Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, 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):

OFC: Chapter 5101:2-5 FYR 2023

Rule Number(s): 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34

Date of Submission for CSI Review: 12/9/22

Public Comment Period End Date: 12/16/22

Rule Type/Number of Rules:

New/___ rules

X Amended/_4_ 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Rescinded/____ rules (FYR?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.

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 5101:2-5-04.1 entitled Acceptance of Accreditation in Lieu of Certification Requirements provides guides to agencies on the process for presenting materials to show their accreditation meets specific rule requirements for licensure. The rule was updated for clarity. No substantive changes were made.

OAC 5101:2-5-14 entitled Treatment or Diagnostic Services provides guidance to agencies on additional services used for children in foster care and how to document those services. The rule was updated to add mental health to the list of services in paragraph (A). No other changes were made.

OAC 5101:2-5-15 entitled Volunteers and College Interns provides guidance to agencies on the requirements for the use of interns and volunteers in foster care agencies. The rule was updated for clarity. No substantive changes were made.

OAC 5101:2-5-34 entitled PCPA and PNA Case Plans and Administrative Case Reviews for Direct Placements provides guidance to agencies on the requirements for completion of a case

plan for foster children who were directly placed by their guardian. The rule was updated for clarity in paragraph (A). No substantive changes were made.

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
Rule 5101:2-5-04.1	ORC 5103.03
Rule 5101:2-5-14	ORC 5103.02, 5103.03, 2151.412
Rule 5101:2-5-15	ORC 5103.02, 5103.03
Rule 5101:2-5-34	ORC 5103.03, 2151.412

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 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34 do not implement a federal requirement.

5. **If the regulation implements a federal requirement, but 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.

   For rule 5101:2-5-04.1, the purpose of the regulation is to provide guidance on the process for presenting materials to show their accreditation meets specific rule requirements for licensure.

   For rule 5101:2-5-14, the purpose of the regulation is to provide guidance to agencies on additional services used for children in foster care and how to document those services.

   For rule 5101:2-5-15, the purpose of the regulation is to provide guidance on the requirements for the use of interns and volunteers in foster care agencies.

   For rule 5101:2-5-34, the purpose of the regulation is to provide guidance on the requirements for completion of a case plan for foster children who were directly placed by their guardian.

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

   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?**
   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.

   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 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, provided feedback and came to conclusions on each rule.

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

    There was one comment made regarding the proposed rephrasing of terms in rule 5101:2-5-04.1, asking for the original phrasing to remain in place. ODJFS accepted the comment and revised the rules accordingly.

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?**
    Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

There were no other alternatives considered for rules 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34 as all parties involved were satisfied with the rules and because the rules are driven by statute.

13. 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 to ensure they do not duplicate any existing Ohio regulations.

14. 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 in areas of inconsistency.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).
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 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. The current average wage for use in the examples below for a social worker is $22 per hour, according to Zip Recruiter. More specifically, the adverse impact includes:

5101:2-5-04.1 - Agencies must follow the guidelines and procedure for showing ODJFS it has met an equivalent requirement as a result of licensure with another organization. This is optional path toward engaging in business and serves as an alternative pathway for agencies versus certification. If the agency chooses to use their licensure with another organization to

meet ODJFS requirements, and it takes a worker 10 hours to compare and document compliance, it will cost the agency $220.

5101:2-5-14 - Agencies must follow the procedures for the reporting of non-routine medical, mental health, dental or vison care. If a worker takes 2 hours to record the required information, it will cost the agency $44.

5101:2-5-15 – Agencies must follow the requirements for the use of volunteers and college interns including the required background checks. If a worker takes 4 hours to complete the requirements, it will cost the agency $88.

5101:2-5-34 – Agencies that accept direct placements must create a case plan for the children that are placed. This plan involves in-depth discussion and planning for the child's stay. If it takes an agency worker 12 hours to complete the plan, it will cost the agency $264.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. ***(Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).***

Yes. Rule 5101:2-5-34 was amended to improve readability in paragraph (A) by breaking out the requirements into an easy-to-read list.

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 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34, 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 5101:2-5-04.1, 5101:2-5-14, 5101:2-5-15 and 5101:2-5-34, 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 regional office with licensing specialists assigned to each agency to assist in the obtaining and maintaining compliance. Specialists are available to provide technical assistance to meet the requirements of all regulations.