

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: Assessment of Placements with Relative or Nonrelative Caregivers

Rule Number(s): 5101:2-42-18

Date: 2/3/2017

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☐ Rescinded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.

OAC 5101:2-42-18, "PCSA and PCPA approval of placements with relative and non-relative substitute caregivers" sets forth requirements for the assessment of relative and non-relative

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(kinship) caregivers for the placement of children who are unable to remain in their own homes. This rule has been amended to provide clear timelines for the initiation and completion of the assessment, as well as notification of approval or denial to the caregiver. Additionally, language regarding disqualifying offenses and rehabilitation standards has been amended in an effort to allow public children services agencies (PCSAs) and private child placing agencies (PCPAs) more flexibility when assessing kinship caregivers who might otherwise not meet more stringent requirements applied to licensed foster and adoptive caregivers. The amended rule has been edited to require PCSAs and PCPAs to use the JFS 01447 "Assessment of relative or nonrelative substitute caregiver." This form has been edited to reflect amendments to rule 5101:2-42-18 of the Ohio Administrative Code.

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? No 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.

Not applicable.

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

This rule is not written as a requirement of Federal Law, nor does it exceed any Federal requirements. This rule is specific to child welfare and follows state statute to ensure the safety of the children placed with relative or nonrelative substitute caregivers.

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)?

This regulation is necessary to ensure the safety of children when placed with a relative or nonrelative substitute caregiver.

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

Agencies undergo compliance reviews once every two years as part of the recertification process which includes compliance with the requirements of this rule. Agencies also receive compliance reviews at approximately the one year mark of the two-year certification period. Additional inspections may occur as a result of allegations of rule violations. Rule 5101:2-42-18 will be measured against the criteria specific to the rule content.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

Rule 5101:2-42-18 was reviewed by a workgroup established to address a Children and Family Services Plan (CFSP) goal to explore the possibility of developing a statewide kinship home assessment. The workgroup held meetings on 12/1/2015, 2/4/2016, 5/5/2016, and 8/4/2016 and had a phone conference on 4/5/2016. Stakeholders included county agency staff, professionals from the Institute for Human Services, and professionals from the Waiting Child Fund.

Rule 5101:2-42-18 was in pre-clearance from 09/09/2016 through 10/09/2016. The clearance period for rule 5101:2-42-18 was 11/30/2016 through 12/14/2016.

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

The CFSP workgroup established that the requirements in this rule should be kept to a minimum, recognizing that there are differences among agencies in their internal policies and practices for completion of these home assessments. The workgroup determined that while the requirements in rule could be kept to a minimum, an instruction document with guidelines for completing the JFS 01447 "Assessment of Relative or Nonrelative Substitute Caregiver" (rev. 5/2017) would encourage agencies to be more thorough, would allow for the policy and practice differences among the agencies, and may facilitate more consistency and better quality in completion of kinship home assessments across the state. Ultimately, the workgroup determined that it is feasible for all agencies conducting assessments on relative and nonrelative substitute caregivers to use the JFS 01447 as a required form. The form was edited to allow for additional information to be included in narrative fields that is above and beyond the minimal requirements outlined in rule. The workgroup discussed common barriers to approving relative or nonrelative substitute caregivers, which oftentimes is attributed to an adult in the home having a disqualifying offense conviction and not meeting certain parts of the rehabilitation standards. The workgroup explored reducing the time restrictions for felonies from ten years to five years and for misdemeanors from three years to one year. After researching federal regulations, the decision was made to reduce the time restrictions. Additionally, the rule was edited to allow agencies more flexibility in applying the rehabilitation standards to approve a placement that is determined to be in the best interest of the child.

During the pre-clearance period, a comment was received that the changes in the rehabilitation timeframes and standards could negatively impact future foster care licensure for approved kinship caregivers. A similar comment was received during the regular clearance period. These comments resulted in additional language in the rule that establishes that this difference exists between approval of kinship caregivers and licensure of foster caregivers and approval of adoptive caregivers.

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Another comment received during the pre-clearance period and reiterated by the Public Children Services Association of Ohio Rules Review Committee following the regular clearance period emphasized a concern that the new timelines established in the rule for completion of the home assessment process are a burden to the agency when one approval has already been made, but a court requires the agency to continue to pursue additional kinship placements. These comments resulted in an addition to the rule that provides agencies additional time to complete assessments on additional kinship placements when a child is already residing in an approved placement.

