



# Common Sense Initiative

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## Business Impact Analysis

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

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

Continuous Certification (FYR)

Rule Number(s): 5101:2-5-02, 5101:2-5-03, 5101:2-5-04, 5101:2-5-04.1, 5101:2-5-06, 5101:2-5-07, 5101:2-5-13.1, 5101:2-5-20, 5101:2-5-24, 5101:2-5-25, 5101:2-5-26, 5101:2-5-28, 5101:2-5-31, 5101:2-5-33, 5101:2-5-38, 5101:2-9-08 and 5101:2-9-37

Date of Submission for CSI Review: 08/27/24

Public Comment Period End Date: 09/03/24

Rule Type/Number of Rules:

New/ 1 rules

No Change/      rules (FYR?     )

Amended/ 15 rules (FYR? Y)

Rescinded/ 2 rules (FYR?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):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- 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.*

OAC 5101:2-5-02 entitled Application for an agency to perform specific functions; amended applications provides guidance to agencies on the process for applying for agency certification. Paragraph (A) was amended to require an agency application to be processed in the new Ohio Certification for Agencies and Families (OCAF) system. New paragraphs (F) and (G) were added to include system guidelines for inactivity. Minor changes were made throughout the rule to refer to the new OCAF system.

OAC 5101:2-5-03 entitled Certification of an agency to perform specific functions provides guidance to agencies on the various types of certifications for foster care agencies. Paragraph (E) was amended to establish a new initial certification period of four years. Paragraph (J) was added to address agency audits as required by statute. There is a one-time permission for an extension of the timeframe for submission of the agency audit. New paragraphs (K)(J)(L) and (M) were moved here from rule 5101:2-5-04 as rule 5101:2-5-04 is being rescinded and blended into 5101:2-5-03 in an effort to reduce the number of rules.

OAC 5101:2-5-04 entitled Recertification of and agency to perform specific functions has been rescinded. Some of the language from this rule has been added to rule 5101:2-5-03 in an effort to keep all information regarding continuous certification in one area.

OAC 5101:2-5-04.1 entitled Acceptance of accreditation in lieu of certification requirements provides guidance to agencies on requirements for submission of a request to accept an accreditation requirement in place of a certification requirement. Paragraph (B) was amended to removed recertification and replace it with continuous certification language. Paragraph (D) was amended to require the agency to re-submit their approval if anything regarding the approval has changed.

OAC 5101:2-5-06 entitled Corrective action plans provides guidance to agencies on the procedures for submitting a corrective action plan when the agency has been found to be out of rule compliance. The reference to the Ohio certification and licensing management system (OCALM) was replaced with the new Certification for Agencies and Families (OCAF) system.

OAC 5101:2-5-07 entitled Denial or revocation of an agency's certificate or certification to perform specific functions; temporary certificate was retitled Denial or revocation of an agency's certificate or certification to perform specific functions; temporary certificate; administrative closures. This rule provides agencies with guidance on the process of denying, revoking, or closing of an agency's certificate. A new paragraph (H) was added which provides guidance on administrative closures of an agency's certificate.

OAC 5101:2-5-13.1 entitled Disaster preparedness plan requirements provides guidance to agencies on disaster plan requirements for foster care agencies. Paragraph (B)(1) was amended to remove the term "recertification." Other minor changes were made to references for Ohio SACWIS.

OAC 5101:2-5-20 entitled Initial application and completion of the foster care homestudy provides guidance to agencies on the requirements for the completion of a foster care home study. Paragraph (G) was amended to add the ability to apply to be a foster caregiver through the new OCAF system. New paragraphs (G)(4) and (G)(5) were added to address system related issues. Other minor changes were made throughout the rule referencing the application process rather than a form.

OAC 5101:2-5-24 entitled Foster home recertifications was rescinded and entitled Continuous certification and Periodic Reviews for foster caregivers. This new rule provides guidance to agencies on the process for continuous certification for foster caregivers. Appendix A specifies what items are to be periodically reviewed once a caregiver has been approved for continuous certification.

OAC 5101:2-5-25 entitled Changing the certification of a foster caregiver from one type of foster home to another provides agencies guidance on the process for upgrading or lowering a foster caregiver's certification status. Paragraph (D) was amended to reference the new location of caregiver qualifications for a specialized certification. Paragraphs (E)(2), (E)(4) and (E)(5) were removed as a result of being obsolete due to continuous certification.

OAC 5101:2-5-26 entitled Procedures for revocation, denial of initial certification or denial of a foster home certificate was retitled Procedures for revocation, denial of initial certification or denial of continuous certification of a foster home certificate. This rule provides guidance to agencies on how to deny, revoke or administratively close a foster home certificate. A new paragraph (I) was added to provide information on administrative closures for foster caregivers. The term "recertification" was removed throughout the rule and replaced with continuous certification.

OAC 5101:2-5-28 entitled Agency cause for denial of initial certification, denial of recertification or revocation of a foster home certificate was retitled Agency cause for denial of initial certification, denial of continuous certification or revocation of a foster home certificate. This rule provides guidance to agencies on the process for revoking or denying a foster care certification. Paragraph (C)(1) was amended to address denial and revocation with the change to continuous certification. The rule was amended throughout to change verbiage to continuous certification.

