

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC- Adoption Policy/Matching

Rule Number(s): 5101:2-48-05 and 5101:2-48-16

Date: 6/3/15

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 Rescinded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.

This Business Impact Analysis covers two rules to be amended as a result of the ongoing effort to align the foster care and adoption process, as well as an effort to remove any inconsistencies in

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the rules regarding the matching process. The following is a brief summary of the proposed changes:

OAC rule 5101:2-48-05, entitled "Agency adoption policy and recruitment plan" provides guidance to agencies regarding the policies they are required to have, including their adoption recruitment plan. Paragraph (B)(2)(g) was revised to clarify when a large family assessment is due, in alignment with a change to rule 5101:2-48-12 of the Administrative Code. Paragraph (B)(4) was revised to remove private noncustodial agencies from the requirement, as they would not be requesting a homestudy for matching purposes. Paragraph (B)(9) was revised to simply refer agencies to rule 5101:2-48-16 of the Administrative Code in creating their matching policy, in an effort to alleviate any discrepancies. Paragraph (B)(10) was revised to accentuate the preference to keep siblings together whenever possible and in their best interests. The language in paragraph (F) was added to paragraph (E). The language in paragraph (I) was added to paragraph (G). Paragraphs (L) and (M) were taken from the requirements located in rule 5101:2-5-13 for foster care policies, in a continued effort to align the two programs. All other revisions were not substantive and were for grammar purposes or for the ease of the reader.

OAC rule 5101:2-48-16, entitled "Adoption preplacement and placement procedures" provides guidance to agencies regarding what is required between the time of permanent custody and the time of adoption. Language was added to paragraph (H) to ensure that the appropriate individuals who are required to be invited to the pre-adoptive staffing are given appropriate notice to the meeting, or any changes or cancelations to the meeting. Identical language was added to paragraph (N) for the purposes of the matching conferences. The language in paragraph (U)(5) was taken from the stricken language in rule 5101:2-48-05 of the Administrative Code. Paragraph (V) was revised to clarify, in one rule, what the matching preference order is when all possible placement options are in the best interest of the child. Language was added to paragraph (AA) to require a specific timeframe for when information must be given to other agencies after a matching conference. Private noncustodial agencies were removed from paragraph (DD) as a noncustodial agency is not to be placing children out of state in adoptive homes, and private child placing agencies were added to the paragraph as they are permitted to place out of state. Paragraphs (II) and (JJ) were added to the language in paragraphs (LL) through (NN). All other revisions were not substantive and were for grammar purposes or for the ease of the reader.

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

Rule Number	Statutory Authority
Rule 5101:2-48-05	ORC 3107.032, 5153.166
Rule 5101:2-48-16	ORC 5101.141, 5103.03, 5153.166

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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.

No, these rules do not implement federal regulations nor do they enable the state to obtain or maintain approval to administer and enforce a federal law or 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 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 purpose of the regulation in 5101:2-48-05 is to set policy standards and procedures for agencies to follow regarding the placement of children in permanent custody that will ensure safety, permanency and well-being for the children they serve.

The purpose of the regulation in 5101:2-48-16 is to set standards for agencies to follow in preparing all parties and carry out all steps required in an adoption, from recruitment through finalization.

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

The success of these regulations will be measured against the criteria specific to the content in each rule in assuring appropriate adoption practices are followed and children are placed in loving, safe, and permanent families.

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.

These rules were presented to several interest groups including the Ohio Association of Child Caring Agencies (OACCA), the Ohio Adoption Planning Group (OAPG) and at the public and

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private agency coordinator's meetings at the Central Ohio Regional Training Center. The information in the rules was also presented at the adoption subgroup meeting in Spring 2015, and sent out to all adoption contacts at both public and private agencies. The adoption subgroup was created out of Ohio's Diligent Recruitment Plan, which was submitted as part of the Child and Family Services Plan in 2014. The group consists of public agency staff and state staff who have come together to work towards increasing positive outcomes for children related to adoption and permanency. The rules were posted on the Ohio Rule Review website in Spring 2015, and went through the internal and external clearance process in April 2015. One external comment was submitted from a public agency during the clearance process, which resulted in the rule being revised further for clarification.

