



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Michael Lynch, Ohio Department of Job and Family Services

FROM: Michael Bender, Business Advocate

DATE: September 22, 2022

RE: **CSI Review – Additional requirements for children’s crisis care facilities (OAC 5101:2-5-03, 5101:2-9-36, 5101:2-9-43, and 5101:2-9-44)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office’s comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of two new rules and two amended rules proposed by the Ohio Department of Job and Family Services (ODJFS) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on August 8, 2022, and the public comment period was held open through August 15, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 8, 2022.

Ohio Administrative Code (OAC) 5101:2-5-03 establishes the functions performed by public children services agencies (PCSA’s), private child placing agencies (PCPA’s), and private noncustodial agencies (PNA’s) or local public entities which require certification by ODJFS. The rule is amended to add the operation of residential infant care centers and family preservation centers as functions that require ODJFS certification. OAC 5101:2-9-36 specifies additional requirements and guidance for children’s crisis care facilities. The rule is amended to remove a provision allowing the Director of ODJFS to issue a waiver authorizing certified children’s crisis care facilities to provide residential care to a pre-teen for more than seventy-two consecutive hours, allow a children’s crisis care facility to include administrative staff, interns, volunteers, or contracted transportation providers toward the required staff ratio in case of an emergency, revise the engagement plan

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instructions to incorporate the involvement of the individual or agency placing the child, require a transfer summary be completed if a pre-teen is transferred between facilities of the same certified crisis care agency during their stay, add requirements concerning medical services, add hygiene requirements for children after bathroom usage, outside play, and handling animals, allow video monitoring to observe napping or sleeping children under the age of two, and update language and citations. OAC 5101:2-9-43, a new rule, sets forth requirements and guidance for residential infant care centers that provide residential services to infants affected by substance use and preserve families through infant diversion practices and programs. A newly created appendix, Appendix A: Exceptions for Residential Infant Care Centers, is cited in the rule and provided. OAC 5101:2-9-44, a new rule, contains guidance and requirements for licensed children's crisis care facilities or residential infant care centers that wish to obtain a family preservation center certificate in order to provide family preservation programs.

During early stakeholder outreach, ODJFS consulted with the Public Children Services Association of Ohio (PCSAO), Providence House, Blessing House, and Brigid's Path. The rules also went through public clearance for two weeks in July 2022. The rule amendments and new rules are modeled after language drafted by Providence House, Blessing House, and Brigid's Path. Feedback, which included suggestions for changes and clarity, from both the public clearance and meeting with the agencies was accommodated into the rules. The rules were also reviewed by the PCSAO to determine impacts to PCSA's. No comments were received during the public comment period, although ODJFS did make a typographical correction upon inquiry from the CSI Office.

The business community impacted by the rules includes PCSA's, PCPA's, and PNA's or local public entities. The adverse impacts created by the rules include the time and expenses needed to obtain and maintain certification for a crisis care facility or residential infant care facility, including the hiring of clinical staff, maintaining child-staff ratios, training staff, monitoring children, development of engagement plans, completing transfer summaries, following protocols for health, hygiene, and safety, ensuring that facilities meet appropriate standards and requirements, developing plans of safe care for infants and programs for the parents and caregivers of the infants, encouraging dyad care, obtaining and maintaining proper accreditation, and providing family preservation programs. Actual costs would vary depending on factors such as the provider's business structure and geographical setup. ODJFS states that the adverse impacts are justified to fulfill the regulatory intent of the recently passed House Bill 265 and to provide structure for the provisions of permitted actions when children are in out-of-home placements within a residential facility.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODJFS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.