

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC:FYR Chapter 5101:2-5 CCN 7465 02/14

Rule Number(s): 5101:2-5-13

Date: 3/31/14

**Rule Type:**

New

☒ 5-Year Review

☒ Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

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OAC rule 5101:2-5-13, entitled "Required agency policies, plans and procedures" provides guidance to agencies regarding policies a foster care agency must have in order to operate. Paragraph (A)(2) was amended to remove the two-year update timeframe for the completion of the Multiethnic Placement Act (MEPA) plan. The MEPA plan can remain as written until an update occurs. Paragraph (A)(10) was amended for clarity. No substantive changes were made. Paragraph (A)(16) was added to require an agency that operates a residential facility to have a policy for admissions. Paragraphs (A)(24) and (A)(25) were removed because they are duplicative and can be found in rule 5101:2-48-05 of the Administrative Code. A new paragraph (A)(28) was added to require an agency to have a policy for monitoring the appropriate use of psychotropic medications for children and youth in foster care. This was added due to a federal mandate in section 422(b) (15)(A) of 42 U.S.C. 622.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Rule Number	Statutory Authority
Rule 5101:2-5-13	ORC 5103.03, 5103.0316

**3. 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.*

Rule 5101:2-5-13 does not implement a federal regulation and is not being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This rule is not written as a requirement of Federal Law, nor does it exceed any Federal requirements. The rule is specific to child welfare and follows state statute to ensure the safety of the children in substitute care.

**5. 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)?**

For rule 5101:2-5-13, the purpose of the regulation is to ensure foster care agencies have policies to address varying issues that can arise as the result of serving children in care.

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

Rule 5101:2-5-13 will be measured against the criteria specific to the rule content.

**Development of the Regulation**

**7. 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 was presented to several interest groups including Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association, representatives from county agencies and the Ohio Council of Behavioral Health and Family Services Providers. These interest groups were part of the Midwest Child Welfare Implementation Center (MCWIC) meetings that the Office of Families and Children conducted during 2012. The meetings were held in person and also allowed for online input toward rule suggestions and changes. The group discussed and came to conclusions on each rule. The rule also went through the clearance process on November 21, 2013. There were a few comments made and responses were provided to the stakeholders. No additional questions were received.

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

The rule was reviewed and revised with the interested parties' involvement and language was developed and altered to address the issues presented. There were seven comments received during the clearance process. The first was from Lore Pierzchala of Bellefaire JCB. Mr. Pierzchala made a comment concerning a conflict about the required time frame for submitting recruitment plans. ODJFS responded by clarifying the rule as a result of Mr. Pierzchala's comment.

The remaining six comments were all concerning the proposed psychotropic medication policy requirement in paragraph (A)(28). The comments were concerning the additional costs of agencies having the availability of mental health expertise and consultation regarding both consent and monitoring issues by a board-certified or board-eligible Child and Adolescent Psychiatrist. ODJFS responded by removing this requirement.

**9. 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.

**10. 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?**

There were no other alternatives considered for rule 5101:2-5-13 as most parties involved were satisfied with the rule and because the rule is driven by statute.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**  
*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

For rule 5101:2-5-13, ODJFS did not consider a performance based initiative, but rather followed statutory language prescribing that the department set standards to ensure every institution and association that receives, or desires to receive and care for children, or places children in private homes is effectively and appropriately administering proper standards for safety. ODJFS also, according to statute, must be satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with. These rules are also specific because the safety of the children in care dictates a specified process to ensure compliance.

**12. 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 foster care agencies and no other rules address these specific issues. This rule was reviewed by the legal staff at ODJFS prior to the clearance process to ensure it did not duplicate any existing Ohio regulations.

**13. 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.**

The rule does not prescribe anything that would not be applied consistently. 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**

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**14. Provide a summary of the estimated cost of compliance with the rule.**

**Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**  
*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.*

Rule 5101:2-5-13 of the Administrative Code contains requirements for foster care agencies. Requirements must be met to obtain and/or maintain certification.

The adverse impact involves the time involved completing and the reporting of the following information:

- 1) A written discipline policy which prohibits the use of prone restraints;
- 2) A written plan describing strategies for foster caregiver recruitment;
- 3) A written policy describing the process for simultaneously approving applicants for foster care placement and adoptive placement;
- 4) A written policy detailing any assessment activities in which an agency would require a foster caregiver applicant to participate and any materials or documentation which a foster caregiver applicant would be required to submit as part of the assessment or home-study process;
- 5) A written policy detailing all payments to foster caregivers;
- 6) A written grievance policy;
- 7) A written policy on the notification of the adoption process;
- 8) Written policies that shall be explained to potential foster caregivers during initial orientation;
- 9) Implement a policy regarding good cause for a foster caregiver's failure to complete the continuing training;
- 10) A written policy on the operation of the specialized foster home program;
- 11) A written policy that provides for access to both planned and crisis respite care;
- 12) A written policy, outlining procedures for matching children with specialized foster caregivers;
- 13) A written policy to assure that all children in specialized foster care and all specialized foster caregivers and their families affiliated with the program shall have access to crisis counseling;
- 14) Be responsible for developing and implementing a behavior intervention policy;
- 15) A written policy on the use of alcohol, tobacco and tobacco products;
- 16) A written admissions policy;
- 17) A written policy which describes the conditions under which, and the procedures by which, a child will be discharged from an out-of-home care setting;

- 18) A written policy which specifies the procedures for ensuring the accessibility of the administrator;
- 19) A written policy regarding access, confidentiality, maintenance, security and disposal of all records; a written policy which protects the confidentiality of information concerning a child and the child's family;
- 20) A written policy governing the agency's participation in human research projects, fund raising and publicity activities; written personnel policies and procedures;
- 21) A written policy for screening volunteers or college interns;
- 22) A written policy and procedure which assures protection of a child's civil rights;
- 23) A copy of the JFS 01611 form;
- 24) Comply with the standards of conduct regarding MEPA and Title VI;
- 25) Include in its foster care policy the complaint process;
- 26) A written policy and procedure to notify the custodial agency if serious injury or illness, death, unauthorized absence of the foster child from the home, removal or attempted removal of the foster child, or Any involvement of the foster child with law enforcement authorities;
- 27) A written policy for monitoring the appropriate use of psychotropic medications.

After reviewing several agency submissions of their policies and procedures it was estimated that the time involved in creating the above 27 policies and procedures for an agency is approximately 40 to 80 hours. The time period will vary depending on the complexity and size of the agency and their policies and procedures.

The cost involved in creating the policies and procedures for an agency will vary depending on how many people develop the policies and procedures and the rate per hour they pay those employees.

The submission of agency policies and procedures is done electronically with minimal impact on time and cost.

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

As mentioned in the response to question #7 -- The rule was presented to several interest groups for review and input. These interest groups were part of the Midwest Child Welfare Implementation Center (MCWIC) meetings that the Office of Families and Children conducted during 2012. The content of this rule was agreed upon by these groups.

An agency's written policies and procedures provide an outline for every employee of the agency to follow to help ensure the safety of children in substitute care. If agency personnel did not have policies and procedures to follow as outlined in this rule, you would have no consistency in the treatment of the children in the agency's care and the safety of the children could be in jeopardy. Therefore, the adverse impact of this rule is necessary.

### **Regulatory Flexibility**

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

For rule 5101:2-5-13 there is no alternative means of compliance.

**17. 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 rule 5101:2-5-13 there is no fine or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

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

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.