 30, 2015. There were some comments made by Joan Van Hull of ODJFS. These comments were:

5101:2-5-03 (F) Need to also include Chapter 5101:2-38 and 5101:2-53

5101:2-5-08 (A)(3) Need to also include Chapter 5101:2-38 and 5101:2-53

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5101:2-5-10 (A) - 5101:2-39 no longer contains the case record requirement. You should check where it went (e.g., moved to another Chapter)

5101:2-5-13 - (A)(11)(f) - OAC 5101:2-39-10 has been rescinded and content is now contained in Chapter 5101:2-38

5101:2-5-13 - (A)(23) Should include central registry checks

All comments were accepted and the rules updated with the exception of the comment regarding adding the central registry check in rule 5101:2-5-13(A)(23). The response from ODJFS was: “Central registry checks are governed by section 5103.18 of the Revised Code and are mandated for specific purposes. There is no authority given to ODJFS in statute to require a check beyond what the statute prescribes. ODJFS has no authority to require a check for a volunteer or intern.”

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 revised with the interested parties' involvement and language was developed to address the issues presented. There were minor changes made. These changes were:

Rule 5101:2-5-09 – Paragraph (E) was amended to clarify that this requirement is for residential facilities. No other substantive changes were made.

Rule 5101:2-5-02 - Paragraph (I)(6) was amended to remove the timeframe of sixty days for the request of approval for implementing a change in a residential facility. The facility must now request the approval from ODJFS prior to implementing a change.

Rule 5101:2-5-03 - Two grammatical changes were made to paragraph (F). No substantive changes were made.

Rule 5101:2-5-05 - Paragraph (A) was amended to change the requirement for submission of an appeal from five days to ten days following the receipt of the summary of findings of noncompliance. An additional requirement for the licensing supervisor is to arrange a meeting in person or by phone if requested and render a decision within ten business days. A new paragraph (B) was added to prohibit any form of retaliation to an agency by an employee of ODJFS due to the filing of an appeal by the agency.

Rule 5101:2-5-06 - Paragraph (A) was amended to expand the number of days for submission of a corrective action plan from ten to fifteen days from the date of the exit interview. A sentence was added to allow ODJFS to grant an extension for submissions to go beyond the fifteen days.

Rule 5101:2-5-07 - Paragraph (F) was amended for clarification.

Rule 5101:2-5-08 - Paragraph (B) was amended for clarification.

Rule 5101:2-5-10 - Paragraph (C) was amended for clarification.

Rule 5101:2-5-13 - Paragraph (A)(28) was amended to require the recommending agency to notify the custodial agency immediately, but no later than twenty-four hours from the time the agency is notified of an unauthorized absence of a foster child. Paragraph (A)(29) was amended to clarify that the psychotropic medication policy is required for PCSAs only.

Rule 5101:2-5-16 - The title of the rule was amended to "Consideration to be given to child's religion, beliefs and practices." Paragraph (B) was amended to consider a child's dietary restrictions due to beliefs.

Rule 5101:2-5-17 - Paragraph (A) was amended for clarity. A new paragraph (D) was added to ensure that when a child is receiving pre-planned respite care services or is a short term direct placement on a recurring schedule addressed in the case plan, the discharge summary is required at six month intervals or at the conclusion of the service, whichever occurs sooner.

Rule 5101:2-5-22 - Paragraphs (A) and (B) were amended for clarity. Paragraph (F) was removed because it is required in other rules and is duplicative.

Rule 5101:2-5-25 - Paragraph (D) was amended for clarity and paragraph (E) was amended to remove an outdated reference.

Rule 5101:2-9-02 - A new paragraph (K) was added to ensure a facility has at least one staff on site that is trained and authorized to apply the reasonable and prudent parent standard as required by H.R. 4980 of the 113th Congress.

Rule 5101:2-9-03 - Paragraph (D) was amended to require training in the prudent parent standard for existing staff. New paragraphs (I)(12), (I)(13) and (I)(14) were added to require new topics for orientation training for residential staff. These additions were the direct result of legislation.

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 as all parties involved were satisfied with both 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.

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. Specifically, rules 5101:2-5-02 and 5101:2-5-03 are mandated by statute in sections 5103.02 and 5103.03 of the Revised Code.

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:

One hundred fifty-eight 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.

b. Nature of adverse impact:

Loss of certification if the agency does not adhere to the statutory requirements of the rules.

c. Quantify adverse impact:

Adverse impact would entail administrative time spent completing the certification process, reviews, appeals, governance, policies and staffing requirements necessary for statutory and rule compliance.

Residential staff is to receive twenty hours of initial orientation training and twenty-four hours of annual training. This is an existing cost and can vary depending on the rate of pay and other factors contributing to the time involved in the process. An agency paying an employee \$10 per hour would be spending \$200 for each employee to attend orientation training. The cost of a trainer would be similar, but allowing for an additional 20 hours of preparation time; the trainer’s cost could range from \$400-\$500 for an entire orientation session. This cost can be repeated allowing for 24 hours of annual training.

Time involved capturing the information for prospective employees could be a potential adverse impact due to the cost involved to request, obtain, review and assess the information. BCII checks would cost the agency \$50 per employee. A clerical employee earning \$8 and spending 10-12 hours reviewing and requesting information for each applicant would cost the agency \$80-\$100 per applicant to process.

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 sections 2151.86, 5103.035, and 5103.038 – 5103.0311 of the Revised Code.

Regulatory Flexibility

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

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?

There are no fines 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 process including assistance with the proper information required by these rules.