



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job & Family Services

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Qualified Residential Treatment Programs

Rule Number(s): 5101:2-9-42

Date of Submission for CSI Review: 6/22/20

Public Comment Period End Date: 6/29/20

Rule Type/Number of Rules:

☒ New/_1_ rules

☐ No Change/_ rules (FYR? _)

☐ Amended/_ rules (FYR? _)

☐ Rescinded/_ rules (FYR? _)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

☒ X_ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.

☒ X_ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.

☒ X_ c. Requires specific expenditures or the report of information as a condition of compliance.

☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

This new rule OAC 5101:2-9-42 is being introduced to provide the guidance on ODJFS certified residential facilities, known as qualified residential treatment programs. What is required for residential facilities to have accredited trauma-informed treatment and trauma-informed training for staff, facilities are to have clinical and medical staff available 24 hours a day, The facility is to have an aftercare team of family/relatives and professionals that have treated the child and there is to be a discharge plan and aftercare services for at least 6 months with monthly visits.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

5103.03 and 5103.02, 5103.03

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- 4. 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.

Yes, P.L. 115-123 Family First Prevention Services Act. This act reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The aim is to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment and in-home parenting skill training to families and children. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce placement of children in group care.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

No provisions were included that exceed the federal requirements.

- 6. 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)?**

This is a new federal requirement and guidance is required to direct the provisions of Qualified Residential Treatment Programs (QRTF) and aftercare services in order to utilize federal funds to assist with placement costs.

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

New rule 5101:2-9-42 will be monitored through the certification process.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. 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 draft rules were shared with representatives from a variety of state departments, county agency's, court and private service providers like Abraxas, Guidestone, National Youth Advocate Program,

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Medicaid, ODD, OhioMHAS and sent out for public comment. The department includes a process of internal and external clearance comment process and this was opened from April 28 – May 14, 2020. Internal and external comments received covered topics of compliance, licensure, timeframes and aftercare services and the policy staff prepared responses to each question and submitted responses to each individual concern.

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

A committee was formed to review the legislation and formulate functionality in the rule and practice. The committee consisted of representatives from Abraxas Ohio, Ohio Guidestone, St. Joseph Orphanage, PCSA representatives from 3 counties, 1 court, ODMHAS, and Medicaid.

The rule went through the clearance process from April 28 – May 14, 2020. The comments submitted did not affect significant changes within the rule because the language of the new rule follows federal guidelines.

11. 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?

5101:2-9-42 puts in place requirements for Qualified Residential Treatment Programs, measurable outcomes and scientific data are not applicable.

12. 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 rule 5101:2-9-42, as the rule is driven by statute and federal guidelines.

13. 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 within a residential placement.

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

JFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

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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 rule is final filed, a transmittal letter will be generated explaining the new rule and the rationale for the addition of this rule. The transmittal letters can be viewed at: <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>

The rule does 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

15. 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; and

A residential facility that is certified by the Ohio Department of Job and Family Services (ODJFS) and accepts children for placement is considered a Qualified Residential Treatment Program (QRTP) and is to comply with the requirements in this rule.

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

The Adverse Impact includes time and cost involved in providing the services, including nursing staff, clinical staff and treatment, discharge planning and cost of accreditation required in this rule.

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 QRTP would have time and costs associated with providing the services and treatment outlined in this rule. The time spend and associated costs to comply with the requirements of this rule would vary depending on the program's business model.

16. 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 the rule is necessary.

Regulatory Flexibility

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

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There is no alternative means of compliance. Family First Services Prevention Act is a federal law regulating the new provision required of each residential facility to become and practice under the guidelines of a Qualified Residential Treatment Program.

18. 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.

19. 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.