



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job and Family Services

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Protective supervision and case plan documents

Rule Number(s): 5101:2-38-03 and 5101:2-38-06

Date of Submission for CSI Review: 3/12/2020

Public Comment Period End Date: 3/19/2020

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☐ No Change/\_\_\_ rules (FYR? \_\_\_)

☒ Amended/\_\_\_2\_\_\_ rules (FYR? yes\_\_\_)

☐ Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- ☐ a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business**
- ☐ b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ☒ c. **Requires specific expenditures or the report of information as a condition of compliance.**
- ☐ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

OAC 5101:2-38-03 entitled Protective supervision by PCPAs sets forth the requirements that apply to the private child placing agency (PCPA) when pursuing legal action for court ordered protective supervision regarding a child. The PCPA requirements outlined in this rule include, development of a case plan to address child and family needs, and review of progress toward achieving case plan goals to assess whether ongoing protective supervision is needed or should be terminated based upon facts of the case. Form numbers and revision dates are being removed to be in sync with changes to the Ohio Administrative Code.

OAC 5101:2-38-06 entitled Required contents of a PCPA case plan document sets forth the content requirements for PCPA case plans, including the participants to be identified in the case plan, the goals of the case plan (maintain the child safely in the home, reunify the child with family a family member, or other permanency planning for the child), the types of services and case management to be provided to the child and family for achieving the goals,

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and anticipated timeframes for completion of case objectives. Minor, grammatical changes were made to the rule.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

5101:2-38-03 – 2151.33, 2151.353, 5103.03, 5153.16

5101:2-38-06 – 2151.412, 5103.03

- 4. 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.*

Yes, agencies providing services to children and families who are at risk of child abuse and/or neglect and under the protective supervision of the court are required to complete case plans and semiannual administrative reviews. The case plans outline the services provided to families to prevent the removal of or further maltreatment of the children. The semiannual administrative reviews evaluate the progress of the families in achieving their case plan goals. These requirements are included in the Child Abuse Prevention Act and the Titles IV-B and IV-E sections of the Social Security Act.

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

The rules do not exceed federal requirements or the requirements of sections 2151.412 and 2151.416 of the Ohio Revised Code.

- 6. 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)?**

5101:2-38-03 – The purpose for this regulation is to provide the requirements that apply to the PCPA protective supervision cases to ensure reasonable efforts are made to provide support and services to children and families in their own homes to prevent removal. There are no new requirements being added to this rule.

5101:2-38-06 - The purpose for this regulation is to provide the requirements for PCPA case plans and assist the family to provide a safe home for children. Requirements outline for the PCPA to document goals, outcomes, progress and assessments. There are no new requirements being added to this rule.

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

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The Office of Families and Children Bureau of Foster Care Licensing monitors and enforces compliance with Ohio Administrative Code rules that govern PCPAs. Success of this regulation will be measured by the extent to which PCPAs appropriately implement protective supervision for children in their care as well as creating and maintaining appropriate case plan documents.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

Not applicable.

### **Development of the Regulation**

- 9. 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.*

As a result of the implementation of the Partners for Ohio's Families, the Ohio's Families and Children Rule Review website was created for public and stakeholder feedback. The rule review website allows child professionals whose daily tasks are guided by the rules, someone who has had experience with some aspect of Ohio's child welfare system, or simply an individual who cares about how Ohio's programs for families and children are administered, to offer comment or feedback on the rule. This rule was placed on the rule review website for 30 days in addition to the general public clearance process. No comment was obtained on either rule through the rule review website or the clearance process.

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

No comment or feedback was provided on either rule through the rule review website or the clearance process.

- 11. 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.

- 12. 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?**

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The existing regulations support case plan practices to meet the statutory case plan requirements set forth by section 2151.412 of the Revised Code for development, implementation and evaluation of case plans for PCPAs providing services for a family. As such, this five year review of these rules did not result in changes to the practice, and do not require any new or modification of current private agency processes and procedures. The revisions do not extend beyond the federal or state statute outlining the case planning or semiannual administrative review processes for families under an order of protective supervision of the court and receiving services from a private child placing agency.

**13. 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 ODJFS set standards to ensure the well-being of every child in temporary custody.

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

ODJFS legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

**15. 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.**

ODJFS licensing/certification specialists review the agencies to ensure the regulations are applied consistently and the specialists offer technical assistance in areas of possible inconsistency.

**Adverse Impact to Business**

**16. 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; and**

PCPAs must be certified by ODJFS. Twenty-five PCPAs are certified by ODJFS.

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

Failure to comply with rule may result in denial or revocation of certification. The adverse impact involves the time and cost of preparing and maintaining a case plan; providing supporting services; filing court requests; amending case plans, providing copies of the Semi-Annual Review (SAR) summary; developing a visitation plan;

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providing written notice of any case plan changes; completing face-to-face contacts, and conducting semiannual administrative reviews.

