

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Amendments to Children Services Licensing OAC Rules in chapter 5101:2-5. CCN 7651

Rule Number(s): 5101:2-5-09, 5101:2-5-33

Date: 2/9/15

Rule Type:

New
☒ Amended

☒ 5-Year Review
Rescinded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 5101:2-5-09, entitled "Personnel and prohibited convictions for employment," provides guidance to public children services agencies (PCSAs), private child placing agencies (PCPAs) and private non-custodial agencies (PNAs) on the requirements for the hiring of personnel for the agency.

OAC rule 5101:2-5-33, entitled "Foster caregiver preplacement and continuing training", provides guidance to PCSAs, PCPAs and PNAs regarding the required training in order to achieve and maintain a foster home certificate.

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

| Rule Number | Statutory Authority |
|------------------|------------------------|
| Rule 5101:2-5-09 | ORC 2151.86, 5103.03 |
| Rule 5101:2-5-33 | 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.

Rules 5101:2-5-09 and 5101:2-5-33 do not implement a federal regulation and are not being established 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.

These rules are not written as a requirement of Federal Law, nor do they exceed any Federal requirements. The rules are specific to child welfare and follow 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 5101:2-5-09, the purpose of the rule is to ensure the safety of children in care by setting guidelines for hiring employees that meet the criminal record requirements set in statute.

For rule 5101:2-5-33, the purpose of the rule is to follow through with statute by requiring specific training for foster caregivers based on the desired level of care for which they wish to serve.

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

The success of these rules can be measured by the completion of the statutory requirements.

For rule 5101:2-5-09, the completion of the rule requirements are retained by the agency in a file for the employee and reviewed by ODJFS licensing staff.

For rule 5101:2-5-33, the completion of a training log for each foster caregiver by the agency is used to measure the success.

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 rules were 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 rules also went through the clearance process on December 5, 2014 through December 19, 2014. There were no comments made during the clearance process.

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 to address the issues presented. There were minor changes made. These changes were:

Rule 5101:2-5-09 – Paragraph (E) was amended to clarify that this requirement is for residential facilities. No other substantive changes were made.

Rule 5101:2-5-33 was amended in paragraph (C) for clarity and to add a training requirement for the reasonable and prudent parenting standard. The requirement for the training on the reasonable and prudent parenting standard is a mandate from Public Law 113-183, “Preventing Sex Trafficking and Strengthening Families Act” (9/2014). Paragraph (F)(3) was amended to allow up to six hours of outside the classroom training to be accepted for pre-placement training. This change was made as a suggestion of both public and private agency advocates during the MCWIC process. Paragraph (G)(2) was amended to include training for the caregiver that relates to providing independent living services as part of the written needs assessment and continuing training plan.

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 rules as all parties involved were satisfied with both rules and because the rules are 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.*

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. Specifically, rule 5101:2-5-33 is mandated by statute in sections 5103.035, and 5103.038 – 5103.0311 of the Revised Code.

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 rules are specific to foster care agencies and no other rules address these specific issues. The rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure there was no duplication of 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 rules do not prescribe anything that would not be applied consistently. ODJFS licensing specialists review the agencies to ensure all regulations are applied consistently and that technical assistance is offered in areas of inconsistency.

Adverse Impact to Business

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.

a. Scope of impacted business community:

One hundred fifty-eight agencies will be impacted by the requirements of these rules. The agency number may vary slightly due to monthly openings or closings of facilities. This number includes both public and private agencies.

b. Nature of adverse impact:

Loss of certification if the agency does not adhere to the statutory requirements of the rules.

c. Quantify adverse impact:

Adverse impact would entail administrative time spent conducting background checks for employees and training provided to caregivers necessary for statutory and rule compliance.

Agencies are required to obtain three references as well as conduct a criminal background check on all prospective employees.

Training is required to be provided to foster care applicants. The amount of training necessary to obtain certification depends upon the type of certification the applicant is attempting to achieve. To offset the training costs for private agencies, per section 5103.0313 and rule 5101:2-5-38 (D) of the Administrative Code, each private agency is reimbursed, by ODJFS, fifteen dollars an hour for each participant in a training class, if the agency shows the training caused an expense.

Time involved capturing the information for prospective employees could be a potential adverse impact due to the cost involved to request, obtain, review and assess the information. Also, the agency will provide the cost of training up front to applicants and then wait for the reimbursement from ODJFS. Another potential adverse impact would be if the agency spends more on training than they are reimbursed.

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

The Agency is carrying out the directives of sections 2151.86, 5103.035, and 5103.038 – 5103.0311 of the Revised Code.

Regulatory Flexibility

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

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?

There are no fines 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 process including assistance with the proper information required by these rules.