

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Chapter 5101:2-9 Beck CCN 8272

Rule Number(s): 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10,
5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20,
5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29,
5101:2-9-30, 5101:2-9-32, 5101:2-9-34

Date: 03/27/19

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☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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 rule 5101:2-5-13, entitled "Required agency policies, plans and procedures" provides guidance regarding policies specific to the operations of a foster care agency. Paragraph (A)(1)(a) was amended to clarify the definition of prone restraint.

OAC rule 5101:2-9-05, entitled "Requirements for residential parenting facility and crisis care facility furniture, materials and equipment; diaper changing" provides guidance regarding the various equipment and furniture for residential parenting and crisis care facilities. A grammatical change was made in paragraph (L). No substantive changes were made.

OAC rule 5101:2-9-06, entitled "General safety" provides guidance for residential facilities for safety in and around the facility. Paragraph (B) was clarified to include that a staff member cannot have a firearm while on duty for a residential facility. Paragraph (K) was broken out for clarity. No substantive changes were made.

OAC rule 5101:2-9-08, entitled "Fire safety" provides guidance for children placed in residential facilities for fire safety issues. Paragraph (A) was amended to update the effective date for the JFS 01200 form. No substantive changes were made.

OAC rule 5101:2-9-10, entitled "Storage of hazardous materials" provides guidance for residential facilities for the storage of hazardous materials. Paragraph (B) was broken out for clarity. No substantive changes were made.

OAC rule 5101:2-9-11, entitled "Admissions and admissions log" provides guidance to residential facilities for the keeping of the admissions log of the facility. Language was removed from paragraph (C) which required a child to remain in the custody of a PCSA in order to remain in the residential facility if they had turned eighteen years of age and are expected to graduate by age nineteen.

OAC rule 5101:2-9-12, entitled "Service plans" provides guidance to residential facilities regarding the service plan for children placed in the facility. Paragraph (C) was broken out for clarity. Paragraph (D) was created to require a residential facility to provide a copy of the service plan and the service plan review to the custodial agency.

OAC rule 5101:2-9-14, entitled "Medications" provides guidance to residential facilities regarding the distribution of medications to the children in the facility. Paragraph (B)(2) was

amended for clarity. Paragraph (I) was amended to add an exclusion to allow an inhaler or medication that might be needed in an emergency.

OAC rule 5101:2-9-16, entitled "Visiting and communications" provides guidance to residential facilities regarding visitation and communication for the children in the facility. Paragraph (B) was amended to remove an outdated rule reference.

OAC rule 5101:2-9-17, entitled "Child's money" provides guidance to residential facilities regarding safe keeping of money belonging to children in the facility. Paragraph (E) was broken out for clarity. No substantive changes were made.

OAC rule 5101:2-9-19, entitled "Personal belongings, hygiene, socialization, and education" provides guidance to residential facilities regarding the items listed in the title of the rule. Paragraph (A) was broken out for clarity. A new paragraph (O) was created to ensure that all child care staff at a residential facility implement the reasonable and prudent parenting standard in accordance with section 2151.315 of the Revised Code.

OAC rule 5101:2-9-20, entitled "Food and nutrition" provides guidance to residential facilities for the proper nutritional requirements of the menu provided to children in the facility. Paragraph (B) was amended to update the reference for the website for the dietary guidelines for Americans published by the food and nutrition information center of the United States Department of Agriculture (USDA).

OAC rule 5101:2-9-21, entitled "Care, supervision and discipline" provides guidance to residential facilities regarding the care, supervision and discipline of the children in the facility. Paragraph (B) was broken out for clarity. Paragraph (C)(19) was amended to clarify the definition of prone restraint. No substantive changes were made.

OAC rule 5101:2-9-22, entitled "Isolation, seclusion and restraint" provides guidance to residential facilities regarding the isolation, seclusion and restraint of children in the facility. Paragraph (A) was broken out for clarity. No substantive changes were made.