OAC 5101:2-5-31 entitled Sharing or transferring a foster home provides guidance to agencies on the process for sharing or transferring a foster home. Minor changes throughout the rule to change verbiage to continuous certification.

OAC 5101:2-5-33 entitled Foster caregiver preplacement and continuing training provides guidance to agencies on the required training for foster caregivers. Paragraph (D) was amended to allow the mentor of a foster caregiver to receive credit for up to fifty percent of their outside classroom training. The mentee may also receive credit. Paragraphs (F)(2) and (3) were amended to require a pre-test and post-test for outside classroom training.

OAC 5101:2-5-38 entitled Payment of foster caregiver training stipends; reimbursement of training allowances to recommending agencies provides guidance to agencies on the reimbursement for foster care training stipends and training allowances. Minor changes throughout the rule to change verbiage to accommodate continuous certification.

OAC 5101:2-9-08 entitled Fire safety provides guidance to agencies on fire safety for foster care residential facilities. Paragraph (B) was amended to remove the word "recertified."

OAC 5101:2-9-37 entitled Information to be provided by residential facilities provides guidance to agencies on required information to be shared with other agencies. Paragraph (B) was amended to remove recertification and add wording to comply with continuous certification.

**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.**

| <u>Rule Number</u> | <u>Statutory Authority</u>                                                                           |
|--------------------|------------------------------------------------------------------------------------------------------|
| Rule 5101:2-5-02   | ORC 5103.03, 5103.54, 5153.166                                                                       |
| Rule 5101:2-5-03   | ORC 5103.03, 5103.6017, 5103.0318, 5103.54, 5153.166                                                 |
| Rule 5101:2-5-04   | ORC 5103.03, 5103.54, 5153.166                                                                       |
| Rule 5101:2-5-04.1 | ORC 5103.03                                                                                          |
| Rule 5101:2-5-06   | ORC 5103.02, 5103.03                                                                                 |
| Rule 5101:2-5-07   | ORC 5103.02, 5103.03                                                                                 |
| Rule 5101:2-5-13.1 | ORC 5103.02, 5103.03, 5103.07, 5153.166                                                              |
| Rule 5101:2-5-20   | ORC 2151.86, 5103.02, 5103.03, 5103.0327                                                             |
| Rule 5101:2-5-24   | ORC 2151.86, 5103.02, 5103.03, 5103.18                                                               |
| Rule 5101:2-5-25   | ORC 5103.02, 5103.03, 5103.0316                                                                      |
| Rule 5101:2-5-26   | ORC 5103.02, 5103.03                                                                                 |
| Rule 5101:2-5-28   | ORC 5103.02, 5103.03, 5103.0319, 5103.0321, 5103.0326                                                |
| Rule 5101:2-5-31   | ORC 3107.033, 5103.02, 5103.03                                                                       |
| Rule 5101:2-5-33   | ORC 5101.14, 5101.14, 5103.03, 5103.031, 5103.0316, 5103.032, 5103.033, 5103.034, 5103.038, 5103.036 |
| Rule 5101:2-5-38   | ORC 5103.012, 5103.0313, 5103.0314, 5103.0316                                                        |
| Rule 5101:2-9-08   | ORC 5103.02, 5103.03                                                                                 |
| Rule 5101:2-9-37   | ORC 5103.03, 5103.05, 5103.051                                                                       |

**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. Background checks and other safety regulations for foster caregivers are required by SEC. 471. [42 U.S.C. 671] (a) (20) of the Social Security Act. The agency must also be certified by the state in order to receive federal funding.

**5. If the regulation implements a federal requirement, but 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.

**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)?**

All rules are a result of the general rule writing authority regarding the safety of children in care as directed in section 5103.03 paragraph (A) of the Revised Code.

For rule 5101:2-5-02, the purpose of the regulation is to provide guidance to agencies on the requirements to apply for certification as a foster care agency.

For rule 5101:2-5-03, the purpose of the regulation is to provide guidance on the requirements of what foster care agency functions can be certified.

For rule 5101:2-5-04, the purpose of the regulation is to provide guidance on the requirements of the continuous certification of an agency.

For rule 5101:2-5-04.1, the purpose of the regulation is to provide guidance on the requirements for submission of a request to accept an accreditation requirement in place of a certification requirement.

For rule 5101:2-5-06, the purpose of the regulation is to provide guidance on the procedures for submitting a corrective action plan when the agency has been found to be out of rule compliance.

For rule 5101:2-5-07, the purpose of the regulation is to provide guidance on the process of denying, revoking, or closing of an agency's certificate.

For rule 5101:2-5-13.1, the purpose of the regulation is to provide guidance on disaster plan requirements for foster care agencies.

For rule 5101:2-5-20, the purpose of the regulation is to provide guidance on the requirements for the completion of a foster care home study.

For rule 5101:2-5-24, the purpose of the regulation is to provide guidance on the requirements for the process of continuous certification for foster caregivers.

