



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:

Mike Lynch Michael.Lynch@jfs.ohio.gov

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

OCF: FYR Chapter 5101:2-5

Rule Number(s): 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30, 5101:2-5-31

Date of Submission for CSI Review: 9/29/20

Public Comment Period End Date: 10/6/20

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR ___)

X Amended/___ rules (FYR? X)

Rescinded/___ rules (FYR ___)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.

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

CSIPublicComments@governor.ohio.gov

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 rule 5101:2-5-05, entitled "Agency appeal of findings of noncompliance," provides guidance to agencies on the process for appealing a finding for an agency review. Changes were made in paragraph (A) to have the agency submit their appeals to ODJFS through the new Ohio certification and license management system.

OAC rule 5101:2-5-06, entitled "Corrective action plans," provides guidance to agencies on the process of submitting corrective action plans when the agency is found to be out of compliance with rule. Changes were made in paragraph (A) to have the agency submit their corrective action plans to ODJFS through the new Ohio certification and license management system.

OAC rule 5101:2-5-07, entitled "Denial or revocation of an agency's certificate or certification to perform specific functions; temporary certificates," provides guidance on the process of denying or revoking an agency's certificate to operate. Clarifying changes were made in paragraph (A)(3). Additional language was added to paragraph (D) to add Title IV-E courts and others to be informed of an adjudication order. The paragraph was also split and the second half of paragraph (D) becomes a new paragraph (E).

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

CSIPublicComments@governor.ohio.gov

OAC rule 5101:2-5-10, entitled "Child records," provides guidance to agencies on the minimum requirements of what is to be included in a child's record. Punctuation was added to paragraph (A). No substantive changes were made.

OAC rule 5101:2-5-16, entitled "Consideration to be given to child's religion, beliefs and practices," provides guidance to agencies on the minimum requirements regarding allowing a child in care to practice their religious beliefs. A sentence from paragraph (B) was broken out into its own paragraph (C) for clarity. No substantive changes were made.

OAC rule 5101:2-5-22, entitled "Recommendations for initial foster home certification," provides guidance to agencies on how to submit a home for certification as a foster home. Paragraphs (C), (D) and (E) were updated to remove the old manual paper process and use the new SACWIS system as all public and private agencies now are operating in SACWIS.

OAC rule 5101:2-5-25, entitled "Changing the certification of a foster caregiver from one type of foster home to another," provides guidance to agencies on the process to change a foster caregiver type. Paragraphs (E)(6) and (E)(7) were amended to remove the old manual paper process use the new SACWIS system as all public and private agencies now are operating in SACWIS.

OAC rule 5101:2-5-30, entitled "Foster care amendments," provides guidance to agencies on the items that would require an amendment for a foster home. Paragraph (C)(5) was removed because all agencies have access to SACWIS and the old paper process is obsolete. New language in paragraph (D)(2) was added to require a national sex offender search for new adult household members to align with revisions to 5101:2-5-09.1 pursuant to new ORC requirements. New language was added to paragraph (D)(7) to require all new immunization requirements for new household members of a foster home as described for foster caregivers in rule 5101:2-7-02, in alignment with the federal model standards.

OAC rule 5101:2-5-31, entitled "Sharing or transferring a foster home," provides guidance to agencies the process of sharing and transferring a foster home. Paragraph (F)(3) was updated to allow a foster home record to be scanned for the transfer process. Paragraphs (H)(1)(g) and (H)(3) were amended to remove form dates. No substantive changes were made.

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

| Rule Number | Statutory Authority |
|------------------|----------------------|
| Rule 5101:2-5-05 | ORC 5103.03 |
| Rule 5101:2-5-06 | ORC 5103.02, 5103.03 |
| Rule 5101:2-5-07 | ORC 5103.03 |
| Rule 5101:2-5-10 | ORC 5103.03 |

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

CSIPublicComments@governor.ohio.gov

Rule 5101:2-5-16 ORC 5103.03
Rule 5101:2-5-22 ORC 5103.02, 5103.03, 5103.0324
Rule 5101:2-5-25 ORC 5103.03, 5103.0316
Rule 5101:2-5-30 ORC 3107.033, 5103.03
Rule 5101:2-5-31 ORC 3107.033, 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***

Rules 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30 and 5101:2-5-31 do not implement a federal requirement.

5. 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 any Federal requirements.

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)?

All of the rules are a result of the general rule writing authority regarding the safety of children in care as directed in section 5103.03 paragraph (A) of the Revised Code.

For rule 5101:2-5-05, the purpose of the regulation is to provide guidance regarding the process for filing an appeal for agency non-compliance.

For rule 5101:2-5-06, the purpose of the regulation is to provide guidance to agencies on the minimum requirements for a corrective action plan related to a finding of non-compliance.

For rule 5101:2-5-07, the purpose of the regulation is to provide guidance regarding the revocation or denial of an agency's certification.

For rule 5101:2-5-10, the purpose of the regulation is to provide guidance on the information required to be kept in a child's record.

For rule 5101:2-5-16, the purpose of the regulation is to provide guidance for the consideration to be given to child's religion, beliefs and practices by the agency.

For rule 5101:2-5-22, the purpose of the regulation is to provide guidance on how to submit a home for certification as a foster home.

For rule 5101:2-5-25, the purpose of the regulation is to provide guidance on the process to change a foster caregiver type.

For rule 5101:2-5-30, the purpose of the regulation is to provide guidance on completing foster care amendments to the homestudy.

For rule 5101:2-5-31, the purpose of the regulation is to provide guidance on the process of

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

CSIPublicComments@governor.ohio.gov

sharing or transferring a foster home.

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

Rules 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30 and 5101:2-5-31 will be measured against the criteria specific to the rule content. Licensing specialists will monitor compliance ensuring the health and safety of children in care and preventing those who are ineligible/prohibited to provide care.