OAC rule 5101:2-9-23, entitled "Notification and documentation of critical incidents" provides guidance to residential facilities on documenting and reporting critical incidents of children in the facility. An addition was made in paragraph (A) to ensure the paragraph is only applicable to a child placed in the facility. Paragraph (B) was amended to add a new isolation and restraint form, the JFS 01386. This form will require residential facilities to capture information on critical incidents of restraint and isolation on the new form or an equivalent form. Paragraph (C) was broken out for clarity. No other substantive changes were made.

OAC rule 5101:2-9-24, entitled "Child and family complaint policy and procedure" provides guidance to residential facilities regarding the required policies and procedures for child and family complaints against the facility. Paragraph (D) was broken out for clarity. No substantive changes were made.

OAC rule 5101:2-9-25, entitled "Residential parenting facility and crisis care facility location and programmatic requirements" provides guidance to residential facilities on the location and the programmatic requirements for the operation of the facility. Paragraph (C) was amended for clarity. No substantive changes were made.

OAC rule 5101:2-9-28, entitled "Bedrooms" provides guidance to residential facilities regarding bedroom dimensions, furniture and other requirements for children of the facility. Paragraph (E) was amended to clarify that central air conditioning is considered a source of fresh air in a residential facility. New paragraph (S)(6) was added to ensure compliance with federal regulations on cribs in a residential facility.

OAC rule 5101:2-9-29, entitled "Bathrooms" provides guidance to residential facilities regarding bathroom requirements for the children of the facility. Paragraphs (A) and (B) were broken out for clarity to allow a single bathroom to be able to be utilized for either gender. No substantive changes were made.

OAC rule 5101:2-9-30, entitled "Kitchens and kitchen supplies" provides guidance to residential facilities regarding kitchen requirements for the children of the facility. Paragraphs (B) and (C) were broken out for clarity. No substantive changes were made.

OAC rule 5101:2-9-32, entitled "Transportation" provides guidance to residential facilities regarding transportation requirements for the children of the facility. A new paragraph (D) was added to ensure that any employee transporting children of a residential facility has a valid driver's license.

OAC rule 5101:2-9-34, entitled "Building approval" provides guidance to residential facilities regarding building requirements for changing or adding to the building. Paragraph (B) was broken out for clarity. No substantive changes were made.

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

| Rule Number | Statutory Authority |
|-------------|---------------------|
|-------------|---------------------|

| | |
|------------------|---------------------------------|
| Rule 5101:2-5-13 | ORC 5103.03, 5103.54, 5103.0316 |
|------------------|---------------------------------|

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

| | |
|------------------|-------------|
| Rule 5101:2-9-05 | ORC 5103.03 |
| Rule 5101:2-9-06 | ORC 5103.03 |
| Rule 5101:2-9-08 | ORC 5103.03 |
| Rule 5101:2-9-10 | ORC 5103.03 |
| Rule 5101:2-9-11 | ORC 5103.03 |
| Rule 5101:2-9-12 | ORC 5103.03 |
| Rule 5101:2-9-14 | ORC 5103.03 |
| Rule 5101:2-9-16 | ORC 5103.03 |
| Rule 5101:2-9-17 | ORC 5103.03 |
| Rule 5101:2-9-19 | ORC 5103.03 |
| Rule 5101:2-9-20 | ORC 5103.03 |
| Rule 5101:2-9-21 | ORC 5103.03 |
| Rule 5101:2-9-22 | ORC 5103.03 |
| Rule 5101:2-9-23 | ORC 5103.03 |
| Rule 5101:2-9-24 | ORC 5103.03 |
| Rule 5101:2-9-25 | ORC 5103.03 |
| Rule 5101:2-9-28 | ORC 5103.03 |
| Rule 5101:2-9-29 | ORC 5103.03 |
| Rule 5101:2-9-30 | ORC 5103.03 |
| Rule 5101:2-9-32 | ORC 5103.03 |
| Rule 5101:2-9-34 | 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 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

32 and 5101:2-9-34 do not implement a federal regulation and are not being amended 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. Each of the rules 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)?

For rule 5101:2-5-13, the purpose of the regulation is to provide guidance regarding the required policies for operation of an agency.