For rule 5101:2-5-25, the purpose of the regulation is to provide guidance on the requirements for upgrading or lowering a foster caregiver's certification status.

For rule 5101:2-5-26, the purpose of the regulation is to provide guidance on how to deny, revoke or administratively close a foster home certificate.

For rule 5101:2-5-28, the purpose of the regulation is to provide guidance on the process for revoking or denying a foster care certification.

For rule 5101:2-5-31, the purpose of the regulation is to provide guidance on the process for sharing or transferring a foster home.

For rule 5101:2-5-33, the purpose of the regulation is to provide guidance on the required pre-placement and continuing training for foster caregivers.

For rule 5101:2-5-38, the purpose of the regulation is to provide guidance on the reimbursement, for foster care training stipends and training allowances.

For rule 5101:2-9-08, the purpose of the regulation is to provide guidance on fire safety for foster care residential facilities.

For rule 5101:2-9-37, the purpose of the regulation is to provide guidance on required information to be shared with other agencies.

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

Rules 5101:2-5-02, 5101:2-5-03, 5101:2-5-04, 5101:2-5-04.1, 5101:2-5-06, 5101:2-5-07, 5101:2-5-13.1, 5101:2-5-20, 5101:2-5-24, 5101:2-5-25, 5101:2-5-26, 5101:2-5-28, 5101:2-5-31, 5101:2-5-33, 5101:2-5-38, 5101:2-9-08 and 5101:2-9-37 will be measured against the criteria specific to the rule content. Licensing specialists will monitor compliance ensuring the health and safety of children in care and preventing those who are ineligible/prohibited to provide care.

**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.*

DCY presented at the Public Children Services Association of Ohio (PCSAO) rules committee meeting and the Ohio Children's Alliance (OCA) committee monthly meeting regarding the proposed rule changes. The rules went through the public clearance process in April, 2024.

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

There were comments received by individual private agencies as well as the Ohio Children's Alliance (OCA). Several of the comments were in opposition to reducing foster caregiver training from every two years to one year. As a result, DCY decided to not make a change and leave the training at every two years. Several other comments were received regarding generalized flow and work when moving to a continuous certification period. DCY provided clarity in response to these areas.

**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?**

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

There were no other alternatives considered for the rules as requirements are driven by statute.

**13. 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. These rules were reviewed by the legal staff at DCY to ensure they do not duplicate any existing Ohio regulations.

**14. 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.**

DCY 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(s). Specifically, please do the following:**

- a. **Identify the scope of the impacted business community, and**
- b. **Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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:  
The rules included in this BIA contain requirements for foster care and adoption agencies that include eighty-eight public and over one hundred private agencies. Requirements must be met in order to obtain and/or maintain certification or approval.
- b. Quantify and identify the nature of adverse impact:  
The rules require the application and continuous certification process for a private agency and the application and continuous certification process for a foster caregiver. The adverse impact for each of the requirements would vary based upon the size and staffing of each agency and would include the actual cost of completing each requirement for the processing of an agency application or for a foster caregiver application along with the maintenance of both certifications.

The current average wage for use in the examples below for a social worker is \$22 per hour, according to Zip Recruiter. However, the specific anticipated cost of compliance for an impacted agency to comply with these rules would vary, depending on administrative and staffing variables.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

The proposed changes do reduce a regulatory burden by reducing the time and effort involved in the recertification process for both foster caregivers and for agencies. Continuous certification streamlines the agency application process by reducing paperwork and allowing more flexibility of time frames to allow agencies and resource caregivers to serve families and children more efficiently in Ohio.

- 17. 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**

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

For rules 5101:2-5-02, 5101:2-5-03, 5101:2-5-04, 5101:2-5-04.1, 5101:2-5-06, 5101:2-5-07, 5101:2-5-13.1, 5101:2-5-20, 5101:2-5-24, 5101:2-5-25, 5101:2-5-26, 5101:2-5-28, 5101:2-5-31, 5101:2-5-33, 5101:2-5-38, 5101:2-9-08 and 5101:2-9-37, there are no apparent alternative means of compliance or possible exemptions given the nature of the rules.

- 19. 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 rules 5101:2-5-02, 5101:2-5-03, 5101:2-5-04, 5101:2-5-04.1, 5101:2-5-06, 5101:2-5-07, 5101:2-5-13.1, 5101:2-5-20, 5101:2-5-24, 5101:2-5-25, 5101:2-5-26, 5101:2-5-28, 5101:2-5-31, 5101:2-5-33, 5101:2-5-38, 5101:2-9-08 and 5101:2-9-37, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation.

- 20. What resources are available to assist small businesses with compliance of the regulation?**

DCY has regional office with licensing specialists assigned to each agency to assist in the obtaining and maintaining compliance. Specialists are available to provide technical

assistance to meet the requirements of all regulations. DCY helpdesk is also available for directing questions via email at [HELP-DESK-OCF@childrenandyouth.ohio.gov](mailto:HELP-DESK-OCF@childrenandyouth.ohio.gov).