

# 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.

Rule Number(s): 5101:2-5-09.1, 5101:2-5-26, 5101:2-5-28, 5101:2-5-32, and 5101:2-5-35

Date: 8/18/16

**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Rescinded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.

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OAC rule 5101:2-5-09.1, entitled "Criminal records check required for certain prospective employees and certified foster caregivers," provides guidance to agencies on the requirements for criminal records checks for agency employees as well as for foster caregivers. Paragraphs (A), (K) and (N) were amended to include a reference to section 2151.86 of the Revised Code in regard to conducting criminal records checks.

OAC rule 5101:2-5-26, entitled "Revocation, denial of initial certification or denial of recertification of a foster home certificate," provides guidance to agencies on what an agency must do to deny a foster home certificate. Paragraphs (B), (D) and (E) were amended for clarification. No substantive changes were made.

OAC rule 5101:2-5-28, entitled "Agency cause for denial of initial certification, denial of recertification or revocation of a foster home certificate," provides guidance to agencies on valid reasons for denial or revocation of a foster home certificate. Paragraph (A)(13) was added to reference section 5103.0326 of the Revised Code.

OAC rule 5101:2-5-32, entitled "Occupancy limitations and accessibility," provides guidance to agencies on occupancy limits in foster homes. Paragraph (B) was amended to add and clarify exceptions to each occupancy limit listed in the paragraph. These exceptions existed for the total number of children in the home but were never expanded to include the limits in paragraph (B) prior to this change.

OAC rule 5101:2-5-35, entitled "Children's rights," provides guidance to agencies on the rights of a child placed in foster care. Paragraph (A) was amended for clarification. No substantive changes were made.

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

Rule Number	Statutory Authority
Rule 5101:2-5-09.1	ORC 2151.86
Rule 5101:2-5-26	ORC 5103.03
Rule 5101:2-5-28	ORC 5103.03
Rule 5101:2-5-32	ORC 5103.03
Rule 5101:2-5-35	ORC 5103.02, 5103.03

- 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 5101:2-5-09.1, 5101:2-5-26, 5101:2-5-28, 5101:2-5-32, and 5101:2-5-35 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.

- 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 5101:2-5-09.1, the purpose of the rule is to ensure the safety of children in care by setting guidelines for agencies on the requirements for criminal records checks for agency employees as well as for foster caregivers. This requirement is also mandated by state statute.

For rule 5101:2-5-26, the purpose of the rule is to follow through with statute by prescribing the method by which an agency may request denial of a foster home certificate. This ensures the safety of the children in care by ensuring a foster caregiver is not allowed to continue operating a foster home outside of the required guidelines.

For rule 5101:2-5-28, the purpose of the rule is to determine a reasonable cause for denial or revocation of a foster care certificate. This ensures the foster caregiver is provided with a reasonable explanation of their impending denial or revocation.

For rule 5101:2-5-32, the purpose of the rule is to limit the capacity of children in a foster home in order to ensure the proper care is being provided to the children in placement as research shows that the quality of child care improves with smaller groups of children getting more attention and care from adult caregivers.

For rule 5101:2-5-35, the purpose of the rule is ensure the children in care have basic rights even though they are in the custody of an agency.

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**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 5101:2-5-09.1, the completion of the rule requirements required for the agency to complete criminal background checks for foster caregivers and agency employees.

For rule 5101:2-5-26, the completion of rule requirements for the agency to deny certification or recertification of a foster home.

For rule 5101:2-5-28, the completion of rule requirements for the agency to provide a reasonable cause for denial or revocation of a foster care certificate.

For rule 5101:2-5-32, the completion of rule requirements required to comply with occupancy limitations and guidelines.

For rule 5101:2-5-35, the completion of rule requirements to ensure that a child's rights are not violated.

**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 Public Children Services Association of Ohio (PCSAO), and other representatives from county and private agencies through regional meetings conducted by ODJFS. The groups discussed potential changes, provided feedback and came to conclusions on each rule. The rules also went through the clearance process on July 1, 2016 through July 15, 2016. There were some comments made by Mary Wachtel of PCSAO and Anne O'Leary of Franklin County Children Services. These comments were:

**Mary Wachtel:**

Rule 5101:2-5-32, (B) (3) I wonder if "to determine the number of children in the home under age of two" should be "under the age of FIVE" as this section pertains to children under the age of five and the preceding section deals with children under the age of two.

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Rule 5101:2-5-32, (B) (4). Does the foster caregiver have any obligation to report a change in number of children in the home? In particular (B) (4) (c) allows a foster caregiver to exceed capacity for additional child or children related to the foster caregiver by blood or marriage. It is unclear if this is a child in custody or not. If it is not a child in custody, i don't see where they would have to inform anyone of this additional child or children

**Anne O'Leary:**

5101:2-5-35 (A) (9) Add Her – The right to his or her own money; (A) (12) Add she - ....from whom he or she is living apart; (A) (13) Add herself –fulfill appropriate responsibilities to himself or herself.

All comments were accepted and the rules updated with the exception of the comment from Mary Wachtel regarding reporting a change in occupancy in a foster home in rule 5101:2-5-32, (B)(4). The response from ODJFS was: "The reporting requirements for foster caregivers are located in a different rule. Rule 5101:2-7-14 contains all of the reporting requirements for caregivers including additional household members. However, the occupancy requirements are not specific to reporting, but the caregiver is expected to maintain compliance and a specialist would investigate if there is a report of a violation of the occupancy limits."

## **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 5101:2-5-09.1 - Paragraphs (A), (K) and (N) were amended to include a reference to section 2151.86 of the Revised Code in regard to the conducting of criminal records checks.

Rule 5101:2-5-26 - Paragraphs (B), (D) and (E) were amended for clarification. No substantive changes were made.

Rule 5101:2-5-28 - Paragraph (A)(13) was added to reference section 5103.0326 of the Revised Code.

Rule 5101:2-5-32 - Paragraph (B) was amended to add and clarify exceptions to each occupancy limit listed in the paragraph. These exceptions existed for the total number of children in the home but were never expanded to include the limits in paragraph (B) prior to this change.

Rule 5101:2-5-35 - Paragraph (A) was amended for clarification. No substantive changes were made.

**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 the 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, rule 5101:2-5-09.1 is mandated by statute in section 2151.86 of the Revised Code. Rules 5101:2-5-26, 5101:2-5-28, 5101:2-5-32, and 5101:2-5-35 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 criminal record check requirements necessary for statutory and rule compliance. Time involved capturing the information for prospective employees and foster caregivers 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 applicant. 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.

All other rules would be quantified by varying factors such as the agency employee’s time involved in processing foster home denials, monitoring of occupancy limitations and approval of alternative caregivers.

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**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, 5103.02, and 5103.03 of the Revised Code.

**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 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.