**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 is regulated by the time spent to adhere to rule regulations and reporting the information necessary for rule compliance. In order to achieve the desired outcomes of child protective services (i.e., child safety, child permanency, child and family well-being), interventions must be well planned and purposeful. These outcomes are achieved through a case plan, which follows an assessment of the family’s needs and sets forth goals and outcomes and describes how the family will work toward these outcomes.

It is the role of the worker/employee of the PCPA to arrange, provide, and coordinate the delivery of services to children and families. Services are selected to help families achieve goals and outcomes and should be based on an appropriate match to the family’s goals and should use best practice principles. When needed services are not readily available or accessible, an interim or alternative plan must be made with families.

The case plan may take thirty minutes or more to complete. The plan identifies risks and problematic behaviors, as well as the strategies and interventions to facilitate the changes needed, by identifying activities, goals, and outcomes. The worker identifies strategies with the family, which addresses the effects of maltreatment and changes of behaviors or conditions contributing to risk. The case plan provides a clear and specific guide for the family to work towards changing the behaviors and conditions that influence risk. The family is engaged in the decisions regarding outcomes, goals, and tasks along with collaboration between the caseworker, family network, and other providers. A case amendment may take thirty minutes or more to complete. Case reviews are required every 3 months and may take thirty minutes or more to complete. The semiannual administrative reviews are required every six months and may take thirty minutes or more to complete, based upon variation in the number of issues and services identified in the case plan to be reviewed.

With all that said there is not a dollar amount that can be placed on the workers time to engage a family or the length of time the family may require services from a PCPA, and the cost would vary based upon the salary or hourly rate of pay provided to the employee on the PCPA. In addition, the development and ongoing review of a case plan is incorporated into most aspects of the work conducted by a caseworker, and essential to assessing needs and providing services to families. As such, there would not be a single, separate act that can be quantified with an amount of time for assessment of family needs.

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Identification of case plan services and ongoing assessment review of case plan progress. However, the following provides a list of some factors which affect the workers' time in developing a case plan.

- Worker's skill and experience to assess and develop a case plan
- Workload at the agency
- Family's engagement and number of members involved
- Level of safety and family behaviors
- Ability of the family to understand, to participate, and to articulate their needs
- Services available to assist the family and the family's willingness to accept them
- Obtaining agreement and participation of tasks
- Difficulty gathering family members together
- Allowing the family to discuss their issues and problems

The following is not all-inclusive but are some hard costs that vary.

- Transportation cost of vehicles and fuel
- Distance to travel and number of times the worker must travel
- Salaries of individual workers
- Agencies that are metro vs. rural have many different costs
- Costs if service is not available local and services are provided out of county
- Electronic tablets to take in the field vs. completing forms at the office
- Completing the forms in writing in the family's home
- Completing the forms and SACWIS in the office
- Consultation and arrangement with service providers

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

The adverse impact of these rules is necessary to ensure Ohio's federal compliance with providing services to children and their families who are at risk of child abuse or neglect. PCPAs determine their own interest in providing such services based on the federal requirements. This rule does not increase or add new requirements to PCPAs.

**Regulatory Flexibility**

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

There is no alternative means of compliance. The requirements of these rules align with the statutory requirements set forth in section 2151.412 of the Revised Code.

**19. 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?**

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There are no fines or civil penalties for non-compliance. Non-compliance may result in the loss of certification.

**20. What resources are available to assist small businesses with compliance of the regulation?**

ODJFS has bureau and regional licensing specialists and managers whose primary role is to certify, recertify and provide technical assistance to PCPAs. Resources and trainings have been developed and are readily available for PCPAs.



5101:2-38-03

**Protective supervision by PCPAs.**

- (A) If a private child placing agency (PCPA) files a complaint with the court requesting an order of protective supervision, the agency shall also request the court to impose reasonable restrictions on the child and the child's parent, guardian, or custodian, or any other person as needed. Reasonable restrictions may include, but not be limited to:
- (1) Ordering a parent, guardian, or custodian, within forty-eight hours after the issuance of the order, to vacate the child's home indefinitely or for a specified period of time.
  - (2) Ordering a parent, guardian, or custodian, to prevent a particular person from having contact with the child.
  - (3) Restraining or otherwise controlling the conduct of any person if his or her conduct is not in the best interest of the child.
- (B) For each child under an order of protective supervision:
- (1) The PCPA shall prepare and maintain a case plan pursuant to rule 5101:2-38-07 of the Administrative Code.
  - (2) The PCPA shall make available appropriate supportive services to the child, parent, guardian, or custodian, or, if applicable, pre-finalized adoptive parent. The PCPA shall comply with rule 5101:2-40-02 of the Administrative Code if providing supportive services.
  - (3) The PCPA shall review the progress in achieving the case plan objective and services by completing case reviews pursuant to rule 5101:2-38-09 of the Administrative Code. The PCPA shall document the case review on the JFS 01416 "Semiannual Administrative Review for Private Child Placing Agencies" (~~rev. 1/2014~~) in lieu of the ~~JFS 01413~~ "Comprehensive Assessment Planning Model - I.S. Case Review" (~~rev. 8/2010~~).
  - (4) The PCPA shall complete a semiannual administrative review pursuant to rule 5101:2-38-10 of the Administrative Code for any case if there is an order of protective supervision.
- (C) No later than one year after the date the complaint was filed or the child was placed in shelter care, whichever is earlier, the PCPA shall file a written request with the court to either terminate, or extend for six months the order of protective supervision.

