

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Necessity for continued substitute care placement: court reviews and hearing requirements.

Rule Number(s): 5101:2-42-68

Date: June 26, 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☐ Rescinded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 filed as a non five-year rule review and does not touch on any of the criteria for adverse impact in ORC 107.52. 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). The law requires when a disposition of planned permanent living arrangements (PPLA) for children in state custody is needed, this disposition can only be determined for children aged sixteen or older. The federal mandate includes guidance on involving children in

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the court proceedings regarding their permanency outcomes. Changes made to the rule only impact the public children services agencies (non-business entities).

1. Please briefly describe the draft regulation in plain language.

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

OAC 5101:2-42-68, "Necessity for continued substitute care placement: court reviews and hearing requirements," sets forth the requirements for agencies regarding continued substitute care placements and the frequency of assessing the continuation of placement.

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

5103.03, 5153.16

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.

Yes, 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 has been amended as a requirement of Federal Law and does 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 for the rule is to outline for both public children services agencies (PCSAs) and private child placing agencies (PCPAs) the steps to determine the necessity of continued substitute care placement for each child. The amendments made to this rule do not have an adverse impact on PCPAs, and only affects the PCSAs.

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

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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 proposed changes to this rule were open for a pre-clearance comment period for 30 days; and a two week clearance comment period from May 11, 2015 to May 25, 2015.

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

Montgomery Co. submitted comments and the Department clarified the intent of the federal requirement.

Franklin Co. submitted comments and the Department added language in the rule to document any significant safety concerns that prohibit the youth from attending any hearing.

Public Children Services Association of Ohio submitted an inquiry regarding children younger than age sixteen currently in a PPLA status. The agency provided a response that the federal mandate does not allow any flexibility to the age of children placed in a PPLA. If there are children younger than sixteen in a PPLA, upon the effective date of this rule, any child younger than sixteen must be removed from this dispositional status.

Summit Co. submitted comments and the basis of the inquiry was to clarify which hearings were being referred to in the rule. The Department provided a response clarifying which hearings are necessary to be in attendance and what documentation is required regarding the outcome.

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 other alternatives were considered. The amended rule is being revised to strictly adhere to federal mandate in Public Law 113-183.

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. The changes to the amended rule strictly adhere to federal mandate 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: The amendments to the rule do not pose adverse impact under ORC 107.52, and the rule is not being filed as a result of a five-year rule review.

- 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.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community? Not applicable

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain. Not applicable

- 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?** Not applicable
- 18. What resources are available to assist small businesses with compliance of the regulation?** Not applicable.