For rule 5101:2-9-05, the purpose of the regulation is to provide guidance regarding the various equipment and furniture for residential parenting and crisis care facilities.

For rule 5101:2-9-06, the purpose of the regulation is to provide guidance for residential facilities for safety in and around the facility.

For rule 5101:2-9-08, the purpose of the regulation is to provide guidance on fire safety issues for children placed in residential facilities.

For rule 5101:2-9-10, the purpose of the regulation is to provide guidance for residential facilities for the storage of hazardous materials.

For rule 5101:2-9-11, the purpose of the regulation is to provide guidance to residential facilities for the keeping of the admissions log of the facility.

For rule 5101:2-9-12, the purpose of the regulation is to provide guidance to residential facilities regarding the service plan for children placed in the facility.

For rule 5101:2-9-14, the purpose of the regulation is to provide guidance to residential facilities regarding the distribution of medications to the children in the facility.

For rule 5101:2-9-16, the purpose of the regulation is to provide guidance to residential facilities regarding visitation and communication for the children in the facility.

For rule 5101:2-9-17, the purpose of the regulation is to provide guidance to residential facilities regarding safe keeping of money belonging to children in the facility.

For rule 5101:2-9-19, the purpose of the regulation is to provide guidance to residential facilities regarding personal belongings, hygiene, socialization, and education.

For rule 5101:2-9-20, the purpose of the regulation is to provide guidance to residential facilities for the proper nutritional requirements of the menu provided to children in the facility.

For rule 5101:2-9-21, the purpose of the regulation is to provide guidance to residential facilities regarding the care, supervision and discipline of the children in the facility.

For rule 5101:2-9-22, the purpose of the regulation is to provide guidance to residential facilities regarding the isolation, seclusion and restraint of children in the facility.

For rule 5101:2-9-23, the purpose of the regulation is to provide guidance to residential facilities on documenting and reporting critical incidents of children in the facility.

For rule 5101:2-9-24, the purpose of the regulation is to provide guidance to residential facilities regarding the required policies and procedures for child and family complaints against the facility.

For rule 5101:2-9-25, the purpose of the regulation is to provide guidance to residential facilities on the location and the programmatic requirements for the operation of the facility.

For rule 5101:2-9-28, the purpose of the regulation is to provide guidance to residential facilities regarding bedroom dimensions, furniture and other requirements for children of the facility.

For rule 5101:2-9-29, the purpose of the regulation is to provide guidance to residential facilities regarding bathroom requirements for the children of the facility.

For rule 5101:2-9-30, the purpose of the regulation is to provide guidance to residential facilities regarding kitchen requirements for the children of the facility.

For rule 5101:2-9-32, the purpose of the regulation is to provide guidance to residential facilities regarding transportation requirements for the children of the facility.

For rule 5101:2-9-34, the purpose of the regulation is to provide guidance to residential facilities regarding building requirements for changing or adding to the building.

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

Rules 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32 and 5101:2-9-34 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.

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

The rules were presented to several interest groups including Ohio Children's Alliance (OCA), 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 September 28, 2018 through October 12, 2018. There were no external comments and no additional questions were received. After this clearance period the rules were amended with internal (ODJFS) comments. The rules were then put back into clearance from February 7, 2019 through February 21, 2019. The rules were presented at the rules committee meeting of PCSAO on February 7, 2019. Comments were received from Richard Tvaroch of Trumbull County Children Services, Bobbi Beale of Case Western University and Joe Thompson of the Ohio Wilderness Boys Camp. Richard Tvaroch commented regarding rule 5101:2-5-13 (A)(1)(a) and 5101:2-9-21 (C)(19). The comments were:

This comment is being submitted by Trumbull County Children Services (TCCS) regarding the proposed changes to Sections 5101:2-5-13 (A) (1) (a) and 5101:2-9-21 (C) (19) of Ohio Administrative Code. Both sections address the use of prone restraints in residential child care facilities certified by ODJFS. While ODJFS claims that these rules are being changed to simply "clarify the definition of prone restraint," it is in actuality attempting to ban the use of transitional holds, which have safely been used by TCCS, and other facilities, for over a decade.