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

The rules were revised as a result of feedback from county agencies that the matching criteria in the two rules contradicted each other. Upon further review, this information was confirmed. It was also determined that the language in the rules would need revised to account for language changes as a result of the foster care and adoption alignment of the homestudy process. No private agency stakeholders commented on these rules during the clearance process.

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 these rules as all parties involved in the process were satisfied with rule language outcomes and because the rules are driven by statute or federal guidance.

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 minimum standards to ensure the safety and well-being of all children entering substitute care homes.

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

There is no duplication in other rules. The rules in this package were reviewed by internal and external partners, as well as the Partners for Ohio's Families (PFOF) Rule Review Board, for duplication and approval. The rule revisions were also reviewed by the internal legal staff at ODJFS prior to the clearance process to ensure they do 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.

ODJFS licensing specialists and technical assistance specialists monitor agencies to ensure the regulations are applied consistently. PFOF regional teams have also been developed to offer technical assistance and improve consistency statewide. Additional training opportunities are planned for private and public agencies as the effective date of the rule gets closer.

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.

The rules of the Administrative Code in Chapters 5101:2-42, 5101:2-48, and 5101:2-52 contain administrative requirements for all agencies, both public and private. Requirements must be met by private agencies to obtain and/or maintain certification.

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The adverse impact on the business community potentially involves approximately 128 private agencies:

5101:2-48-05 – The adverse impact of the revised requirements of this rule would involve the time needed to document any additional assessment activities beyond what is required by Chapter 5101:2-48 of the Administrative Code. This will vary from agency to agency, and may not be a factor at all for some agencies. With the change that is added to paragraph (B)(2)(g) there may be an adverse impact in that existing agency policies may have to be revised to explain the clarification. This would take a minimum amount of time, possibly an hour at the most. The revisions for paragraph (B)(9) would actually take away adverse impact as much of the language around matching has been deleted and simplified. The revision made to remove paragraph (I) of this rule actually takes away the adverse impact of completing the recruitment plan on an annual basis. The plan will now only be due at initial agency opening and when revisions are completed. The revised paragraph (L) simply requires an agency to follow their policies when conducting business and should not involve new adverse impact. The revised paragraph (M) requires everyone affected by an agency policy to have a copy of the policy. Again, this should not represent any new adverse impact as it is sound business practice. If agencies have not been following this previously, then the adverse impact would include the time and resources involved in supplying copies of policies in hard copy or electronic format to all individuals impacted by the policies. All other revisions to the rule were for clarity or grammar, and do not represent any additional adverse impact on business.

5101:2-48-16 – The adverse impact of the revised paragraphs (H) and (N) involve the time it would take to provide written notice to individuals of the preadoptive staffing and matching conferences and the time it takes to document those notices in the child's file. The individuals have already been required to be invited; however the revision now requires notice to be in written form and to document the invitation in the child's file. The remaining revisions to the rule were for clarity of the reader or grammatical purposes and do not represent any new adverse impact.

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

To ensure the most appropriate placement selection for the child into a permanent, safe, loving home, the requirements of these rules are necessary. Without the specified requirements set forth in these rules, the agency may not ensure a fair and ethical process for matching a child with an adoptive family.

Regulatory Flexibility

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

No, there are 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 these rules there are no fines or civil penalties for non-compliance from ODJFS. If significant noncompliance was discovered then it would be possible for an agency to have their license revoked, resulting in substantial business losses.

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

ODJFS has regional offices with technical assistance specialists and licensing specialists that will be able to assist agencies in creating adoption policies and making appropriate placement decisions for children in their permanent custody. Policy developers are also available to give technical assistance regarding these requirements. These rule revisions will be presented to agencies along with other foster care and adoption rules during the summer of 2015, as the effective dates draw near.