



## 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:** Michael Lynch

**Regulation/Package Title (a general description of the rules' substantive content):**

Chapter 5101:2-9 Five Year Rule Review

**Rule Number(s):** 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31, 5101:2-9-35

**Date of Submission for CSI Review:** 1/4/2023

**Public Comment Period End Date:** 1/11/2023

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ 8 rules (FYR? Yes)

Rescinded/\_\_\_ rules (FYR?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.

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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 5101:2-9-04 entitled “General Maintenance of a Residential Facility” sets forth guidance on all structures, grounds, furnishings, and equipment used on the grounds of a residential facility be regularly maintained. The amendment within this rule includes the requirement that the facility’s water supply be tested within twelve months prior to initial certification and annually thereafter.

OAC 5101:2-9-07 entitled “Emergency Planning and Preparedness” sets forth guidance for residential facilities to develop and implement written procedures to follow in emergencies and disasters. The amendment within this rule is the removal of the requirement to have an evacuation plan developed in consultation with the fire inspector.

OAC 5101:2-9-09 entitled “Emergency Medical Plan and First Aid Supplies” sets forth guidance that each residential facility will have a written medical emergency plan. The amendment within this rule directs first aid supplies to be in each building used by children and a copy of the emergency medical plan posted in each building used by children.

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OAC 5101:2-9-15 entitled “Residential Facility Handbook for Residents and their Families” sets forth guidance for residential facilities to have a handbook for the children and their families. The amendment to this rule identifies the handbook is to contain rules and expectations for residents and the inclusion of the foster youth bill of rights.

OAC 5101:2-9-18 entitled “Recreation and Leisure Activities and Equipment” sets forth guidance for residential facilities to have a recreational program and provide activities and equipment. The amendment to this rule is providing guidance for swimming activities when youth are monitored by a person who has completed lifesaving or water safety training.

OAC 5101:2-9-26 entitled “Living Rooms, Dining Rooms and Lounges” sets forth guidance for a residential center to have adequate space for eating. The amendment to this rule is reorganizing the structure for clarity and adding group homes are to have a dining area large enough to accommodate all children to eat at the same time.

OAC 5101:2-9-31 entitled “Laundry Facilities” sets forth guidance for residential facilities to have operable laundry facilities. The amendment to this rule is providing guidance on the use of public laundromat as an option if the residential facility laundry is inoperable or as a life skills training for older youth.

OAC 5101:2-9-35 entitled “Additional Programmatic Requirements regarding Behavior Management” sets forth guidance for a residential facility to establish a system to review dangerous behavior and bring to the attention of staff. The amendment to this rule is reorganizing the structure for clarity.

**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 5101:2-9-04 Statutes: 5103.02, 5103.03

OAC 5101:2-9-07 Statutes: 5103.02, 5103.03

OAC 5101:2-9-09 Statutes: 5103.02, 5103.03

OAC 5101:2-9-15 Statutes: 5103.02, 5103.03

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OAC 5101:2-9-18 Statutes: 5103.02, 5103.03

OAC 5101:2-9-26 Statutes: 5103.02, 5103.03

OAC 5101:2-9-31 Statutes: 5103.02, 5103.03

OAC 5101:2-9-35 Statutes: 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.*

No, the rules are not written as a requirement of Federal Law and does not exceed any Federal requirements.

- 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.**

The rules do not exceed 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 set up structure for the provision of permitted actions when children are in out of home placements within a residential facility.

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

The implementation of the rules and subsequent outcomes are monitored through the certification process.

- 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 rules went through the public clearance on October 27, 2022 through November 10, 2022. They were also discussed with the PCSAO Rules Committee on November 3, 2022. They were reviewed with OCA on November 15, 2022.

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

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ODJFS received feedback during the public clearance. A comment was made by Community Teaching Homes regarding limiting prudent parenting decisions by placing a requirement for residential facilities that a certified lifeguard be present during swimming activities and if a lifeguard is a staff member during the duration as a lifeguard the staff member can not be counted in the staff to resident ratio. ODJFS considered the impact and removed the language.

**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?**

No scientific data was used to develop the rules.

**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.*

No alternative regulations were considered for rules 5101:2-9-04, 5101:2-9-07, 5101:2-9-09, 5101:2-9-15, 5101:2-9-18, 5101:2-9-26, 5101:2-9-31 and 5101:2-9-35 as 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 residential facilities and no other rule addresses these specific issues. The rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure it did 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**

The rules of the Administrative Code in Chapter 5101:2-9 contain requirements for foster care agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification. The impacted community consists of 135 JFS agencies and 246 residential facilities.

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- 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 costs associated with the rule would be quantified by varying factors such as the agency employee's time involved in compliance with the day-to-day activities and requirements of operating a foster care residential facility. Estimated time for compliance may be 10 employees would be responsible for approximately 8 hours per month at a rate of \$23.13 per hour, costing the residential facility \$22, 204.00 annually.

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*).

The proposed changes to rule 5101:2-9-04 simplifies guidance.

The proposed changes to rule 5101:2-9-07 eliminates a requirement.

The proposed changes to rule 5101:2-9-09 simplifies the rule to improve readability.

The proposed changes to rule 5101:2-9-18 simplifies the rule to improve readability.

The proposed changes to rule 5101:2-9-26 simplifies the rule to improve readability.

The proposed changes to rule 5101:2-9-35 simplifies the rule to improve readability.

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 the rules is necessary.

### **Regulatory Flexibility**

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

There are 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?

Not applicable.

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

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ODJFS has a regional office with a licensing specialist that will be assigned to assist the agency in the entire application process including assistance with the proper information required by this rule if the agency chooses to use a certification to meet Ohio requirements.

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