ODJFS is attempting to ban transitional holds by replacing the prone restraint definition that has been in rule since 2010 with the Department of Developmental Disabilities' (DODD) definition, section 5123-2-2-06 (C) (8) (a) of Ohio Administrative code. The proposed change would ban all face-down restraints regardless of duration no matter how brief. If enacted, this would be a reversal of a decade old policy and an extreme application of the requirements of Executive Order 2009-13S, Establishing Restraint Policies Including a Ban on Prone Restraints, which could put children at unnecessary risk.

Executive Order 2009-13S was issued by Governor Ted Strickland on August 3, 2009. To reduce the risk of positional asphyxia, it banned the use of prone restraint and set limits on the use of transitional holds. A transitional hold is the "the physical positioning of an individual face-down for the purpose of quickly and effectively gaining physical control of that individual in order to prevent harm to self and others, or prior to transport to enable the individual to be transported safely." Transitional holds may only be used, if the following conditions are met:

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 1. Only by staff with current training on its safe use, including how to recognize and respond to signs of distress in the individual;*
- 2. Only in a manner that does not compromise breathing, including the compromise that occurs with the use of pressure or weight bearing on the back, soft devices such as pillows under an individual's face or upper body, or the placing of an individual's or staff's arms under the individual's head, face, or upper body;*
- 3. Only for the reasonable amount of time necessary to safely bring the person or situation under control and to ensure the safety of the individual involved; and*
- 4. Only with consistent and frequent monitoring during and after the intervention with every intent to assure that the person is safe and suffers no harm.*

These are the same conditions taught by certified Physical-Aggression-Avoidance-Response-Remediation (P.A.A.R.R) instructors. P.A.A.R.R is the behavioral intervention and restraint program used by TCCS' residential treatment center staff.

ODJFS utilizes 5101:2-9-22 (N) to operationalize the Executive Order 2009-13S requirement that "physical restraint may only be used by trained staff under the approval, guidance and restrictions outline with each department's policies." This rule requires that "any restraint techniques used to restrain a child shall be previously approved and listed in the behavioral intervention policy of the residential facility." It has been in effect since 2007, even predating Executive Order 2009-13S, and transitional holds have been in TCCS' approved behavioral intervention policy, and used without incident, since its inception.

ODJFS first addressed the requirements of Executive Order 2009-13S, including prohibiting the use of prone restraints, with a series of changes to the 5101:2-5 and 5101:2-9 rules in 2009 and 2010. 5101:2-5-13 was the first of these rules to be changed. Between November 2009 and April 2010, 5101:2-5-13 evolved from "all forms of prone restraint shall be prohibited," which if adopted could have restricted all facedown restraints, to the prone restraint definition in Executive Order 2009-13S, which remains in this rule, and 5101:2-9-21, to this day. Also, not once in the many versions of the 5101:2-5 and 5101:2-9 rules that have been finalized since 2009 has the use of transitional holds been prohibited, or even addressed, in these rules. If it has always been ODJFS intent to prohibit all face down restraints, they could have done so simply by codifying the proposed 2009 version of these rules and formally addressing transitional holds in rule, but neither has ever occurred.

Executive Order 2009-13S also charged Ohio departments, including ODJFS, to develop and institute restraint policies to meet the unique needs of their specific service populations. Individuals suffering from developmental disabilities and behavioral health issues have very different abilities and needs. Individuals with developmental disabilities may be cognitively impaired and often lack the ability to communicate with caregivers. In contrast, a behavioral health disorder does not directly impact

cognitive abilities, but instead changes an individual's perceptions and thought processes. Because of the very different needs of these two service populations, ODJFS' decision to simply co-opt DODD's prone restraint definition is potentially dangerous.

