

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: FYR of Substitute Care Rules

Rule Number(s): 5101:2-42-87, 5101:2-42-90, and 5101:2-48-15

Date: March 20, 2015

**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☐ Rescinded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.**

OAC 5101:2-42-87, "Termination of substitute care and custody of a child" sets forth requirements for agencies regarding the termination of custody of a child. Paragraph (D) was amended to include the recommending agency in the notification process. Minor changes were also made to reorganize the paragraphs for clarity and for the ease of the reader.

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OAC 5101:2-42-90, “Information to be provided to children, caregivers, school districts and juvenile courts” sets forth the requirements for public children services agencies (PCSAs) and private child placing agencies (PCPAs) in the sharing of information with substitute caregivers, school districts, and juvenile courts. The rule title was amended to more accurately reflect the requirements set forth by the rule. Paragraphs (B), (C), and (I) were amended for clarity and grammatical errors. Paragraph (F) was added to meet new requirements as a result of legislative changes made to the Ohio Revised Code pursuant to the passage of Amended Substitute House Bill 213 of the 130<sup>th</sup> General Assembly. The new language requires PCSAs and PCPAs to provide the caregiver of a child who is placed in a planned permanent living arrangement a notice that addresses the caregivers’ understanding of the permanency of a planned permanent living arrangement and that the caregiver is expected to actively participate in the child’s case plan. Paragraphs (Q), (R), and (S) were added requiring the custodial agency to provide the JFS 01677 “Foster Youth Rights Handbook” to every child in substitute care, age fourteen and older.

OAC 5101:2-48-15, “Provision of information to a prospective adoptive parent matched with a specific child” provides guidance to custodial agencies regarding the documentation that is required to be given to a prospective adoptive parent prior to the adoptive placement of a child. There were no substantive changes made to the rule. The changes made were a result of reorganizing the paragraphs for clarity and for the ease of the reader.

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

Rule Number	Statutory Authority
Rule 5101:2-42-87	ORC 5103.03, 5153.16
Rule 5101:2-42-90	ORC 5103.03, 5153.166
Rule 5101:2-48-15	ORC 3107.017, 5153.16

**3. Does the regulation implement a federal requirement? Yes and No. 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.**

The above question is not applicable to rules 5101:2-42-87 and 5101:2-48-15.

The above question is applicable to rule 5101:2-42-90. Public Law No: 113-183 enacted by Congress through the passage of H.R. 4980 – Preventing Sex Trafficking and Strengthening Families Act on September 23, 2014 requires agencies to provide children in custody, age fourteen and older, a document that describes their rights with respect to education, health, visitation, and court participation. It also requires the child to sign a document verifying they were provided a copy of such document and that it was explained in an age-appropriate way. In order to meet this requirement, the aforementioned rule was amended to require agencies

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provide the existing JFS 01677 – Foster Youth Rights Handbook to all youth, age fourteen and older, in agency custody. The JFS 01677 is available to all agencies, with no associated fee, and meets the standards set forth in the bill. The requirement, however, is 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.**

The rules do not exceed any Federal requirements.

**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)?**

The regulation delineated in 5101:2-42-87 is necessary to outline for public children services agencies (PCSAs) and private child placing agencies (PCPAs) the steps to determine the necessity of continuing or terminating the custody of a child, and if terminated the steps to take when the child is to be returned home. The goal of these requirements is to ensure a child is not in custody longer than necessary and also to ensure the child is returned to a safe environment.

The regulation delineated in 5101:2-42-90 is necessary to outline for public children services agencies (PCSAs) and private child placing agencies (PCPAs) the steps to provide essential information to children, caregivers, school districts, and juvenile courts. The goal of these requirements is to ensure the sharing of necessary information between involved individuals and agencies.

The regulation delineated in 5101:2-48-15 is necessary to outline for public children services agencies (PCSAs) and private child placing agencies (PCPAs) the steps to provide essential information to prospective adoptive parents to assist in making an informed decision about a placement. The goal of this requirement is to ensure a family is provided all information about a child, thus encouraging stability after placement.

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

Agencies undergo compliance reviews once every two years as part of the recertification process which includes compliance with the requirements of this rule. Agencies also receive compliance reviews at approximately the one-year mark of the two-year certification period.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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**If applicable, please include the date and medium by which the stakeholders were initially contacted.**

Rule 5101:2-42-87 was presented to several interest groups including staff from PCSAs, PCPAs, the Ohio Family Care Association, and foster parents. These interest groups were part of the Midwest Child Welfare Implementation Center (MCWIC) meetings that the Office of Families and Children conducted through the Partners for Ohio's Families (PFOF) initiative in 2012 and 2013. 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 the rule. The rule went through the clearance process on January 7, 2015 through January 21, 2015.