One comment received during the clearance period requested clarification on the definition of "spousal abuse" which is identified as an automatic disqualifying conviction for which there are no rehabilitation standards. This term is defined in the definition rule (5101:2-1-01 of the OAC) and is federal language mandated by the Adoption and Safe Families Act. The guidance document that was developed as a supplement to the JFS 01447 also addresses the meaning of "spousal abuse" by advising the individual completing the assessment to consider any convictions for domestic violence. There were no edits to the rule based on this comment.

One commenter requested that the rule clarify what date the annual home assessment is based on. Language was added to the rule based on this comment to clarify that an annual home assessment shall be completed based on the date of the original approval and if there are multiple children placed in the home by one agency, the original placement approval date stands as the date that the annual home assessment shall be completed.

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 rule 5101:2-42-18 as all parties involved were satisfied with the rule.

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.*

Rule 5101:2-42-18 contains specific requirements for approving a relative or nonrelative substitute caregiver. In order to ensure the safety of these children, a performance-based regulation was not considered.

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

Rule 5101:2-42-18 is the only rule that specifies the process for approving a relative or nonrelative substitute caregiver who is not certified as a foster caregiver. Therefore, there is no duplication of any other 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.

When the rule is final filed, a transmittal letter will be generated explaining the changes to the rule and the rationale for the changes. The transmittal letters can be viewed at [http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id\(59\)&docId=Document\(storage%3DREPOSITORY%2CdocID%3D%23node-id\(87890\)\)&locSource=input&docLoc=%24REP_ROOT%24%23node-id\(87890\)&version=8.0.0](http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id(59)&docId=Document(storage%3DREPOSITORY%2CdocID%3D%23node-id(87890))&locSource=input&docLoc=%24REP_ROOT%24%23node-id(87890)&version=8.0.0).

Certification reviews, which include monitoring the implementation of rule 5101:2-42-18, occur once every two years, and at the one year mark during the two-year certification period.

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;

Rule 5101:2-42-18 contains requirements for all private child placing agencies. There are currently 28 certified private child placing agencies in Ohio.

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

Non-compliance may result in revocation or loss of certification. The adverse impact includes specific expenditures and the report of information.

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.

The agency is required to collect identifying information on all members of the household. Depending on the number of people in the household, an interview to collect this information should take approximately ten to twenty minutes.

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The agency is required to assess the safety of the home, specifically considering all of the following: cleanliness of the home; absence of hazardous conditions inside and outside the home; storage of poisonous and other dangerous or combustible materials; proper heating, lighting and ventilation; condition of indoor plumbing and toilet facilities; working smoke detectors on each level of occupancy; safe storage of weapons in inoperative condition and in a secured and locked area; adequacy of each child's bedding and appropriateness to his or her needs; and availability of or reasonable access to a working telephone. An on-site home inspection should take one to two hours to complete.

The agency is required to provide the prospective caregiver with the following: any known information about the child; information about Ohio works first (OWF) child-only financial assistance and medicaid coverage and how to apply; information about foster care certification and how to apply to be a foster caregiver; information about eligibility for other applicable supportive services. Providing this information to the caregiver should take approximately 30 to 40 minutes.

The agency is required to obtain finger prints for BCI and FBI background checks. The agency may, but is not required to pay for the background checks. If the agency chooses to pay for them, the cost is approximately \$60 per adult.

When the rule goes into effect, the agency shall be required to complete the JFS 01447 "Assessment of Relative or Nonrelative Substitute Caregiver" (rev. 5/2017). This form should take 10 to 15 minutes to complete.

If the agency disapproves of a court ordered placement of a child, it is required to notify the court in writing of its findings. This activity should take 10 to 15 minutes and would also cost the agency in postage.

The agency is required to maintain documentation in the case record of assessments and findings. The cost in terms of time spent conducting these tasks would differ by agency and depend upon business practices and policies of the agency.

The agency is required, on an annual basis, to conduct a home assessment that reviews the requirements of this rule and ensure that the requirements continue to be met. This can be conducted as a phone or desk review, which should take 20 to 30 minutes. However, if the caregiver has moved to a new address, the agency would be required to conduct an on-site home inspection to review all of the items mentioned previously. Likewise, if any new adults have entered the home, the agency is required to collect and submit fingerprints for BCI and FBI background checks. The agency may, but is not required to pay for the background checks. If the agency chooses to pay for them, the cost is approximately \$60 per adult.

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

The adverse impact is necessary to ensure the safety of children who are placed with a relative or nonrelative substitute caregiver that is not certified as a foster caregiver.

Regulatory Flexibility

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

There are no exemptions and no alternative means of compliance for rule 5101:2-42-18.

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 with this rule 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 regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of rule 5101:2-42-18.