Positional asphyxia is a multi-factorial event, with body position being only one of a range of causative factors. Contrary to popular understanding, if causative factors are not understood and controlled restraint-related deaths can occur in standing, seated, prone and supine positions. To safely control these factors, staff must understand the unique needs of, and be able to constantly monitor and communicate with, the individual that is being restrained; and the restraint must be limited to the minimum amount of time necessary to safely bring the individual under control. Because individuals with developmental disabilities are often non-verbally, face-down restraints make it difficult, if not impossible, for DODD staff to safely monitor them during a restraint. Communication is generally not an issue for the children being served in residential child care facilities certified by ODJFS. Therefore, for these children, the key to ensuring safety is ending the restraint as quickly as possible, and the conditional use of transitional holds, as taught through P.A.A.R.R., is the most efficient and effective way to do this.

If ODJFS feels that it is necessary to amend these rules, because the individuals served by both departments are equivalent, the ODMHAS restraint rules could be adapted, instead of DODD's. Chapter 5122-26-16, Seclusion, Restrain, and Time-Out, defines approved restraint procedures for ODMHAS certified facilities. This rule essentially "mirrors" Executive Order 2009-13. While it prohibits prone restraint, it allows the use of transitional holds under very clearly defined conditions. Even though the ODMHAS rules would be a much better fit to the service population, they were never considered; a fact that could have been addressed if ODJFS would have sought stakeholder input.

Prior to these rules entering clearance, ODJFS admits that it did not seek stakeholder input or comment on the proposed changes. The previous versions of these rules were presented to several interest groups including Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association, representatives from county agencies and the Ohio Council of Behavioral Health and Family Services Providers before being entering clearance. By not allowing a similar dialog to occur regarding these proposed changes, ODJFS was negligent in its stewardship responsibilities and obligations.

Lastly, if enacted, these proposed changes would have a financial impact on ODJFS certified residential treatment facilities. Policies and procedures would have to be amended, vendors would have to be contracted with, and staff would have to be retrained. Facilities will be forced to spend thousands of dollars to address a problem that simply does not exist.

TCCS will expand on this comment in testimony that will be offered at the public hearing regarding this matter.

The ODJFS response to Richard was:

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

The rule process evolves over time due to varying circumstances that have an influence. It may be new legislation, or an event or events that cause the rule to change. The priority of ODJFS is the safety of children in care (ORC 5103.03 (B)(2)). Due to some agencies implementing questionable practices and interpretations surrounding the use of prone restraint and/or transitional holds, children have been injured. ODJFS is not banning restraint but ensuring that restraints in the prone position are prohibited. ODJFS feels the approach to resolve questionable practices is to land on the side of caution for the best care and safety of the children we serve. The financial impact would be minimal to none. By removing this method, agencies would discontinue the practice. It would be up to the agency on how to proceed with other forms of restraint. Some agencies currently certified by ODJFS opt to not use any type of restraint and other agencies choose not to use any type of prone-positioned restraint. An agency is required to update agency policies to be compliant with any law or rule change. This is part of doing business and would not put an undue financial burden on the agency. Agencies who do not have any type of restraint policy or agencies that use other non-prone positioned forms of restraint would not incur any expense as it would not require an agency policy change.

Bobbi Beale also commented regarding rule 5101:2-5-13 (A)(1)(a) and 5101:2-9-21 (C)(19). The comments were:

This comment is being submitted by Bobbi Beale, Psy.D., Senior Research Associate, Center for Innovative Practices, CWRU, regarding the proposed changes to Sections 5101:2-5-13 (A) (1) (a) and 5101:2-9-21 (C) (19) of Ohio Administrative Code. Both sections address the use of prone restraints in residential child care facilities certified by ODJFS.

Having worked at a behavioral health agency for children and youth for over 20 years, where we were trained to utilize P.A.A.R.R. as a behavior management program for extremely challenging youth, I would like to advocate for the inclusion of approved Transitional holds. These are in the prone position, but only maintained for the briefest time possible, and only to prevent the youth from harming themselves or others. As a P.A.A.R.R. trainer I can verify that trainees are well versed in the need to use the least restrictive and safest methods possible to assist the youth in regaining self-control.

As trained, Transitional holds may only be used under these conditions: staff must have annual training on its safe use, including how to recognize and respond to signs of distress; they are trained to never compromise breathing, specifically prohibiting the use of pressure or weight bearing on the back, or any devices or props under the individual's head, face, or upper body; only for the reasonable amount of time necessary to safely bring the person or situation under control and to ensure the safety of the individual involved; and with continual monitoring to assure that the person is safe and suffers no harm.

