

# 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 chapters 5101:2-5 and 2-9.

Rule Number(s): 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15, 5101:2-5-32, 5101:2-5-34,  
5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31,  
and 5101:2-9-35

Date: 3/2/18

**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Rescinded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 5101:2-5-04.1, entitled "Acceptance of accreditation in lieu of certification requirements," provides guidance to agencies on procedures and requirements for the acceptance of accreditation from sources other than through the certification criteria. This rule is being filed as a no change rule.

OAC rule 5101:2-5-14, entitled "Treatment or diagnostic services," provides guidance to agencies on informing the custodial agency of the medical treatment for a foster child. This rule is being filed as a no change rule.

OAC rule 5101:2-5-15, entitled "Volunteers and college interns," provides guidance to agencies on the requirements for the use of volunteers and college interns within the agency. This rule is being filed as a no change rule.

OAC rule 5101:2-5-32, entitled "Occupancy limitations and accessibility," provides guidance to agencies on the capacity limits and exceptions for foster homes. Paragraph (B)(3) was modified to correct a grammatical error. No substantial changes were made.

OAC rule 5101:2-5-34, entitled "PCPA and PNA case plans and administrative case reviews for direct placements," provides guidance to agencies on procedures and requirements for direct placement case plans for foster children. This rule is being filed as a no change rule.

OAC rule 5101:2-9-04, entitled "General maintenance of a residential facility," provides guidance to foster care residential facilities regarding the infrastructure of the facility. This rule is being filed as a no change rule.

OAC rule 5101:2-9-07, entitled "Emergency planning and preparedness," provides guidance to foster care residential facilities regarding the requirements for emergency situations such as natural disasters and fires. This rule is being filed as a no change rule.

OAC rule 5101:2-9-09, entitled "Emergency medical plan and first aid supplies," provides guidance to foster care residential facilities regarding the requirements for emergency medical incidents as well as the required medical supplies for a facility. This rule is being filed as a no change rule.

OAC rule 5101:2-9-15, entitled "Residential facility handbook for residents and their families," provides requirements for foster care residential facilities in regard to the content of the facility handbook. This rule is being filed as a no change rule.

OAC rule 5101:2-9-18, entitled "Recreation and leisure activities and equipment," provides guidance and regulations for recreational equipment and activities at a foster care residential facility. This rule is being filed as a no change rule.

OAC rule 5101:2-9-26, entitled "Living rooms, dining areas and lounges," provides guidance to foster care residential facilities on the regulations for size, furniture and other requirements of living rooms, dining areas and lounges. This rule is being filed as a no change rule.

OAC rule 5101:2-9-31, entitled "Laundry Facilities," provides guidance to foster care residential facilities on regulations for the laundry area of the facility. This rule is being filed as a no change rule.

OAC rule 5101:2-9-35, entitled "Additional programmatic requirements regarding behavior management," provides guidance to foster care residential facilities on more detailed behavior management regulations. This rule is being filed as a no change rule.

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

Rule Number	Statutory Authority
Rule 5101:2-5-04.1	ORC 5103.03
Rule 5101:2-5-14	ORC 5103.02, 5103.03, 2151.412
Rule 5101:2-5-15	ORC 5103.02, 5103.03
Rule 5101:2-5-32	ORC 5103.03
Rule 5101:2-5-34	ORC 5103.03, 2151.412
Rule 5101:2-9-04	ORC 5103.03
Rule 5101:2-9-07	ORC 5103.03
Rule 5101:2-9-09	ORC 5103.03
Rule 5101:2-9-15	ORC 5103.03
Rule 5101:2-9-18	ORC 5103.03
Rule 5101:2-9-26	ORC 5103.03
Rule 5101:2-9-31	ORC 5103.03
Rule 5101:2-9-35	ORC 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 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15, 5101:2-5-32, 5101:2-5-34, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 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 5101:2-5-04.1, the purpose of the rule is to guide private agencies on how they may use an accreditation from an outside entity to meet ODJFS licensing requirements. This requirement is also governed by state statute.

For rule 5101:2-5-14, the purpose of the rule is to guide agencies on the health care treatment and diagnostic services related to foster children in foster care settings.

For rule 5101:2-5-15, the purpose of the rule is to guide agencies on the requirements for the use of volunteers and college interns within the agency.

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 5101:2-5-34, the purpose of the rule is to guide agencies on procedures and requirements for direct placement case plans for foster children.

For rule 5101:2-9-04, the purpose of the rule is to guide foster care residential facilities regarding the infrastructure of the facility.

For rule 5101:2-9-07, the purpose of the rule is to guide foster care residential facilities regarding the requirements for emergency situations such as natural disasters and fires.

For rule 5101:2-9-09, the purpose of the rule is to guide residential facilities regarding the requirements for emergency medical incidents as well as the required medical supplies for a facility.

For rule 5101:2-9-15, the purpose of the rule is to guide foster care residential facilities in regard to the content of the facility handbook.

For rule 5101:2-9-18, the purpose of the rule is to give guidance and regulations for recreational equipment and activities at a foster care residential facility.

