



## Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: FYR of Substitute Care Chapter 5101:2-42

Rule Number(s): 5101:2-42-04, 05, 08, 09, 18.1, 64, 65, 67, 68, 71, 87, 88, 92, 93, 95

Date: May 3, 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☐ Rescinded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 5101:2-42-04 *Authority to assume and retain custody of a child* sets forth the authority to place a child outside of the parental home only if custody has been assumed or retained by the public children service agency or private child placing agency. The rule has been proposed for amendment to adhere to the five-year rule review. The language proposed by the Family First Prevention Services Act is being included into this rule specifically pertaining to substance use disorder residential facilities.

OAC 5101:2-42-05 *Selection of a placement setting* sets forth the requirements in the selection of a placement setting when a child cannot remain in their own home. The rule has been proposed for amendment to adhere to the five-year rule review. The language proposed by the Family First Prevention Services Act is being included into this rule specifically pertaining to substance use disorder residential facilities.

OAC 5101:2-42-08 *Acceptance of temporary custody by agreement and court-approved extensions* sets forth the requirements of a temporary custody agreement between the PCSAs and PCPAs and a parent upon the request of a secondary extension. The rule has been proposed for amendment to adhere to the five-year rule review.

OAC 5101:2-42-09 *Acceptance of permanent custody by permanent surrender* sets forth the requirements of a permanent custody agreement between the PCSAs and PCPAs and a parent. The rule has been proposed for amendment to adhere to the five-year rule review.

OAC 5101:2-42-18.1 *Non-discrimination requirements for foster care placements* sets forth the requirements not to deny or delay prospective foster parents or the placement of children into foster care on the basis of race, color or national origin of that person. The rule has been proposed for amendment to adhere to the five-year rule review.

OAC 5101:2-42-64 *Preplacement services* sets forth the guidance for preplacement services for a child and his or her parent, guardian or custodian when substitute care is going to occur. The rule has been proposed for amendment to adhere to the five-year rule review. The language proposed by the Family First Prevention Services Act is being included into this rule specifically pertaining to substance use disorder residential facilities.

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OAC 5101:2-42-65 *Caseworker visits and contacts with children in substitute care* sets forth the requirements for caseworker visits with the child and the substitute caregiver in the placement setting to ensure safety and well-being. The rule has been proposed for amendment to adhere to the five-year rule review. The language proposed by the Family First Prevention Services Act is being included into this rule specifically pertaining to substance use disorder residential facilities.

OAC 5101:2-42-67 *Preparation of lifebook* sets forth the requirements for the PCSA or PCPA to create and maintain and share a lifebook while the child is in substitute care. It is a document for the child to have regarding childhood milestones and memories. The rule has been proposed for amendment to adhere to the five-year rule review and changes were made to the authorizing statute citations.

OAC 5101:2-42-68 *Necessity for continued substitute care placement: Court reviews and hearing* sets forth the requirements for each PCSA or PCPA to determine if the need for continued placement in a substitute care setting is necessary. The rule has been proposed for amendment to adhere to the five-year rule review.

OAC 5101:2-42-71 *Approval of adult-supervised living arrangements* sets forth the requirements of an adult-supervised living arrangement which includes an approved family setting, licensed or certified foster home. The rule has been proposed for amendment to adhere to the five-year rule review.

OAC 5101:2-42-87 *Termination of substitute care and custody of a child* sets forth the requirements for the PCSA to assess the need for continued custody of a child. The rule changes the requirements of a trial home visit from sixty consecutive days to ninety consecutive days.

OAC 5101:2-42-88 *Requirements for substitute care placement disruptions* sets forth the requirements that PCSAs and PCPAs shall document when there is a disruption of a child in substitute care. The rule has been proposed for amendment to adhere to the five-year rule review and changes were made to the authorizing statute citations.

OAC 5101:2-42-92 *Visitation for child in temporary custody* sets forth the requirements of the PCSAs and PCPAs to arrange regular and frequent opportunities for visitation for children in temporary custody with their parents or guardians. The rule has been proposed for amendment to adhere to the five-year rule review and changes were made to the authorizing statute citations.

OAC 5101:2-42-93 *Change of placement or visitation plan prior to journalization of case plan* sets forth the requirements when a child's placement or visitation plan has been specified by a court order or the court has ordered that no change in the child's placement can occur without the court's approval a motion to modify is to be filed and the court's approval must be obtained. The rule has been proposed for amendment to adhere to the five-year rule review.