Eliminating the Transitional hold would require youth to be held in a supine position, which can feel more vulnerable and threatening, with adults looming over the youth to prevent them from hurting themselves or others. The direct face-to-face contact can actually prolong the incident, rather than quickly de-escalating the aggressive feelings with no eye contact and only repeated indications that they will be

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

released as soon as they have control. In addition, the staff is at greater risk of being hit, kicked or spit upon when the youth is in a supine position; it is simply easier to do those things when you are facing up. It would require more staff members to safely hold the youth down, again escalating the event rather than calming as quickly as possible.

Trained properly, staff can usually manage severe behavior relatively quickly and painlessly, for all involved. Without the ability to use the Transitional hold appropriately, I am concerned that holds may be extended and/or staff may be injured. If residential and other intensive programs (day treatment, for example) are not able to safely manage aggressive behaviors, staff will be forced to involve law enforcement officers to intervene, who are not required to observe any particular protocols with our youth. I strongly advocate for those of us working with these challenging and traumatized youth to be allowed to continue to use de-escalation strategies and safe restraint practices, including the Transitional hold, so that we can keep our youth in our protective and therapeutic programs and residences, rather than have them arrested or hospitalized to control them.

The ODJFS response to Bobbi was:

Please see the comment response to Richard above. Thank you.

Richard also commented on rule 5101:2-5-13 (B). Richards comments were:

This comment is being submitted by Trumbull County Children Services (TCCS) to recommend a change to Section 5101:2-5-13 (B) of Ohio Administrative Code. We recommend that this section be changed to require that "unless otherwise indicated, policies, plans and procedures related to ODJFS certified or approved functions shall be submitted for ODJFS approval in...." "For ODJFS approval," this three-word change is needed to better clarify and codify the intent of Section 5101:2-5-13 and ODJFS' statutory oversight responsibility as defined by Section 5103.03 (Rules for Adequate and Competent Management Institutions or Associations) of Ohio Revised Code; and it would provide clear support and linkage to the requirements of Section 5101:2-9-22 (N), and other similar sections, of Ohio Administrative Code.

The ODJFS response to Richard was:

ODJFS does not provide a directive for itself in rule. By adding the term "approval," the rule would implicate a directive for ODJFS therefore, the change will not be made.

Joe Thompson's comments on rule 5101:2-9-23 (B) were: *The new JFS form 01386 will enable reviewers to have a standard format CIR to examine and should streamline their efforts...a commendable move. However, the 01386 would seem to be insufficient in a number of ways and will therefore require duplicate and redundant information recording for the agencies. As the only Wilderness Therapeutic Camp under JFS licensure, we are in a 'no cellular service' area and only have internet access in our office - not the base camps where incidents happen and forms are filled out. If the forms need to be printed and filled out by hand, the current version provides woefully inadequate physical space to respond to the*

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

queries. For example: our present CIR form lists 40 de-escalation strategies from which numerous are often used in the 1+ hours preceding an incident requiring restraint. There is not room for this. Further, to record the child's response to EACH may be helpful for analysis, but would require a lot of recording space, an excellent memory on the part of the care-giver, and significant writing time unless done in a very generalized way. Some important items not included on this form are: medical monitoring in 15 min. increments, post incident medical assessment; post incident mental health assessment; chain of debriefing and related times; current certification of participating staff; review process with related times. At a minimum, I would suggest separating the isolation portion to it's own form to create space for requested information. Much better, would be to require agencies to have the 01386 components as a minimum for agency forms and listed in the order shown on 01386 as a help to reviewers. This would allow some customization by agency with their varied restraint curriculum's requirements, yet create a content/order framework to streamline reviews. Thank you.

