

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: PCPA Semiannual Review and Case Plan rules (ERF 161777)

Rule Number(s): 5101:2-38 -04 and 5101:2-38 -07.

Date: 03/31/2016

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☐ Rescinded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.

5101:2-38-04 – **PCPA requirements for completing the semiannual administrative review** (SAR) contains the requirements that apply to the private child placing agency (PCPA) for completing the semiannual administrative review. This is a new rule specific to PCPAs who were previously aligned with the public children services agency in rule 5101:2-38-10 regarding completion of the semiannual administrative review. Rule identifies the requirements and timeframes to complete the SAR, people to include in case review, and who is required to receive copies of the semiannual administrative review.

5101:2-38-07 – **PCPA case plan for children in custody or under protective supervision** contains the requirements that apply to the private child placing agency (PCPA) case plans for children in

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custody or under protective supervision. New language defines parties to the case plan including the child age fourteen or older. Invitees to the case plan developing, implementing, and review now include two individuals selected by the child pursuant to rule 5101:2-42-90 of the Administrative Code and in accordance with JFS 01677 "Foster Youth Rights Handbook" (rev. 5/2015). Some language and paragraphs have been revised to provide consistency and clarity, to correct paragraph references within the rule, and to correct the revision dates of the JFS 01416 "Semiannual Administrative Review for Private Child Placing Agencies" (rev. 7/2016).

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

Rule number	Statutory Authority
5101:2-38-04	2151.416, 2151.412
5101:2-38-07	2151.412

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?

These rules are being amended to include requirements of Public Law 113-183 "Preventing Sex Trafficking and Strengthening Families Act."

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

Not applicable. These rules do not exceed any Federal requirements. The rule is specific to child welfare and follows 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)?

5101:2-38-04 - Sets forth the PCPA requirements for completing the semiannual administrative review required by federal statute. This is a new rule specific to PCPAs which was previously incorporated with the public children services agency in rule 5101:2-38-10 of the Administrative Code. The SAR provides documentation of whether or not there is any progress in changing an individuals' behaviors and the conditions that negatively influence safety, risk, and family functioning.

5101:2-38-07 – Sets forth the PCPA requirements that apply to case plans for children in custody or under protective supervision and assist the family to provide a safe home for children. The SAR provides documentation of whether or not there is any progress in changing an individuals' behaviors and the conditions that negatively influence safety, risk, and family functioning.

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

The rules are considered minimum standards designed to provide safe out-of-home care for children in placement.

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The Children Services Licensing Section of the Bureau of Accountability and Regulation monitors and enforces compliance with Ohio Administrative Code rules that govern private child placing agencies (PCPAs). Meeting these standards is required by state law and the Ohio Administrative Code.

Private child placing agencies (PCPAs) are certified to accept temporary, legal and permanent custody of children and to place children into foster care or for adoption.

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.

In 2012, the State was awarded a three-and-a-half-year federal grant through the U.S. Department of Health and Human Services, Children's Bureau. ODJFS' Office of Families and Children, in partnership with stakeholders Partners for Ohio's Families (PFOF), has been working to examine and reform the State's child welfare service delivery system and the relationship with both public and private child welfare agencies. The work is placed in clearance on a public website and is open for comment from representatives from 88 county public children services agencies (PCSAs), private child placing agencies (PCPAs) and private non-custodial agencies (PNAs), and the general public. All comments are accepted, replied to, and suggested comments incorporated within the rule whenever possible.

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

The rules went through the Clearance process on 12/01/2015 through 12/15/2015. No clearance comments were received on these rules.

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 alternatives considered for these because during the vetting process all parties involved were satisfied with the rules and because the rules are driven by statute.

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

ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the department set standards to ensure the well-being of every child in temporary custody.

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

The JCARR prong for invalidation: “Rules do not conflict with a rule of its own or another rule-making agency” has been an ongoing deterrent to duplication. 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 rules do not prescribe anything that would not be applied consistently. ODJFS licensing/certification specialists review the agencies files to ensure the regulations are applied consistently, and the specialists 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;

Private child placing agencies (PCPA) must be certified by ODJFS.

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

Failure to comply with rule may result in denial or revocation of certification. The adverse impact involves:

- the cost/time to complete the semiannual administrative review,
- the time/cost to send out written SAR invitations,
- cost to file the SAR with court,
- cost/time to develop and complete the case plan including visitation plan, and
- complete face to face contacts.

c. Quantify the expected adverse impact from the regulation.

The adverse impact would be regulated to the time spent adhering to rule regulations and reporting the information necessary for rule compliance. Business models, number of employees, and pay ranges are specific to each PCPA. As such, costs, per business models, will vary among PCPAs. The American Humane completed an evaluation of the workload of twenty-four social services workers in a Florida Job and Family Services agency. The following estimate is provided as

an example of the time it would take one social services worker to complete casework activities. The estimation is based on the data from the Florida study.

Work Activity	Hours by Activity
Case plan and reviews (SAR)	
Case planning conference (SAR)	2.1
Service planning activities	0.2
General case management tasks	
Case contacts	9.8
Case Consultations	1.7
Transportation	13.4
Care and contact with child	1.8
General administrative tasks	
Paperwork	12.0
Court services	9.7
Total hours to complete work activities	50.7

If a worker makes \$15 an hour and spends 50.7 hours of activity on a case, it may cost the PCPA \$760.00. The majority of the cost is due to transportation and completing the paperwork.

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

The adverse impact of these rules is necessary to ensure the safety of children in substitute care.

Regulatory Flexibility

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. Non-compliance results in the loss of certification.

18. What resources are available to assist small businesses with compliance of the regulation?

ODJFS has a regional licensing specialist assigned to provide technical assistance. Electronic manuals are available for viewing on the internet. Ohio has multi-disciplinary teams to provide direct assistance or training when needed.