OAC 5101:2-42-95 *Obtaining permanent custody: termination of parental rights* sets forth the conditions upon which a PCSA or PCPA may petition the court to request permanent custody of a child under specific conditions. The rule has been proposed for amendment to adhere to the five-year rule review.

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

OAC 5101:2-42-04	5153.166, 5103.03
OAC 5101:2-42-05	5153.166, 5103.03
OAC 5101:2-42-08	5153.166, 5103.03
OAC 5101:2-42-09	5103.03, 5153.166, 3107.083
OAC 5101:2-42-18.1	5101.141, 5103.03, 5153.166
OAC 5101:2-42-64	5103.03, 5153.166
OAC 5101:2-42-65	5103.03, 5153.166
OAC 5101:2-42-67	5153.166, 5103.03
OAC 5101:2-42-68	5153.166, 5103.03
OAC 5101:2-42-71	5103.03, 5107.05
OAC 5101:2-42-87	5103.03, 5153.166
OAC 5101:2-42-88	5103.03, 5153.166
OAC 5101:2-42-92	5103.03, 5153.166

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OAC 5101:2-42-93 5103.03, 5153.166

OAC 5101:2-42-95 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.*

5101:2-42-04 is being amended due to a requirement to implement provisions of the Family First Prevention Services Act of 2018, P.L. 115-123, specifically pertaining to substance use disorder residential facilities.

5101:2-42-05 is being amended due to a requirement to implement provisions of the Family First Prevention Services Act of 2018, P.L. 115-123, specifically pertaining to substance use disorder residential facilities.

5101:2-42-64 is being amended due to a requirement to implement provisions of the Family First Prevention Services Act of 2018, P.L. 115-123, specifically pertaining to substance use disorder residential facilities.

The remainder of the rules do not implement federal requirements.

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

These rules do 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)?**

The purpose of the regulations in 5101:2-42-04 is to set in place the requirements for PCSAs and PCPAs to provide placement services for a child through the direct placement of the child by his parent, guardian, or custodian into a facility operated by the PCSA or PCPA.

The purpose of the regulations in 5101:2-42-05 is to provide guidelines for PCSAs and PCPAs to explore maternal/paternal relatives, regarding their willingness to assume temporary custody or guardianship of a child.

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The purpose of the regulations in 5101:2-42-08 is to provide guidelines for PCSAs and PCPAs for temporary custody and court-approved extensions.

The purpose of the regulations in 5101:2-42-09 is to provide guidelines for parents, or other persons having custody of a child may enter into an agreement with a PCSA or PCPA to voluntarily surrender a child into the permanent custody of an agency when there is agreement that a permanent surrender would be in the best interests of the child.

The purpose of the regulations in 5101:2-42-18.1 is to provide guidelines to prevent any discriminatory practices that may deny any person the opportunity to become a foster caregiver or prevent placement of a child into foster care on the basis of race, color or national origin (RCNO) of that person.

The purpose of the regulations in 5101:2-42-64 is set to provide or arrange preplacement services to the child and his or her parent, guardian, or custodian when substitute care placement of the child is to occur.

The purpose of the regulations in 5101:2-42-65 is set to provide requirements to the agency which holds custody of a child shall comply with the provisions set forth in this rule regarding caseworker visits and contacts with the child and the substitute caregivers to ensure the child's safety and well-being, and to assess whether the placement and services continue to meet the child's needs in accordance with the case plan.

The purpose of the regulations in 5101:2-42-67 is set to provide guidelines for PCSAs and PCPAs to begin a "life book" for a child in substitute care containing information to be kept on file, shared with the child and to accompany a child during placement changes. The life book provides information to the child on who they are, where they come from, and contains pertinent medical information.

The purpose of the regulations in 5101:2-42-68 is set to provide the guidelines for PCSAs and PCPAs on the steps to determine the necessity of continued substitute care placement for each child.

The purpose of the regulations in 5101:2-42-71 is set to provide requirements for the PCPA or PNA. These agencies shall be responsible for investigating any complaint received on an adult-supervised living arrangement that the agency has approved and arrive at a determination to continue approval of the setting, revoke the approval for the setting, or initiate a corrective action plan. If the complaint involves alleged child abuse and neglect, the PCPA or PNA shall develop written procedures for reviewing complaints or disapprovals of agency actions involving adult-supervised living arrangements.

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The purpose of the regulations in 5101:2-42-87 is set to create a process for properly assessing the need for continuing or terminating custody of a child.

