

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Foster home denial, Foster home occupancy, Foster caregiver stipend and Children's crisis care facility requirements

Rule Number(s): 5101:2-5-28, 5101:2-5-32, 5101:2-5-38 and 5101:2-9-36

Date: 5/16/17

**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Rescinded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.

OAC rule 5101:2-5-28, entitled "Agency Cause for Denial of Initial Certification, Denial of Recertification or Revocation of a Foster Home Certificate," provides guidance to agencies on

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valid reasons for denial or revocation of a foster home certificate. Paragraphs (A)(1), (C) and (E) were amended for clarity to reference the proper paragraphs. No other changes were made.

OAC rule 5101:2-5-32, entitled "Occupancy limitations and accessibility," provides guidance on the limits for the number of foster children placed in a home based on certain criteria. Paragraph (B) was amended to clarify the exceptions for the capacity limits.

OAC rule 5101:2-5-38, entitled "Payment of foster caregiver training stipends; reimbursement of training allowances to recommending agencies," provides guidance to agencies on the requirements for the processing of foster caregiver training stipends and training allowance payments. Paragraph (B)(c)(i) was amended to require the agency that recommends a foster caregiver for certification to be responsible for entering the pre-placement training into the state system and for providing the stipend payment to the caregiver upon certification. Paragraph (D)(1) was amended to allow a private agency to enter pre-placement training into the state system in order to receive a training allowance prior to certification of the caregiver.

OAC rule 5101:2-9-36, entitled "Additional requirements for children's crisis care facilities," provides guidance to agencies on what an agency must do if the agency is certified as a crisis care facility. Paragraph (H) was added to assist facilities by implementing a new engagement plan in place of the service plan and case plan. Paragraph formatting was updated, and paragraph (T) was added to bring awareness to new legislation described in section 5103.132 of the Revised Code.

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

Rule Number	Statutory Authority
Rule 5101:2-5-28	ORC 5103.03
Rule 5101:2-5-32	ORC 5103.03
Rule 5101:2-5-38	ORC 5103.0316
Rule 5101:2-9-36	ORC 5103.13

**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 5101:2-5-28, 5101:2-5-32, 5101:2-5-38 and 5101:2-9-36 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 5101:2-5-28, the purpose of the rule is to provide an agency with the guidelines and procedures for the denial or revocation of a foster home certificate.

For rule 5101:2-5-32, the purpose of the rule is to limit the capacity of children in a foster home in order to ensure the proper care is being provided to the children in placement as research shows that the quality of child care improves with smaller groups of children getting more attention and care from adult caregivers.

For rule 5101:2-5-38, the purpose of the rule is to ensure agencies pay stipends to foster caregivers for attending training as required by statute. Also the rule allows for reimbursement of the stipend payment to agencies that follow the requirements of the rule and statute. This rule also allows for the payment of training allowances to private agencies that incur an allowable cost as defined in the rule.

For rule 5101:2-9-36, the purpose of the rule is to ensure the safety of children placed into a crisis care facility by their parent or agency. A crisis care facility provides a parent or other caretaker with a temporary, short term setting for their child in the time of a crisis situation in which the parent/caretaker would have no means by which to care for the child.

**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, all necessary for the agencies to maintain their certification.

For rule 5101:2-5-28, the completion of rule requirements required to properly request and follow through with the denial or revocation of a foster home certificate.

For rule 5101:2-5-32, the completion of rule requirements required to comply with occupancy limitations and guidelines.

For rule 5101:2-5-38, the completion of rule requirements to request and obtain stipend reimbursements and training allowances.

For rule 5101:2-9-36, the completion of rule requirements to request and obtain certification to operate a crisis care facility.

### **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 the Ohio Association of Child Caring Agencies (OACCA), the Public Children Services Association of Ohio (PCSAO), and other representatives from county and private agencies through regional meetings conducted by ODJFS. The groups discussed potential changes, provided feedback and came to conclusions on each rule. Rules 5101:2-5-32, 5101:2-5-38 and 5101:2-9-36 went through the clearance process from March 31, 2017 through April 14, 2017. Rule 5101:2-5-28 went through the clearance process from April 20 through May 4, 2017. There was only one comment received. This is the comment:

**Jessica Ball – Foster Caregiver**

In response to rule 5101: 2-5-32 paragraph 5(D)-THANK YOU! I always have the concern of children re-entering and not returning to their previous care givers. This rule helps minimize the transitions that children need to experience. Thank you!

**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 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:

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Rule 5101:2-5-28 - Paragraphs (A)(1), (C) and (E) were amended for clarity to reference the proper paragraphs.

Rule 5101:2-5-32 - Paragraph (B) was amended to clarify the exceptions for the capacity limits.

Rule 5101:2-5-38 - Paragraph (B)(c)(i) was amended to require the agency that recommends a foster caregiver for certification to be responsible for entering the pre-placement training into the state system and providing the stipend payment to the caregiver upon certification. Paragraph (D)(1) was amended to allow a private agency to enter pre-placement training into the state system in order to receive a training allowance prior to certification of the caregiver.

Rule 5101:2-9-36 Paragraph (H) was added to assist facilities by implementing a new engagement plan in place of the service plan and case plan. Paragraph formatting was updated, and paragraph (T) was added to bring awareness to new legislation described in section 5103.132 of the Revised Code.

**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 the 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, rules 5101:2-5-28 and 5101:2-5-32 are mandated by statute in sections 5103.02 and 5103.03 of the Revised Code. Rule 5101:2-5-38 is

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mandated by section 5103.0316 of the Revised Code. Rule 5101:2-9-36 is mandated by section 5103.13 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 pursuing the revocation or denial of a foster care certificate. Time involved capturing the information necessary to enforce a closure of a foster home could be a potential adverse impact due to the cost involved to review and assess the information. A clerical employee earning \$10 and spending 10-12 hours reviewing and requesting information for each applicant would cost the agency \$100-\$120 per caregiver review to process.

All other rules would be quantified by varying factors such as the agency employee's time involved in monitoring of occupancy limitations, compliance with the rule for reimbursement of stipend payments, and compliance with the rule and statutory requirements of a crisis care facility.

**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 5103.03, 5103.0316 and 5103.13 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.