

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: \_\_\_\_\_

Rule Number(s): 5101:2-42-06, 5101:2-42-07, 5101:2-42-19.1

Date: 7/13/18

**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☐ Rescinded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.

If the rule(s) is a result of the FYR or is a 'no change' rule then you must answer the BIA questions with regard to the entirety of the rule content (not just what changed). For amended (non FYR) rules, only look at the changes for adverse impact. If the rule pertains to county agencies only or is a reimbursement rule, then a BIA is not required.

The CSIO wants to review all clearance comments and responses as part of their review. Please include a 2<sup>nd</sup> document that contains the clearance comments and responses and email it along with the BIA to the BIA email box ([BIA@jfs.ohio.gov](mailto:BIA@jfs.ohio.gov)).

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## **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.*

5101:2-42-06 Agreement for temporary custody of child provides the requirements of a temporary custody agreement between the public children service agency (PCSA) and private child placing agency (PCPA) and a parent.

5101:2-42-07 Extension of agreement for temporary custody of child provides the requirements of a temporary custody agreement between the PCSAs and PCPAs and a parent upon the request of an extension.

5101:2-42-19.1 Requirements for independent living arrangements for independent living youth in custody provides the requirements for the PCSAs and PCPAs when placing a youth in its custody in an independent living arrangement. This rule has been amended to clarify the age requirements pertaining to independent living arrangements.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.** Use answer to RSFA, Question 4. Include for each rule number.

5101:2-42-06            5103.03, 5103.15, 5153.16

5101:2-42-07            2151.413, 5103.03, 5153.15, 5153.16

5101:2-42-19.1        5101.141, 5103.03

**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 5101:2-42-06, 5101:2-42-07, 5101:2-42-19.1 do not implement a federal regulation and are not being amended 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. Each rule is specific to child welfare and follows state statute to ensure the safety of the children in substitute care.

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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)?** When detailing the public purpose, it is best to ask "what would happen if this rule was not in place?" Do not use the same information as you enter in question #1.

The purpose of the regulations in 5101:2-42-06 is to identify and set in place form JFS 01645 *Agreement for Temporary Custody of Child*, prescribed by the Ohio Department of Job and Family Services, pursuant to section 5101.15 of the ORC, outlining the responsibilities of a PCSA or a PCPA to hold temporary custody of a child; and for the parent, guardian or custodian to accept the responsibility as specified on the JFS 01645.

The purpose of the regulations in 5101:2-42-07 is to create an extension of the form JFS 01645, pursuant to section 5103.15 of the ORC, that can be utilized for an additional thirty-day extension of an agreement for temporary custody of a child between the PCSA or PCPA and the parents, guardians or custodians.

The purpose of the regulations in 5101:2-42-19.1 is to set the requirements for PCSAs and PCPAs when placing a youth in its custody in an independent living arrangement. The age requirement of sixteen years of age is being amended within the rule due to federal requirements.

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

Rules 5101:2-42-06, 5101:2-42-07 and 5101:2-42-19.1 are monitored through the certification process.

### **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.*

CCN 8057 - Amendments to Children Services Licensing OAC Rule 5101:2-42-19.1

No Comments received

Name and email address	Comment	Response
Angie Verity	In regards to 5101:2-42-19.1 A, (For youth aged sixteen or	The federal government has left this widely open for interpretation. The state has

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<p><a href="mailto:Angie.verity@jfs.ohio.gov">Angie.verity@jfs.ohio.gov</a></p> <p>Athens Co. Children Services</p>	<p>seventeen years of age, the placement must be a supervised or semi-supervised independent living setting). A definition of what is considered Semi-Supervised would be helpful. The language here is very vague and could be interpreted to mean different things to different counties or even TA's.</p> <p>For Example, we have in the past when we've had an appropriate and responsible 17 year old youth who is working or going to college, we have assisted them with securing an apartment in the 3 months before they leave care and allowing them to live there in an independent living setting with Caseworker weekly check ins. Depending upon the way the "Supervised/Semi-Supervised" portion of this rule is interpreted this could lead to those scenarios not being allowed which would be a huge disservice to our IL youth who are preparing for emancipation.</p>	<p>left this open for interpretation as well so that each county may determine for each case a youth may need to live independently to provide supervision as required to meet or assist the youth.</p>
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**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The rules went through the clearance process from June 14, 2018 to June 28, 2018. The comment submitted did not affect any changes within the rule because the language of the amended rule follows federal guidelines.

**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?**

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5101:2-42-06 puts in place requirements for agencies to take temporary custody and 5101:2-42-07 provides guidance on extending temporary custody and rule 5101:2-42-19.1 puts in place requirements for placing a youth in its custody in an independent living arrangement. Measurable outcomes and scientific data are 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 5101:2-42-06, 5101:2-42-07, and 5101:2-42-19.1, as the rules are driven by statute and federal guidelines.

**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 the well-being of every child in temporary custody.

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

The JCARR prong for invalidation: "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.**

Once the rules are final filed, a transmittal letter will be generated explaining the changes to the rules and the rationale for the changes. The transmittal letters can be viewed at <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/> <http://emanuals.jfs.ohio.gov/FamChild/FCASM/Forms/>.

The rules do not prescribe anything that would not be applied consistently. ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and they offer technical assistance 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;**

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 and PNAs.

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

5101:2-42-06 – The requirements of JFS 01645 must be met in order for PCPAs to obtain and/or maintain certification by the State.

5101:2-42-07 – The requirements of JFS 01645 must be met in order for PCPAs to obtain and/or maintain certification by the State.

5101:2-42-19.1 – The requirements in paragraph B of the rule must be met to ensure a youth's independent living arrangement meets the requirements by the State. Failure to do so will result in a loss of certification for non-compliance.

**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 adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance.

**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.



### **Regulatory Flexibility**

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

For rules 5101:2-42-06, 5101:2-42-07 and 5101:2-42-19.1, 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?**

If an agency does not comply the result will be a 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 application process including assistance with the proper information required by this rule if the agency chooses to use a certification to meet Ohio requirements.