The purpose of the regulations in 5101:2-42-88 is set to create a process of documenting a disruption in the substitute care placement of a child and to require that information be kept in the case record and the caregiver's record.

The purpose of the regulations in 5101:2-42-92 is set to provide guidelines to PCSAs and PCPAs regarding the schedule of visitation for a child in temporary custody.

The purpose of the regulations in 5101:2-42-93 is set to provide requirements for the PCPA to file a motion to modify a placement order and receive court approval prior to effecting a change in the child's placement.

The purpose of the regulations in 5101:2-42-95 is set to provide requirements for PCSAs and PCPAs to petition the court to request permanent custody of a child when a parent has been convicted of a violent crime, the child has been determined deserted or the child has remained in agency custody for twelve or more months of a consecutive twenty-two month period.

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

These rules are 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.*

These rules have 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 period for this rule review was open from March 8, 2019 to March 22, 2019 and one comment was submitted during this period and the following response was provided to the submitter.

**CCN 8264 - Five Year Rule Review and Amendments to Ohio Administrative**

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**Code Rules 5101:2-42-04, 5101:2-42-05, 5101:2-42-08, 5101:2-42-09, 5101:2-42-18.1, 5101:2-42-64, 5101:2-42-65, 5101:2-42-67, 5101:2-42-68, 5101:2-42-70, 5101:2-42-71, 5101:2-42-87, 5101:2-42-88, 5101:2-42-92, 5101:2-42-93, and 5101:2-42-95**

**No Comments received**

<b>Name and email address</b>	<b>Comment</b>	<b>Response</b>
Shelby Cully <a href="mailto:shelby.cully@jfs.ohio.gov">shelby.cully@jfs.ohio.gov</a>  Lucas County Children Services	<p>LCCS is looking for additional language in 5101:2-42-87 Termination of substitute care and custody of a child under section B. Specifically, LCCS is looking for direction in Rule that substitute care and custody automatically terminates when</p> <p>4) a child emancipates (or turns 18)</p> <p>i) unless a court of jurisdiction issues an order extending jurisdiction over the youth prior to the youth's 18th birthday based upon the child's mental illness, developmental disability or physical impairment then jurisdiction would terminate automatically at age 21.</p> <p>ii) unless a court of jurisdiction issues an order extending jurisdiction over the youth for a specific period of time to allow the youth to enable the child to graduate from high school or vocational school.</p> <p>An addition of this language would align the OAC with</p>	<p>Thank you for your participation and providing a comment.</p> <p>There is no one statute which specifically states a PCSA's custody of a child terminates when that child turns 18. Instead, RC 2151.353 says that a juvenile court's jurisdiction is terminated when a child turns 18, which is not the same thing as PCSA custody.</p>

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	ORC 2151.353(F)(1)  Thank you for your consideration	
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**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 the 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 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.

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**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 rules are final filed, a transmittal letter will be generated explaining the changes to the rules and the rationale for the changes. The transmittal letters can be viewed at <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>. 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;**

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 PNs in Ohio.

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

5101:2-42-04 The requirements must be met for PCPAs to obtain and/or maintain certification by the state. These requirements include executing forms to either accept custody by permanent surrender or temporary custody and extending the custody episode if necessary. Identifying costs as they relate to time spent completing forms depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing and availability of appropriate placements. All activities to assume or retain custody are to comply with rules 5101:2-42-06, 5101:2-42-08, 5101:2-42-09.

5101:2-42-05 The requirements must be met for PCPAs to obtain and/or maintain certification by the State. These requirements include exploring relatives willingness and ability to assume temporary custody/guardianship of the child; exploring placement with a suitable non-relative with ties to the child/family; assuring the placement home conditions are suitable with regard to cleanliness, proper heating/cooling, smoke detectors, etc.; that all persons in the

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home meet the foster care certification standards set forth in rule 5101:2-42-18; and that substitute care settings have been licensed, certified or approved by ODJFS. Identifying costs as they relate to time spent completing forms depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing levels, the number of children in care or custody, the individual needs of each family, and availability of appropriate placements. All placement activities are to comply with rules 5101:2-42-18.1 and 5101:2-48-13 of the OAC and with guidelines of the Federal Multiethnic Placement Act.

