Ohio | Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:
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Regulation/Package Title (a general description of the rules' substantive content):

OAC FYRR – Chapter 9

Rule Number(s): 5101:2-9-02, 5101:2-9-03, 5101:2-9-06, 5101:2-9-37 and 5101:2-9-38

Date of Submission for CSI Review: 10/20/2020

Public Comment Period End Date: 10/27/2020

Rule Type/Number of Rules:

- ☐ New/___ rules
- X Amended/_5_ rules (FYR? Y)
- ☐ No Change/____ rules (FYR? ___)
- ☐ Rescinded/____ rules (FYR?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.

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):

___X_ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.

___X_ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.

___X_ c. Requires specific expenditures or the report of information as a condition of compliance.

___X _ 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.

   The amended rule OAC 5101:2-9-02 addresses staffing requirements in residential facilities and residential parenting facilities. This rule is being changed to remove guidance pertaining to criminal record checks.

   The amended rule OAC 5101:2-9-03 addresses staff development and staff evaluation and the guidance on when an employee in a residential facility is to complete required trainings. The amendment to the rule is including training to be a qualified residential treatment program with staff trained in trauma-informed care. This rule is being changed to reference and align with a new rule OAC 5101:2-9-42, addressing qualified residential treatment programs.

   The amended rule OAC 5101:2-9-06 addresses general safety in a residential facility, the amendment to the rule is including guidance on paint and lead hazard in a facility.

The amended rule OAC 5101:2-9-37 addresses the information a residential facility is to provide to the local county, law enforcement, emergency management and fire departments. This rule is being changed to strike guidance to sharing information by a residential facility within a required timeframe as this information no longer applies.

The amended rule OAC 5101:2-9-38 addresses the community engagement plan for residential facilities. Previous guidance no longer necessary is being removed from 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.**

OAC 5101:2-9-02	Statutory Authority	5103.03
	Rule Amplification	5103.02, 5103.03
OAC 5101:2-9-03	Statutory Authority	5103.03, 5153.16, 5101.141
	Rule Amplification	5103.03, 5153.16, 5101.141
OAC 5101:2-9-06	Statutory Authority	5103.03
	Rule Amplification	5103.02, 5103.03
OAC 5101:2-9-37	Statutory Authority	5103.02, 5103.03, 5103.05, 5103.051
	Rule Amplification	5103.02, 5103.03, 5103.05, 5103.051
OAC 5101:2-9-38	Statutory Authority	5103.02, 5103.03, 5103.05, 5103.051
	Rule Amplification	5103.02, 5103.03, 5103.05, 5103.051

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, P.L. 115-123 Family First Prevention Services Act. This act reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The aim is to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment and in-home parenting skill training to families and children. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce placement of children in group care.

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

No provisions were included that exceed the 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)?** The rules in this packet address the safety inside and outside of a residential facility, the hiring and training of residential staff, and how a residential facility will work with the local medical, fire and law departments

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** OAC 5101:2-9-02, 5101:2-9-03, 5101:2-9-06, 5101:2-9-37 and 5101:2-9-38 are all monitored by the certification process and foster care licensing staff.

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.
   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.

   The draft rules were shared with representatives from all county agency's, court and private service providers and sent out for public comment. The department includes a process of internal and external clearance comment process and this was opened from September 24, 2020 – October 8, 2020. No external comments were received within this timeframe.

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 September 24th to October 8th. No comments were received during the comment period.

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?** Scientific data was not used and measurable outcomes are 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 other alternatives considered for the rules, as the rules are driven by statute and federal guidelines.

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 the department set standards to ensure the well-being of every child placed within a residential placement.

14. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?** JFS 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.**
    Once the rule is final filed, a transmittal letter will be generated explaining the new rule and the rationale for the addition of this rule. 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

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**
    All Ohio certified agencies will be impacted by the requirements of these rules. The agency number may vary slightly due to monthly openings or closings of facilities. This number includes both public and 230 private agencies.
    b. **Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**
    Loss of certification if the agency does not adhere to the statutory requirements of the rules. Adverse impact would entail administrative time spent completing the certification process, reviews, appeals, governance, policies and staffing requirements necessary for statutory and rule compliance. Residential staff is to receive twenty hours of initial orientation training and twenty-four hours of annual training. This is an existing cost and can vary depending on the rate of pay and other factors contributing to the time involved in the process.
    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.

An agency paying an employee $10 per hour would be spending $200 for each employee to attend orientation training. The cost of a trainer would be similar but allowing for an additional 20 hours of preparation time; the trainer's cost could range from $400-$500 for an entire orientation session. This cost can be repeated allowing for 24 hours of annual training. Time involved capturing the information for prospective employees could be a potential adverse impact due to the cost involved to request, obtain, review and assess the information. BCII checks would cost the agency $50 per employee. A clerical employee earning $8 and spending 10-12 hours reviewing and requesting information for each applicant would cost the agency $80-$100 per applicant to process.

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

The Agency is carrying out the directives of sections 2151.86, 5103.035, and 5103.038 – 5103.0311 of the Revised Code.

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.

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?

There are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

20. 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 process including assistance with the proper information required by these rules.