

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC- Adoption Matching

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

Date: 2/7/17

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Rescinded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 one rule to be amended as a result of the ongoing effort to positively impact the adoption process, as well as remove any inconsistencies in the rules regarding the matching process. The following is a brief summary of the proposed changes:

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This rule provides guidance to agencies in regards to the matching and placement requirements for children in their permanent custody. Clarifying language was added to paragraph (C) regarding assessor visits with the child in permanent custody. Paragraphs (F) and (M) were revised to clarify that pre-adoptive staffings and matching conferences may be held prior to the birth of the child in a private agency infant adoption. Paragraph (H) now states that the prospective adoptive family shall be invited to the pre-adoptive staffing, if the PCSA or PCPA deems it to be appropriate. Language concerning distribution of the JFS 01690 was revised in paragraph (J). Paragraph (O) was revised to stress the importance of the matching conferences and not delay permanency for waiting children. Paragraphs (O) and (R) were both revised to allow for flexibility with technology. The child study inventory was added to paragraph (U) as one of the factors in making the matching decision. The requirement that an adult non-relative must have been named by the biological parent in order to be considered for placement has been removed from paragraph (V). The requirement for updating the JFS 01690 preadoptive staffing prior to every subsequent matching conference was removed from paragraph (W). The pre-adoptive staffing meeting will now be a one-time only occurrence. Paragraph (X) was revised to allow for more flexibility in regards to permanency options other than adoption. Paragraph (Y) was revised to clarify that the JFS 01654 Adoptive Placement Agreement is not complete unless it includes all applicable signatures and the adoptive placement date. The reference to the Multiethnic Placement Act in paragraph (KK) was updated. All other changes made were not substantive.

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

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

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 5101:2-48-16 is to set standards for agencies to follow in preparing all parties and carrying 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 who are prepared and equipped to provide adequate care for them.

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 reviewed and the revisions drafted by the adoption workgroup that was created out of Ohio's Diligent Recruitment Plan as part of the Child and Family Services Plan in 2014. The workgroup consisted of agency managers, assessors and attorneys, as well as state staff. The proposed changes were also presented to several interest groups including the Public Children Services Association of Ohio (PCSAO) rule review committee, the Ohio Association of Child Caring Agencies (OACCA), the Ohio Adoption Planning Group (OAPG), the Foster/Adopt/Kinship workgroup through the Institute for Human Services (IHS), at the statewide foster care licensing meeting in fall 2015, and at the public and private agency coordinator's meetings at the Central Ohio Regional Training Center. The revisions were also sent out to all adoption contacts at both public and private agencies. 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 fall 2016, and went through the internal and external clearance process in November/December 2016. Two external comments were submitted from two public agencies, and three internal comments were received during the clearance process. Those comments resulted in the rule being revised further for clarification purposes.

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 part of an ongoing dialogue with the adoption workgroup, reviewing the rules line by line, and making changes with everyone at the table. Feedback was received from state management staff, as well as county stakeholders that child specific recruitment requirements conflicted with other rules. Upon further review, this information was confirmed and resolved. 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 for duplication and approval. The rule revisions were also reviewed by the

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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. Partners for Ohio’s Families regional teams have also been developed to offer technical assistance and improve consistency statewide.

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 Chapter 5101:2-48 contain administrative requirements for all agencies, both public and private. Requirements must be met by private agencies to obtain and/or maintain certification.

The adverse impact on the business community potentially involves approximately 35 private child placing agencies (PCPA):

5101:2-48-16 – The adverse impact of the rule involves 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 rule also now allows the child to be included in the matching conference, if such inclusion would be in the child’s best interests, and if the custodial agency deems it would be appropriate. When considering this change for a private agency with an adverse impact, a PCPA would likely not choose to include the child because the matching conferences held are predominantly for infant adoptions, and usually held prior to the birth of the child. Therefore, no adverse impact would be experienced. In regards to participating in the pre-adoptive staffing and matching conferences, changes were made to

significantly lessen the adverse impact, as agency staff are not required to attend the meetings in person, and can participate via ‘teleconference or other electronic means.’

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

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 available to give technical assistance regarding these requirements. Regional teams have been established to provide technical assistance to both private and public agencies in all areas of the state.