For rule 5101:2-9-26, the purpose of the rule is to guide foster care residential facilities on the regulations for size, furniture and other requirements of living rooms, dining areas and lounges.

For rule 5101:2-9-31, the purpose of the rule is to guide foster care residential facilities on regulations for the laundry area of the facility.

For rule 5101:2-9-35, the purpose of the rule is to guide foster care residential facilities on more detailed behavior management regulations.

**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 5101:2-5-04.1, the completion of the rule requirements required for the agency to use an accreditation from an outside entity to meet ODJFS licensing requirements.

For rule 5101:2-5-14, the completion of rule requirements for the agency to record and share with custodians the health care treatment and diagnostic services related to foster children in foster care settings.

For rule 5101:2-5-15, the completion of rule requirements for the agency regarding the use of volunteers and college interns within the agency.

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

For rule 5101:2-5-34, the completion of rule requirements for direct placement case plans for foster children.

For rule 5101:2-9-04, the completion of rule requirements for foster care residential facilities regarding the infrastructure of the facility.

For rule 5101:2-9-07, the completion of rule requirements for emergency situations such as natural disasters and fires in foster care residential facilities.

For rule 5101:2-9-09, the completion of rule requirements for emergency medical incidents as well as the required medical supplies for a foster care residential facility.

For rule 5101:2-9-15, the completion of rule requirements regarding the content of the foster care residential facility handbook.

For rule 5101:2-9-18, the completion of rule requirements for recreational equipment and activities at a foster care residential facility.

For rule 5101:2-9-26, the completion of rule requirements regarding the regulations for size, furniture and other requirements of living rooms, dining areas and lounges.

For rule 5101:2-9-31, the completion of rule requirements regarding the regulations for the laundry area of the facility.

For rule 5101:2-9-35, the completion of rule requirements regarding more detailed behavior management regulations.

### **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 January 29, 2018 through

February 12, 2018. There were some comments made by Jeffrey Green of The House of New Hope and Rowena Hayslip of ODJFS OFC Licensing Staff. These comments were:

**Jeffrey Green:**

Rule 5101:2-5-04.1, (D) The rule does not speak to (a) what happens or what is to be done when the accreditation period ends before the ODJFS certificate period, and (b) some grace period while re-accreditation may be pending.

Rule 5101:2-5-32, (B) (3). A two-year foster child capacity limitation is excessive and will not serve the intent of the rule revision. Specifically, every recommending foster care agency currently has the right to limit the capacity of children placed in a foster home on a case-by-case basis. In an effort to set a minimal standard for a "training period," after 12 months you will have diminished returns. Most foster caregivers will, after 12 months with up to three children in their care, have ample experience to be able to effectively handle the full weight of the regular capacity limitations.

**Rowena Hayslip:**

5101:2-5-32 (C) The no more than 10 children has started to create problems on a few occasions due to the heroin epidemic and siblings being removed and mom later giving birth to another child. I have had the situation 2 times where an agency placed a sibling in a foster home to be with their sibling but it increased the number to 11 children. I would like to see if we can consider adding that a waiver can be requested if the number of children exceeds 10 because the 11th child is the sibling of another child in the home. Basically this rule has encouraged separating siblings but agencies have decided they'd rather be out of compliance than separate children.

There were no changes made as a result of the comments. The ODJFS responses were:

**Jeffrey Green:**

Rule 5101:2-5-04.1, (D) Thank you for your comment. Nothing will happen to the agency if the accreditation period ends before the certification period ends. All this means is that it cannot be used to meet the requirements for the next/upcoming certification period. If the accreditation requirement is met at the beginning of the certification period, the period will run its normal two-year span.

Rule 5101:2-5-32, (B) (3) Thank you for your comment. While there is some validity to gaining usable experience within the first year of an individual's certification, there is currently no required evaluation at that point for the agency to determine the progress and abilities of the

individual. By keeping the restriction of capacity parallel to the certification period, it allows the home to gain more experience and gives the agency the ability to reassess the home for the additional capacity during the recertification process. As a result, the rule will remain unchanged.

**Rowena Hayslip:**

5101:2-5-32 (C) Ohio has the most lenient capacity limit for foster homes in the nation. Statute and rule limit the number of foster children in a home to five with additional children under certain circumstances. (ORC 5103.0317). Due to the high capacity limit of ten children in a home, the rule will not be changed.

**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 was a minor change made. This change was:

Rule 5101:2-5-32 - Paragraph (B)(3) was modified to correct a grammatical error. No substantial changes were made.

Rules 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15, 5101:2-5-34, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 were filed as no change 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 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

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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 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15, 5101:2-5-32, 5101:2-5-34, 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 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 for rule 5101:2-5-04.1 would entail administrative time spent completing the documentation requirements necessary for statutory and rule compliance. Time involved capturing the information for presenting to ODJFS accreditation criteria for meeting agency certification requirements could be a potential adverse impact due to the cost involved to obtain, review, assess and submit the information. A clerical employee earning \$8 and spending 10-12 hours reviewing and compiling information 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 compliance with the day to day activities and requirements of operating a foster care residential facility.

**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 5103.02, 5103.03 and 2151.412 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.