Rule 5101:2-42-90 was presented to several interest groups including staff from PCSAs, PCPAs, the Ohio Family Care Association, The Ohio Council, the Ohio Association of Child Caring Agencies, and the Institute for Human Services. These interest groups were part of the MCWIC meetings that the Office of Families and Children conducted through the PFOF initiative in 2012 and 2013. 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 the rule. The rule went through the clearance process on January 7, 2015 through January 21, 2015. The comments received were requesting amendments to associated JFS forms cited in the rule. The amendments will be incorporated to the associated form prior to the rule's effective date.

Rule 5101:2-48-15 was presented to several interest groups including staff from PCSAs, PCPAs, the Ohio Family Care Association, and foster parents. These interest groups were part of the MCWIC meetings that the Office of Families and Children conducted through the PFOF initiative in 2012 and 2013. 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 the rule. The rule went through the clearance process on January 7, 2015 through January 21, 2015.

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

The PFOF committee reviewing this rule made recommendations for clarifying existing language. The committee recommended changes to update rule citations and the revision dates to referenced forms. All changes recommended by the PFOF committee were made.

**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?**

No other alternatives were considered for rules 5101:2-42-87, 5101:2-42-90, and 5101:2-48-15 as all parties involved were satisfied with the rules.

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**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 the department set standards to ensure the well-being of every child in temporary or permanent custody.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The JCARR prong “Rules do not conflict with a rule of its own or another rule-making agency” has been an ongoing deterrent to duplication. JFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

**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.**

When the rule is final filed, a transmittal letter will be generated to all PCSAs and PCPAs explaining the changes to the rule and the rationale for the changes. The transmittal letters can be viewed at

[http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id\(59\)&docId=Document\(storage%3DREPOSITORY%2CdocID%3D%23node-id\(87890\)\)&locSource=input&docLoc=%24REP\\_ROOT%24%23node-id\(87890\)&version=8.0.0](http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id(59)&docId=Document(storage%3DREPOSITORY%2CdocID%3D%23node-id(87890))&locSource=input&docLoc=%24REP_ROOT%24%23node-id(87890)&version=8.0.0).

Certification reviews, which include monitoring the implementation of rules 5101:2-42-87, 5101:2-42-90 and 5101:2-48-15 occur once every two years, and at the one-year mark during the two-year certification period.

**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;**

The rules of the Administrative Code in Chapter 5101:2-42 contain requirements for children in temporary custody and placed into substitute care by public and private agencies. Requirements must be met to obtain and/or maintain certification for PCPAs. There are currently 20 certified private child placing agencies in Ohio.

The rules of the Administrative Code in Chapters 5101:2-48 contain requirements for adoption agencies that include public and private agencies. Requirements must be met to obtain and/or maintain certification for PCPAs. There are currently 20 certified private child placing agencies in Ohio.

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**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The requirements of 5101:2-42-87 must be met in order for PCPAs to obtain and/or maintain certification by the State. Adverse impact would entail preparing documentation in order to terminate custody, arranging visits to prepare the child for returning to his or her parent, and completing documentation of such activities. The agencies are not subject to any court costs or filing fees associated with custody termination. The rule changes place no new requirements on agencies.

The requirements of 5101:2-42-90 must be met in order for PCPAs to obtain and/or maintain certification by the State. Adverse impact would entail time required documenting and sharing information as well as completing forms such as the Individual Child Care Agreement (ICCA), JFS 01443 Child's Education and Health Information, and JFS 01677 Foster Youth Rights Handbook. The ICCA is required to be completed each time a child is placed in substitute care. The ICCA outlines the identifying information about the child as well their history, required services, visitation plans, transportation arrangements, goals, special needs, and also the invoicing procedures for the agency. A template ICCA is available for agencies to use as the JFS 01700, however agencies have the option of creating their own form. The JFS 01443, while not required to be completed by this rule, is required to be provided to the caregiver. The JS 01677 is required to be given to every youth in substitute care, age fourteen and older. The JFS 01677 is provided to agencies at no cost by ODJFS. Providing the JFS 01677 is the only new requirement added to this rule which was established by Public Law No: 113-183 enacted by Congress through the passage of H.R. 4980 – Preventing Sex Trafficking and Strengthening Families Act on September 23, 2014.

The requirements of 5101:2-48-15 must be met in order for PCPAs to obtain and/or maintain certification by the State. Adverse impact would entail time required to document and provide information to prospective adoptive parents. The rule citation changes and amendments place no additional requirements on agencies.

**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.**

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The adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance. Although it may depend greatly on the experience and training of each caseworker, it can be estimated that each form should take no longer than an hour to complete. The exception would be the ICCA form though. Due to the fact that each agency can create their own ICCA, many forms vary in length.

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

To ensure the safety of children in substitute care, the adverse impact of these rules is necessary. The requirements set forth in these rules provide safety nets for children in substitute care by providing necessary and accurate information to prospective adoptive parents, school districts, juvenile courts, and children. The agencies are carrying out directives in sections 5103.03, 5153.16, 5153.166, and 3107.017 of the Revised Code.

**Regulatory Flexibility**

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

There are no exemptions and 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 with this rule 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 regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of rules 5101:2-42-87, 5101:2-42-90, and 5101:2-48-15.