Richard also commented on rule 5101:2-9-23 (B): This comment is being submitted by Trumbull County Children Services (TCCS) regarding the proposed changes to Section 5101:2-9-23 (B) of Ohio Administrative Code, specifically the use of the "Restraint and Isolation Incident Report (JFS 01386)." While we support the collection of the information captured in this new report, Agencies must be given the latitude to work with their Licensing Specialists to integrate the elements of this new report into existing data management systems, and not be forced to simply use this new form. Many agencies, including TCCS, use electronic systems to report, monitor, aggregate and analyze restraint and isolation events, and other critical incidents, that occur within their facilities. For agencies with these type of systems, without the requested latitude for current system integration, this new report will be nothing but a valueless and redundant reporting requirement; and it would be a gigantic step backwards.

The ODJFS response to Joe and Ricard was: Thank you for your comments. The rule will be revised to allow an agency to use an equivalent form in either paper or electronic format if all the information contained on the JFS 01386, at a minimum, is captured.

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 that was agreeable to all. There were comments received during the clearance process and answers were provided.

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 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32 and 5101:2-9-34 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.

For rules 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32 and 5101:2-9-34, 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.

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. These rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure they do not duplicate 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 the regulations are applied consistently and they 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;**
- 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.

The rules of the Administrative Code in Chapter 5101:2-9 contain requirements for foster care agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-5-13 – The agencies adhering to policies specific to the operations of a foster care agency.

5101:2-9-05 – The agencies adhering to residential facility requirements with regard to various equipment and furniture for residential parenting and crisis care facilities.

5101:2-9-06 – The agencies adhering to residential facility requirements with regard to safety in and around the residential facility.

5101:2-9-08 – The agencies adhering to residential facility requirements with regard to fire safety issues.

5101:2-9-10 – The agencies adhering to residential facility requirements with regard to the storage of hazardous materials.

5101:2-9-11 – The agencies adhering to residential facility requirements with regard to the keeping of the admissions log of the facility.

5101:2-9-12 – The agencies adhering to residential facility requirements with regard to the service plan for children placed in the facility.

5101:2-9-14 – The agencies adhering to residential facility requirements with regard to the distribution of medications to the children in the facility.

5101:2-9-16 – The agencies adhering to residential facility requirements with regard to visitation and communication for the children in the facility.

5101:2-9-17 – The agencies adhering to residential facility requirements with regard to safe keeping of money belonging to children in the facility.

5101:2-9-19 – The agencies adhering to residential facility requirements with regard to personal belongings, hygiene, socialization, and education of the children placed in the facility.

5101:2-9-20 – The agencies adhering to residential facility requirements with regard to the food served and the proper nutritional requirements of the menu provided to children in the facility.

5101:2-9-21 – The agencies adhering to residential facility requirements with regard to the care, supervision and discipline of the children in the facility.

5101:2-9-22 – The agencies adhering to residential facility requirements with regard to the isolation, seclusion and restraint of children in the facility.

5101:2-9-23 – The agencies adhering to residential facility requirements with regard to documenting and reporting critical incidents of children in the facility.

5101:2-9-24 – The agencies adhering to residential facility requirements with regard to the required policies and procedures for child and family complaints against the facility.

5101:2-9-25 – The agencies adhering to residential facility requirements with regard to the location and the programmatic requirements for the operation of the facility.

5101:2-9-28 – The agencies adhering to residential facility requirements with regard to the bedroom dimensions, furniture and other requirements for children of the facility.

5101:2-9-29 – The agencies adhering to residential facility requirements with regard to the bathroom requirements for the children of the facility.

5101:2-9-30 – The agencies adhering to residential facility requirements with regard to the kitchen requirements of the facility.

5101:2-9-32 – The agencies adhering to residential facility requirements with regard to the transportation requirements for the children of the facility.

5101:2-9-34 – The agencies adhering to residential facility requirements with regard to the building requirements for changing or adding to the building.

The adverse impact would only be relegated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. The 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?

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

To ensure the safety of children in substitute care, the adverse impact of these rules is necessary.

Regulatory Flexibility

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

For rules 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32 and 5101:2-9-34, there are 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?

For rules 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-11, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32 and 5101:2-9-34, 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 application process including assistance with the proper information required by this rule if the agency chooses to use a certification to meet Ohio requirements.