If the PCPA requests termination of the order, the agency shall file a written status report setting out the facts supporting termination of the order at the time the request is filed with the court.

- (D) The PCPA shall provide written notice of the proposed extension, or termination, to all parties of the case plan, parent, guardian, custodian, and the child's guardian ad litem no later than the close of business of the day after the day of filing.
- (E) The PCPA has seven days from the date the court sends a notice of its proposed action, to object to and request a hearing on the proposed extension or termination.
- (F) If the court grants an extension of the order for protective supervision, the PCPA may, prior to termination of the extension, file with the court a request for one additional extension of six months or for termination of the order.

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	2151.33, 2151.353, 5103.03, 5153.16
Rule Amplifies:	2151.33, 2151.353, 5103.03, 5153.16
Prior Effective Dates:	01/01/1989, 06/01/1997, 01/01/2002, 04/17/2006, 10/01/2009, 05/30/2014

5101:2-38-06

**Required contents of a PCPA case plan document.**

(A) The private child placing agency (PCPA) shall select one or more of the following case plan goals as applicable:

- (1) Maintain a child safely in the child's own home.
- (2) Reunify a child with the child's parent, guardian, or custodian.
- (3) Place a child in a safe, planned permanent living arrangement excluding adoption.
- (4) Prepare a child for independent living and emancipation.
- (5) Place a child for adoption.

(B) The case plan shall include, but not be limited to, the following elements:

- (1) Parties involved in the case plan and their individual responsibilities.
- (2) Statement of goals and objectives to be achieved and conditions in the home that ~~must~~are to be improved to ensure the child will be safe and will receive proper care.
- (3) Anticipated timeframes for attainment of goals and objectives.
- (4) Identification of services requested by or provided to the child or the child's parent, guardian, or custodian to achieve the goals identified in paragraph (B)(2) of this rule.
- (5) The appropriateness of supportive services offered or provided under the court order for protective supervision to prevent removal of the child from the child's parent, guardian, or custodian.
- (6) Specification of case management, casework services, and/or if appropriate, therapeutic counseling.

(C) For each child placed in a substitute care setting, the case plan shall also include, but not be limited to, the following elements:

- (1) The type of substitute care placement.
- (2) The appropriateness and safety of the placement in accordance with rule 5101:2-42-05 of the Administrative Code.

- (3) The reasonable efforts made or will be made to make it possible for the child to return to the child's home or identify that reasonable efforts are not required pursuant to rule 5101:2-39-01 of the Administrative Code.
  - (4) The steps to be taken to assure services are provided to the child and the child's parent, guardian, or custodian to do one of the following:
    - (a) Facilitate the reunification of the child to the child's parent, guardian, or custodian.
    - (b) Locate a safe, planned permanent living arrangement for the child.
  - (5) The steps to be taken to assure services are provided to the child and substitute caregiver to address the needs of the child while the child is in the substitute care placement.
  - (6) A schedule for regular and frequent visitation, including an explanation of the reason for any restrictions on location of visits or the need for supervision of visits, between the child and the child's parent, guardian, or custodian for children in temporary custody as specified in rule 5101:2-42-92 of the Administrative Code.
  - (7) The reason why parental rights shall not be terminated pursuant to the requirements contained in rule 5101:2-42-95 of the Administrative Code.
  - (8) Programs and services to assist the child to prepare for transition to independent living and emancipation, for a child sixteen years of age or older if appropriate.
- (D) If the case plan goal is adoption or another planned permanent living arrangement, the case plan shall include the steps the PCPA is taking to do one of the following:
- (1) Place the child with an adult relative expressing an interest in adopting the child and meeting all relevant state child protection standards, a guardian, or an adoptive family.
  - (2) Find an adoptive family, through child specific recruitment efforts, for the child.
  - (3) Identify a planned permanent living arrangement for the child.
  - (4) Finalize the adoption or guardianship.
- (E) When a child is placed in substitute care, the case plan shall indicate that the substitute care setting is:

- (1) Safe and consistent with the best interest and special needs of the child.
  - (2) The least-restrictive, most family-like setting available.
  - (3) In close proximity to the home from which the child was removed or the home in which the child will be permanently placed.
  - (4) In close proximity to the school in which the child was enrolled prior to the placement.
  - (5) Designed to enhance reunification, if appropriate, in accordance with rule 5101:2-42-05 of the Administrative Code.
- (F) The PCPA shall document in the case record the reason why certain elements were not contained in the case plan document due to the permanent custody status of a child.

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under:	119.03
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