



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):

Assessment to Determine a Child's Placement into a Qualified Residential Treatment Program

Rule Number(s): 5101:2-42-12

Date of Submission for CSI Review: 6/24/21

Public Comment Period End Date: 7/1/21

Rule Type/Number of Rules:

☒ New/_1_ rules

☐ Amended/_ rules (FYR? __)

☐ 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☐ Rescinded/_ rules (FYR?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.

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 5101:2-42-12, entitled "Assessment to determine child's placement into a qualified residential treatment program" is a new rule created to comply with provisions of the Family First Prevention Services Act. The rule outlines requirements for the assessment that is to be completed for a child being placed in a qualified residential treatment program and the requirements for a qualified individual to complete such assessments.

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.

Rule Number	Statutory Authority
-------------	---------------------

5101:2-42-12	ORC 5153.166, 5103.03, 2151.412
--------------	---------------------------------

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

CSIPublicComments@governor.ohio.gov

- 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 congregate care.

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

The rule does 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)?**

The rule establishes regulations for the minimum standards to ensure the safety and well-being of children being placed in substitute care.

For rule 5101:2-42-12, the purpose of the regulation is to ensure an individual assessment is completed for each child being placed into a Qualified Residential Treatment Program. The assessment is to determine if the child's needs can be met in a more family-like setting rather than in congregate care.

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

Agencies undergo compliance reviews once every two years as part of the recertification process which includes compliance with the requirements of this rule. Agencies also receive compliance reviews at approximately the one year mark of the two-year certification period.

- 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.

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

CSIPublicComments@governor.ohio.gov

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 solicited feedback on the rule prior to and during the preclearance process. ODJFS led a workgroup comprised of representatives from public and private child welfare agencies, the Ohio Department of Mental Health and Addiction Services, the Ohio Department of Medicaid, the Ohio Children's Alliance, the Public Children Services Association, and individual foster parents to draft the rule. The rule was also presented to stakeholders during the Family First Prevention Services Act Leadership Advisory Committee and the Public Children Services Association Rule Review Committee. The rule was placed on the preclearance website prior to the 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?

The feedback and suggestions received from stakeholder engagement prior to clearance were included in the rule. Examples include, clarifying the requirements for the qualified individual and removing language not specifically included in the Family First Prevention Services Act. The rules went through the clearance process from May 21, 2021 to June 4, 2021. The comments received were reviewed and incorporated in the rule as appropriate.

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 other alternatives considered for rule 5101:2-42-12 as all parties involved were satisfied with the rule and because the rule is driven by P.L. 115-123 Family First Prevention Services Act.

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.*

Rule 5101:2-42-12 does contain specific requirements for a qualified individual to complete an assessment with the child. The information from the assessment is provided to the juvenile

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

CSIPublicComments@governor.ohio.gov

court by the custodial agency. In order to ensure the safety and well-being of children and families, a performance-based regulation was not considered.

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

Rule 5101:2-42-12 is the only rule outlining the assessment to be completed for any child placed in a Qualified Residential Treatment Program. Therefore, there is no duplication of any other 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.

When the rule is final filed, a transmittal letter will be generated explaining the rule. ODJFS licensing specialists and technical assistance specialists review 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

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. There are currently 23 certified private child placing agencies in Ohio.

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

The adverse impact includes specific expenditures and the report of information. The requirements of the rule in this BIA must be met, non-compliance may result in revocation or loss of certification.

The adverse impact of the requirements set forth in rule 5101:2-42-12 include the time required to document and share information as well as time spent completing forms and completing the Child and Adolescent Needs and Strengths (CANS) assessment. While becoming a certified CANS assessor is not required of the employees of every PCSA or PCPA, it is an option, and the training is generally completed in one day.

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

CSIPublicComments@governor.ohio.gov

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 expected adverse impact for rule 5101:2-42-12 includes, obtaining the information, organizing the documents, and completion of the forms required of this rule which would typically be completed by a caseworker/social worker. The time spent would vary based on each child and the child’s history. The time spent could range from approximately 30 minutes to several hours. The anticipated cost to comply with this rule would depend on the wage for the specific worker as well as the availability and accessibility of the information for each child. The current average wage for a social worker in the State of Ohio is \$22 per hour, according to Zip Recruiter. Therefore, the anticipated cost of compliance for an impacted agency to comply with this rule would range from \$11-\$110, depending on administrative and staffing variables. The cost to become certified to use the CANS assessment is approximately \$10 per individual per year.

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

The adverse impact of the rule is necessary to ensure the safety of children in substitute care.

Regulatory Flexibility

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

There are no exemptions and no alternative means of compliance for rule 5101:2-42-12.

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 with rule 5101:2-42-12 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 publishes all rules online as an e-manual. All public and private agencies have access to this publication, which is located at <http://emanuals.jfs.ohio.gov/>.

ODJFS has regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of rule 5101:2-42-12.