



## Common Sense Initiative

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

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### 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):

Chapter 5101:2-5 – Budget Changes

Rule Number(s): 5101:2-5-09, 5101:2-5-15 and 5101:2-5-35

Date of Submission for CSI Review: 7/23/21

Public Comment Period End Date: 7/30/21

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR )

X Amended/ 2 rules (FYR? )

Rescinded/ 1 rules (FYR )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 5101:2-5-09 entitled Personnel and prohibited convictions for employment provides guidance to agencies on the background check requirements for personnel at an agency. Paragraph (P) was amended to include subcontractors, interns and volunteers in the alleged perpetrator search requirements. Paragraph (Q) was amended to add subcontractors, interns and volunteers to the sex offender registry search requirements. A new paragraph (R) was added to ensure agencies complete a search for all employees, subcontractors, interns and volunteers who have never had an alleged perpetrator search or a sex offender search.

OAC 5101:2-5-15 entitled Volunteers and college interns provides guidance to agencies on what requirements are needed for volunteers and interns. The title of the rule has been changed to Volunteers, interns and subcontractors. Paragraph (A) was amended to include a requirement for subcontractors to be trained. A new paragraph (B) was added to ensure a volunteer, intern or subcontractor complies with the background check requirements of rule 5101:2-5-09 of the Administrative Code. Paragraphs (C), (D) and (E) were amended to add subcontractors.

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OAC 5101:2-5-35 entitled Children's rights provides guidance to agencies on the rights of children placed in their care. The title of the rule has changed to Foster youth bill of rights. The entire rule has been re-written in a format more easily readable with new and improved rights and processes.

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

Rule Number	Statutory Authority
Rule 5101:2-5-02	ORC 2151.86, 5103.03, 5103.0310, 5103.037
Rule 5101:2-5-15	ORC 5103.02, 5103.03
Rule 5101:2-5-35	ORC 2151.316, 5103.02, 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 5101:2-5-09 and 5101:2-5-15 implement Federal requirements as a result of the Family First Prevention Services Act (FFPSA) in SEC. 471. [42 U.S.C. 671] (20)(a)(D). Rule 5101:2-5-35 does 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. Also, new legislation in HB 110 of the 134<sup>th</sup> General Assembly added new background requirements for interns, subcontractors and volunteers employed at a foster care agency and a directive to write a rule surrounding a foster youth's bill of rights.

For rule 5101:2-5-09, the purpose of the regulation is to provide guidance regarding background check requirements for personnel at an agency to help ensure the safety of children in substitute care.

For rule 5101:2-5-15, the purpose of the regulation is to provide guidance to agencies on what

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requirements are needed for subcontractors, volunteers and interns to help ensure the safety of children in substitute care.

For rule 5101:2-5-35, the purpose of the regulation is to provide guidance to agencies on the rights of children placed in their care.

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

Rules 5101:2-5-09, 5101:2-5-15 and 5101:2-5-35 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 for children in the care of the agency.

**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 and provided feedback.

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

The rules were in clearance from July 7, 2021 through July 15, 2021. No comments were received. Prior to clearance the rules were shared with multiple groups including PCSAO, OCA as well as former foster youth. Each group provided input for the rules, especially rule 5101:2-5-35 surrounding the foster youth bill of rights.

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**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 rules 5101:2-5-09, 5101:2-5-15 and 5101:2-5-35 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.***

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.**

ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and they offer technical assistance to providers.

**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;
- 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*

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***“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:

5101:2-5-09

- a. Agencies must complete background checks for all employees, subcontractors, interns and volunteers. The cost of completing these checks as required by this rule can involve time spent completing the required documentation.
- b. A social worker, administrators or a team of workers would be implementing the requirements of this rule. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. The anticipated time involved could be between 30 minutes to one hour per person.
- c. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$11 to \$22 per person, depending on administrative and staffing variables.

5101:2-5-15

- a. Agencies regulate the duties of subcontractors, interns and volunteers within the framework of the rule.
- b. There is no cost involved with this rule as it is not mandatory for an agency to use subcontractors, interns or volunteers.
- c. There is no additional cost as a result of the rule amendment unless the agency chooses to use subcontractors, interns or volunteers.

5101:2-5-35

- a. Agencies must ensure the rights of children placed in their care are not violated, and if they are, the agency must document why.
- b. A social worker, administrators or a team of workers would be implementing the requirements of this rule. The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. The anticipated time for a social worker to ensure children's right can vary based on the requirement. Some may not take any time, others might take 15 minutes up to an hour.

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- c. Therefore, the anticipated cost of compliance for an impacted entity to comply with the rule is \$0 to \$22 per person, depending on administrative and staffing variables.

**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 5101:2-5-09, 5101:2-5-15 and 5101:2-5-35, 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 5101:2-5-09, 5101:2-5-15 and 5101:2-5-35, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation. Section 119.14 is not applicable in this instance.

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

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