

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: FYR of OFC-death of a child in care

Rule Number(s): 5101:2-42-89

Date: April 5, 2019

Rule Type:

New

☒ 5-Year Review

☒ Amended

☐ Rescinded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.

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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 5101:2-42-89 *Private child placing agency procedures when a child in agency custody dies* sets forth the requirements of PCPAs to have written policies and procedures when there is a child fatality or near fatality. The rule has been proposed for amendment to adhere to the five-year rule review and the requirements for PCSAs have been removed from this rule as a new rule is being proposed to address PCSA requirements for recording a child fatality or near fatality.

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

5101:2-42-89 **5103.03, 5153.166**

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.

No, the rule doesn't implement a Federal regulation.

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

This rule does not exceed federal requirements.

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)?

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The purpose for this regulation is to be vigilant as a department over the health, life and safety of children in the custody and care of private child placing agencies. This rule sets forth the requirements of PCPAs to have written policies and procedures when there is a child fatality or near fatality.

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

This rule is monitored through the certification process.

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.

This rule has been reviewed by the Public Children Services Association of Ohio (PCSAO) and a variety of county workers.

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

The clearance comment period for rule review was open from March 14, 2019 to March 28, 2019 and no comments were provided during this period.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

There were no alternatives considered for this rule as all parties involved were satisfied with the rule and because the rule is driven by statute.

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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 the well-being of every child in temporary custody.

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

The JCARR prong for invalidation: "Rules do not conflict with a rule of its own or another rule-making agency" has been an ongoing deterrent to duplication. JFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Once 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.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>. The rule does 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;

The rules of the Administrative Code in Chapter 5101:2-42 contain requirements for children in temporary custody and placed into substitute care by public and private agencies. Requirements must be met to obtain

and/or maintain certification for PCPAs and PNAs. There are currently 26 certified PCPAs and 141 PNAs in Ohio.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
5101:2-42-89 The PCPA must have requirements in place to report and record a child fatality or near fatality. Failure to do so will result in a loss of certification for non-compliance.

- 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 adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance.

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

To ensure the safety of children in substitute care, the adverse impact of this rule is necessary.

Regulatory Flexibility

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

For rule 5101:2-42-89, 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?

If an agency does not comply, the result will be a forfeiture of certification through denial or revocation.

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

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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.

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