



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

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

FROM: Jacob Ritzenthaler, Business Advocate

DATE: July 17, 2023

RE: **CSI Review – Prone Restraint (OAC 5101:2-5-13 and 5101:2-9-21)**

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 amended rules proposed by the Ohio Department of Job and Family Services (ODJFS). This rule package was submitted to the CSI Office on May 25, 2023, and the public comment period was held open through June 1, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on May 25, 2023.

Ohio Administrative Code (OAC) 5101:2-5-13 requires that public children services agencies (PCSA), private child placing agencies (PCPA), and private noncustodial agencies (PNA) maintain certain policies, plans, and procedures. These include written policies concerning discipline, foster caregiver recruitment, child civil rights, payments to caregivers, grievances, confidentiality, and specific policies related to specialized foster care programs and residential facilities, among others. This rule amends the definition of “prone restraint” to include downward placement for any amount of time. OAC 5101:2-9-21 establishes requirements for residential facility care, supervision, and discipline, including requirements for explaining disciplinary procedures and their administration, as well as prohibited disciplinary actions. The rule is amended to update the definition of “prone restraint” to include downward placement for any amount of time and to revise language concerning consistency of discipline.

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During early stakeholder outreach, ODJFS reviewed the rules with stakeholders during a meeting of the Ohio Children's Association (OCA) and conducted additional discussions with stakeholders. During that time, ODJFS received comments from three stakeholders. Trumbull County and OCA submitted comments that objected to amendments that prohibit the use of prone restraints, including those employed as transitional holds. ODJFS did not make changes based on this feedback, stating that these types of restraints have the potential to adversely impact the health and safety of children. ODJFS also noted that nearly all licensed providers already independently elected to prohibit such restraint methods. Trumbull also suggested clarifying changes regarding the process for reviewing policies, plans and procedures, which ODJFS accepted and incorporated into the rule. The Public Children Services Association of Ohio inquired about the impact on costs and capacity for providers due to the amendments. ODJFS stated that any costs would involve retraining staff regarding proper discipline techniques.

During the CSI public comment period, ODJFS received comments from several stakeholders regarding the change in the definition of prone restraint, which suggested that the wording of the definition could impact the use of transitional holds. ODJFS did not make changes in response to these comments, stating that the safety risk to children in foster care is too high to allow for prone restraints and that transitional holds involving a prone restrain are accordingly included within that definition.

The business community impacted by the rules includes 88 public foster care agencies and 108 private agencies. The adverse impacts created by the rules include costs and administrative time associated with compliance with requirements to maintain policies, plans, procedures, and guidelines for supervision and discipline. ODJFS states that, if a provider employs prone restraints or transitional holds currently, there may also be costs associated with retraining staff. ODJFS states that the adverse impacts created by the rules are necessary to ensure the safety of children in substitute care.

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.