



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: Michael Bender, Business Advocate

DATE: November 21, 2023

RE: **CSI Review – Background Checks for Foster Caregivers and Employees of Foster Care Agencies (FYR) (OAC 5101:2-5-09 and 5101:2-5-09.1)**

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This rule package consists of one new rule, one amended rule, and one rescinded rule proposed by the Ohio Department of Job and Family Services (ODJFS). This rule package was submitted to the CSI Office on November 8, 2023, and the public comment period was held open through November 15, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 8, 2023.

Ohio Administrative Code (OAC) 5101:2-5-09 establishes requirements for foster care agencies with respect to hiring personnel. The rule is amended to update language, add clarifying language, update the rule title, and remove background check requirement language. OAC 5101:2-5-09.1 is rescinded and replaced by a new rule with the same number. The proposed new rule provides for the background checks that must be completed by foster care agencies for employees, college interns, subcontractors, volunteers, board presidents, officers, administrators, and foster caregivers. Compared to the rescinded version of the rule, the new rule is revised to consolidate all of the aforementioned background check requirements into one location, including the background check

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requirement language removed from OAC 5101:2-5-09. Four appendices to the rule are also provided. The appendices list disqualifying offenses and outline rehabilitation criteria.

During early stakeholder outreach, the rules went through the ODJFS public clearance process from September 6, 2023, through September 20, 2023. No comments were provided by stakeholders. During the CSI public comment period, ODJFS received one comment from The Buckeye Ranch. The Buckeye Ranch asserted that requiring the Ohio Statewide Automated Child Welfare Information System (SACWIS) as a prohibitive background check for alleged perpetrators was problematic. Providing statistics for support, The Buckeye Ranch argued that this would negatively affect the hiring and recruitment of minority workers amidst a workforce shortage. ODJFS responded by revising the rule to revert back to the status quo, where foster care agencies would still be required to complete an Ohio SACWIS search for an alleged perpetrator but would retain discretion on hiring applicants. Additionally, ODJFS revised the rules to correct a citation.

The business community impacted by the rules includes foster care and adoption agencies, of which eighty-eight are public and over one hundred are private. The adverse impacts created by the rules include personnel requirements and background checks. According to ODJFS, the actual costs will vary based upon the size and staffing of the agencies. Citing ZipRecruiter, ODJFS notes that the average wage for a social worker is \$22.00 per hour. ODJFS states that the adverse impacts to business are justified to implement statutory requirements and 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.