5101:2-42-08 – The requirements of JFS 01645 must be met for PCPAs to obtain and/or maintain certification by the State. Identifying the costs to the PCPAs as they relate to time spent completing forms depends on many different variables. Variables include agency staffing and composition, the individual needs of the child and family, and the number of children in care or custody. The agency is not subject to any court costs or filing fees for making an extension request. The rule reference changes in paragraph (1) of this rule were made due to the rescinding and chapter relocation of the cited rules. The rule citation changes place no new requirements on agencies.

5101:2-42-09 The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State. Identifying the costs to the PCPAs as they relate to time spent completing forms, such as a case plan, depends on many different variables.

The variables include:

- Individual needs of the family
- Holding family meetings
- The agency composition and number of assessors employed at the agency
- Case plan preparation and identified services and needs
- The timeliness of documents processed in juvenile court

There is no cost associated with juvenile court filings.

5101:2-42-18.1 The requirements must be met for PCPAs to obtain and/or maintain certification by the State. Identifying the costs to the PCPAs as they relate to time spent conducting assessments regarding whether a child has individual needs involving race, color or national origin are nearly impossible to approximate. As each child and case is different, many

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variables including whether an assessment is necessary, are involved in making such determinations. When an assessment is deemed necessary, the child is referred to an outside provider and the cost would be billed as a Medicaid service. If the assessment is deemed necessary, then the agency is required to complete the JFS 01688 and the provider is required to complete the JFS 01608. Each, as well as the JFS 01611, are directly related to the requirements set forth in the Federal Multiethnic Placement Act of 1994.

5101:2-42-64 PCPAs are to provide or arrange preplacement services when substitute care placement of the child is to occur. The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. The cost to the PCPAs as they relate to providing services depends on many different variables. Identifying the cost to the PCPAs as they relate to pre-placement services include; arranging at least one pre-placement visit with the caregiver, counseling and establishing communication with the child and his or her parent, guardian, or custodian regarding feelings of separation. All activities are to comply with rules 5101:2-52-04, 5101:2-52-06, 5101:2-39-01 and 5101:2-39-03 of the Ohio Administrative Code (OAC).

5101:2-42-65 The requirements for PCPAs regarding caseworker visits and contacts with the child and the substitute caregivers to ensure the child's safety and well-being, and to assess whether the placement and services continue to meet the child's needs in accordance with the case plan. The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State. Identifying the costs vary greatly, that it is nearly impossible to approximate.

5101:2-42-67 The requirements for PCPAs to begin a "life book" for a child in substitute care containing information to be kept on file, shared with the child and to accompany a child during placement changes. The timeframe for preparing a "life book" and completing updates every six months. The requirements must be met to obtain and/or maintain certification.

5101:2-42-68 The requirements for PCPAs is to provide the guidelines for PCPAs on the steps to determine the necessity of continued substitute care placement for each child. The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State.

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5101:2-42-71 The requirements must be met for PCPAs to obtain and/or maintain certification by the state. There may be a cost to: evaluate and process applicants for adult-supervised living arrangements; develop procedures for reviewing complaints and maintain records. Information must be reported on the JFS 01348. Identifying costs as they relate to time spent completing forms depends on so many different variables, that it is near impossible to approximate. These variables include the investigation of an adult-supervised living arrangement and the entire process of removing an applicant from a setting and terminating an adult-supervised living arrangement if the complaint is determined conclusive. All activities for adult-supervised living arrangements are to comply with Chapter 5101:2-5, 5101:2-7 and 5101:2-9 of the Ohio Administrative Code (OAC).

5101:2-42-88 The requirements must be met to obtain and/or maintain certification. The timeframe for documenting into the case record a disruption of a child's substitute care placement.

5101:2-42-92 The timeframe for reviewing for JFS 01413 to assist in decisions to guide the frequency, duration and location of visits or to determine the level of supervision needed during visits. The requirements must be met to obtain and/or maintain certification.

5101:2-42-93 The requirements must be met in order for PCPAs to obtain and/or maintain certification by the State. All documentation related to notices to changes in placements or visitation plans and/or written decisions of a review agent required by this rule shall be maintained by the agency in the child's case record. Identifying costs as they relate to time spent regarding a change of placement depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing and availability of appropriate placements. All activities to change

5101:2-42-95 The requirements of the rule must be met to terminate the custodial rights of parents and place the child in agency custody into a permanent family or planned permanent living arrangement. Failure to do so will result in a loss of certification for non-compliance. The employer's time is involved in petitioning the courts; amending the case plan and submitting it to the court.

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- 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 these rules is necessary.

### **Regulatory Flexibility**

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

For these rules, 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 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.