



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job and Family Services

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

Rule Number(s): 5101:2-42-88

Date of Submission for CSI Review: 5/5/23

Public Comment Period End Date: 5/12/23

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? Y)

Rescinded/___ rules (FYR?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 5101:2-42-88 entitled “Requirements when a child in substitute care disrupts from a placement or is absent without leave (AWOL)” sets forth guidance when there is a disruption in the child’s substitute care placement, or when the child is absent without leave (AWOL). The amendment within the rule includes the requirement of a report which is to be sent to law enforcement and NCMEC. The information shared is to be descriptive of the child with submission of a photo and the IV-E agency is to have regular communication with both law enforcement and NCMEC.

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 5101:2-42-88 Statutes: 5103.03, 5153.166

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.

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Yes, P.L. 117-348 Trafficking Victims Prevention and Protection Reauthorization Act of 2022. The law reauthorizes and amends the Trafficking Victims Protection Act (TVPA), and amends title IV-E plan 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 rule does 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 rule sets up the guidance for an agency to follow when a child in substitute care placement disrupts from placement or is absent without leave (AWOL). The required information for reporting identifying information about the child, who the report is submitted to, and the timeframe for reporting are contained within the rule.

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

The implementation of the rule 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 rule is being submitted for review to the Public Children Services Association of Ohio (PCSAO) Rule Committee on May 4, 2023, and the Ohio's Children Alliance (OCA) on May 16, 2023.

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

The clearance period for this rule began on May 3, 2023 and remained open for seven days. This was an expedited process to meet Federal mandate of having rule effective within ninety days after it was signed by the President of the United States.

- 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 rule.

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- 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 rule 5101:2-42-88, as the rule is 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 rule is specific to children in substitute care settings and no other rule addresses these specific issues. The rule has been 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.**

Once the rule is final filed, a transmittal letter will be generated explaining the changes to the rule and the rationale for the changes. The transmittal letters can be viewed at <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>. 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 impacted business community is reflected by 88 public children service agencies and private child placing agencies.

- 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.

There may be additional time for agency staff to communicate with law enforcement and NCMEC as needed. The variable nature of these cases is undeterminable due to the number of children missing at any period of time. The child(ren) could be missing a day, multiple days, weeks or longer and therefore, cannot be quantified from the onset of the amendment of this rule.

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- 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*).**

No. The proposed changes to the rule are not streamlining reporting processes, but are established as an action of prevention of Human Trafficking and locating missing children.

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

To assure the safety of children in substitute care, the adverse impact of the rule is necessary.

Regulatory Flexibility

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

For rule 5101:2-42-88, there is 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?**

ODJFS has licensing specialists assigned to assist the agency with the documentation and reporting process required by this rule.