



Common Sense Initiative

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Business Impact Analysis

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

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

Emergency removal from substitute care (ERF 188339)

Rule Number(s): 5101:2-39-03

Date of Submission for CSI Review: 09/14/2020

Public Comment Period End Date: 09/21/2020

Rule Type/Number of Rules:

New/___ rules

Amended/___ rules (FYR? ___)

No Change/_X_ rule (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Rescinded/___ rules (FYR?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.

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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.

5101:2-39-03 - **Emergency removal of a child from substitute care placement** sets forth the public children services agency (PCSA) and private child placing agency (PCPA) requirements for removing a child from a substitute care setting when the child is determined to be in immediate danger of serious harm and in need of protection from child abuse or neglect or the presence of the child in the substitute care setting places another child in the setting in immediate danger of serious harm. This rule is under five-year review and no changes were recommended.

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.**

Statutory Authority: ORC 2151.412, 2151.421, 5101.02, 5101.03, 5153.16

Amplified by: ORC 2151.412, 2151.421, 5101.02, 5101.03, 5153.16

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- 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.

No. This rule does not implement a federal regulation and is 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.

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

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

Rule 5101:2-39-03, provides guidance to PCSAs for the emergency removal of a child from a substitute care setting. Rule requires the PCSA or PCPA who holds custody of the child to amend the child's case plan to reflect the current placement changes of the child.

- 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)?**

The purpose of this regulation is to provide the requirements that apply to the PCPAs for removing a child from substitute care placement and ensure the child is provided safe out-of-home care. Requirements outline for the PCPA when it is necessary to remove a child from a placement setting.

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

Rule 5101:2-39-03 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.

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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.

During the current five-year review period ODJFS sought input from internal and external stakeholders from ODJFS and Public Children Services Association of Ohio. The rule package was sent through the Family and Youth Law Center for preliminary public comment. The rule was submitted through the ODJFS internal and external clearance process.

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

5101:2-39-03 rule went through the preclearance process through the Family and Youth Law Center from May 18-June 2, 2020 and were available for public comment for a period of fourteen days. Two comments were received but raised issues not relevant to this rule. The comments were forwarded to the appropriate policy area for consideration. This rule was available for internal clearance comment within ODJFS, Office of Family and Children from May 18-June 2, 2020 and no comments were received. This rule was made available for external clearance comments from July 23-August 6, 2020 and no comments were received.

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?

There were no alternatives considered for 5101:2-39-03 because during the vetting process 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 5101:2-39-03, 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

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children in private homes is effectively and appropriately administering proper standards for safety. ODJFS, according to statute, must be satisfied that the care given such children, the requirements of the statutes and rules covering the management of such institutions, and associations are being followed. Performance-based regulations were not considered in the context of safety standards for children in custody, because they 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?

ODJFS legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation. Rules regulating the emergency removal of children exist exclusively in 5101:2 of the Administrative Code and no known duplication exists.

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 any measures 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; and**
- b. Identify the nature of all adverse impact (e.g., 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.

- a. PCPA's must be certified by ODJFS. Twenty-eight PCPA's are certified by ODJFS;

- b. Failure to comply with rule may result in denial or revocation of certification which could lead to an agency being unable to open for business; a temporary or permanent closure of the business.
- c. The nature of the adverse impact involves the time and cost of preparing and maintaining a case plan; providing supportive services; recording information in the Statewide Automated Child Welfare Information System (SACWIS); preparing and filing court requests; updating case plans; completing the Semi-Annual Review and related activities; developing visitation plans; and completing face to face contacts with the family. These federal requirements are not new for the PCPA.

Case plans are updated as a result of changes in the goals for the child and/or family members need to address or alleviate concerns; changes in the conditions of this child and his or her parent, guardian, or custodian which effect the provision of supportive services; a placement change; the child attaining age 14 and independent living and life skill services will be offered; a change in the visitation plan; relevant changes within the parent, guardian, custodial, or pre-finalized adoptive home environment are identified by the PCSA/PCPA; and a party needs to be added or removed from the case plan.

Case plan progress is measured through a case review. The “Comprehensive Assessment Planning Model – I.S., Case Review” occurs every ninety days (3 months) and is a tool completed in SACWIS. The tool or sections of it may be reviewed in a meeting with the family. The impact of services and activities designed to address the causal and/or contributing factors identified in the Family Assessment, and agreed upon by the caseworker and family are reviewed to determine if services are having the anticipated impact on the identified concerns. The case review is a re-examination of safety, strengths, needs, risk, and a discussion of the impact of the service provision on the family system.

Each case of abuse or neglect in child welfare is unique. Cases vary in complexity and length of time needed to adequately serve a family making it difficult to estimate the adverse impact of this regulation on a PCPA. Most ongoing cases with a case plan range from six months to two years. The amount of salary, time, travel, education, and experience of a worker are all factors in the potential cost to an agency which are difficult to quantify.

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 and to comply with provisions of the Ohio Revised Code, 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 rule 5101:2-39-03 there are no alternative means of compliance.

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?

Failure to comply with 5101:2-39-03, results in the forfeiture of certification through denial or revocation and Ohio Revised Code section 119.14 does not apply.

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

ODJFS has a regional licensing specialist assigned to provide technical assistance. Electronic manuals are available for viewing on the internet. Ohio has multi-disciplinary teams to provide direct assistance or training when needed.