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?

No.

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.

ODJFS has met with Ohio Children's Alliance (OCA), the Public Children Services Association of Ohio (PCSAO), and other representatives from county and private agencies through regional meetings and on several other occasions during the past few months to discuss the draft rules. Discussions were held by video-conference, phone, and through email communication. The groups discussed potential changes, provided feedback and came to conclusions on each rule.

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

The rules went through the clearance process from July 27, 2020 through August 10, 2020. There were no comments provided.

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.

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

CSIPublicComments@governor.ohio.gov

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?

There were no other alternatives considered for rules 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30 and 5101:2-5-31 as all parties involved were satisfied with the rules and because the rules are driven by statute.

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.*

For rules 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30 and 5101:2-5-31, 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. Performance-based regulations were not considered in the context of safety standards for children in custody, which are largely driven by state and federal statute.

14. 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.

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.

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

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;**

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

CSIPublicComments@governor.ohio.gov

- 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 included in this BIA contain requirements for foster care agencies that include eighty-eight public and over one hundred private agencies. Requirements must be met in order to obtain and/or maintain certification.

The adverse impact for each of the requirements would vary based upon the size and staffing of each agency and would include the actual cost of completing each requirement, in addition to the time needed for staff to complete the requirement and report or enter the needed information for rule compliance in meeting the requirement. More specifically, the adverse impact includes:

5101:2-5-05 - Agencies may submit an appeal of agency non-compliance. If the agency chooses to not file an appeal, there would be no cost involved. If the agency does submit an appeal the cost involved would be the time spent to complete and submit the appeal. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker could take from 1-2 hours to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$22 to \$44, depending on administrative and staffing variables. There is no additional cost as a result of the rule amendment.

5101:2-5-06 - When an agency is found out of compliance, they must file a corrective action plan. The cost involved would be the time spent completing the plan and anything related to the non-compliance that may need to be remedied to bring them into compliance. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker could take from 2-3 hours to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$44 to \$66, depending on administrative and staffing variables. There is no additional cost as a result of the rule amendment.

5101:2-5-07 - If ODJFS files to deny or revoke an agency’s certificate of operation, the agency may incur a cost for follow up and representation through the adjudication process. This cost may be time spent in preparation or may be related to legal costs for representation. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker and usually takes from 1-2 hours to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$22 to \$44, depending on administrative and

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

CSIPublicComments@governor.ohio.gov

staffing variables. Legal costs can vary depending on the charge from Legal Counsel. The average Legal Counsel cost in Ohio would be approximately \$210 per hour according to Lawyers.com. If the agency chooses Legal representation, it could cost them 2 hours, or \$420. There is no additional cost as a result of the rule amendment.

5101:2-5-10 – The cost of maintaining a child’s record and includes the time spent collecting, retaining, and compiling the required information. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker and usually takes approximately 30 minutes to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$11, depending on administrative and staffing variables. There is no additional cost as a result of the rule amendment.

5101:2-5-16 - Costs for allowing a child to continue their religious beliefs and practices can vary based on the request. A few examples would be transportation and specific diet restrictions. Those may be absorbed by the foster caregiver rather than the agency, however. Documentation organization, review, and recording the information is typically completed by a caseworker/social worker and usually takes from 15-30 minutes to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$5.50 to \$11, depending on administrative and staffing variables. There is no additional cost as a result of the rule amendment.

5101:2-5-22 - The cost involved in recommending an applicant for certification as a foster caregiver is time spent organizing and submitting the required documentation to ODJFS. Documentation organization, review, and submission of certification to ODJFS is typically completed by a caseworker/social worker and usually takes from approximately 30-60 minutes to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$11 to \$22, depending on administrative and staffing variables. There is no additional cost as a result of the rule amendment.

5101:2-5-25 - The cost surrounding the changing of one foster care type to another is regulated to the review and documentation of the proper requirements and time spent organizing and submitting the required documentation to ODJFS. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker and usually takes from 15-30 minutes to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$5.50 to \$11, depending on administrative and staffing variables.

5101:2-5-30 - Immunization requirements will add a minimal cost to agencies only in the amount of time it requires to add the documentation of compliance to the foster parent file. Now that all

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

CSIPublicComments@governor.ohio.gov

agencies are online with the statewide automated child welfare information system (SACWIS), other changes may actually save agencies money in time and postage, as they now will require electronic submission of documents. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker and usually takes from 15-30 minutes to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$5.50 to \$11, depending on administrative and staffing variables. Because of the minimal time required to document the immunization requirement and the potential cost savings, there is no additional cost as a result of the rule amendment.

5101:2-5-31 – Agencies must adhere to the requirements regarding the transfer or sharing of a foster home. The cost to the agency would be time spent organizing and submitting the required transfer documentation to the other agency. Agencies may recoup some cost as the rule allows for a reasonable fee to be collected for copying or scanning information to be transferred. Documentation organization, review, and submission to ODJFS is typically completed by a caseworker/social worker and usually takes from 30-60 minutes to complete. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$11 to \$22, depending on administrative and staffing variables. There is no additional cost as a result of the rule amendment.

17. 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

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

For rules 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30 and 5101:2-5-31, there are no apparent alternative means of compliance or possible exemptions given the nature of the rules.

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?

For rules 5101:2-5-05, 5101:2-5-06, 5101:2-5-07, 5101:2-5-10, 5101:2-5-16, 5101:2-5-22, 5101:2-5-25, 5101:2-5-30 and 5101:2-5-31, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

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

CSIPublicComments@governor.ohio.gov

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

ODJFS has regional office with licensing specialists assigned to each agency to assist in the obtaining and maintaining compliance. Specialists are available to provide technical assistance to meet the requirements of all regulations.