



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Mike Lynch, Ohio Department of Job and Family Services

FROM: Michael Bender, Business Advocate

DATE: September 10, 2024

RE: **CSI Review – Continuous Certification (OAC 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)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule, fifteen amended rules, and two rescinded rules proposed by the Ohio Department of Job and Family Services (ODJFS) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on August 27, 2024, and the public comment period was held open through September 3, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 27, 2024.

Ohio Administrative Code (OAC) 5101:2-5-02 provides guidance to private child placing agencies (PCPAs), private noncustodial agencies (PNAs), and public children services agencies (PCSAs) for applying for certification to perform certain functions. The rule is amended to update language, incorporate the Ohio Certification for Agencies and Families (OCAF) system, include system guidelines for inactivity, transfer responsibilities to the Ohio Department of Children and Youth

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(DCY), require agencies to report a change in the owner position, and remove provisions pertaining to placement of certification and performing functions requiring certification. OAC 5101:2-5-03 outlines the functions for which PCPAs, PNAs, and PCSAs must obtain certification to perform. The rule is amended to update language, transfer responsibilities to DCY, increase the initial certification period from two years to four years, describe how an agency can obtain continuous certification status, address agency audits required by the State, relocate provisions from OAC 5101:2-5-02 pertaining to placement of certification and performing functions requiring certification, and relocate a provision from OAC 5101:2-5-04 pertaining to providing access to relevant records. OAC 5101:2-5-04 is rescinded, as some of its contents are incorporated into OAC 5101:2-5-03 to keep all information regarding continuous certification in one area. OAC 5101:2-5-04.1 provides for the acceptance of accreditation in lieu of meeting certification requirements. The rule is amended to update language, transfer responsibilities to DCY, incorporate continuous certification in place of recertification, and require an agency to resubmit their approval if anything regarding the approval has changed. OAC 5101:2-5-06 requires agencies to submit a corrective action plan when they are found to be out of compliance. The rule is amended to update language, incorporate the OCAF system, and transfer responsibilities to DCY. OAC 5101:2-5-07 provides for the denial or revocation of an agency's certification to perform certain functions. The rule is amended to update language and the rule title, transfer responsibilities to DCY, and authorize the administrative closure of an agency application or certificate.

OAC 5101:2-5-13.1 requires agencies to create a disaster preparedness plan and include it in its agency policy. The rule is amended to update language, transfer responsibilities to DCY, incorporate the OCAF system, and remove a reference to recertification. OAC 5101:2-5-20 provides for the completion of a foster care home study. The rule is amended to update language, grammar, and citations, transfer responsibilities to DCY, incorporate the OCAF system, require agencies to conduct background checks pursuant to OAC 5101:2-5-09.1, prohibit the JFS 01348 "Safety Audit" form from being completed more than two years after initial certification, and allow local health departments to recommend other entities to test and approve well water to be used for drinking and cooking. A copy of the Safety Audit form is provided. OAC 5101:2-5-24 is rescinded and replaced by a new rule with the same number. The new rule establishes the process for foster caregivers to apply for continuous certification. Appendix A contains a list of necessary documentation for continuous certification as well as the requirements for periodic review. OAC 5101:2-5-25 describes the process for upgrading or lowering a foster caregiver's certification status. The rule is amended to update language and a citation, incorporate the OCAF system, and remove provisions that are obsolete due to continuous certification. OAC 5101:2-5-26 provides for the revocation or denial of a foster home certificate. The rule is amended to update language and the rule title, transfer responsibilities to DCY, incorporate continuous certification in place of recertification, incorporate the OCAF system, and authorize the administrative closure of a foster caregiver application or certificate. OAC 5101:2-5-28 describes what is considered valid cause for denial or revocation of a

foster home certificate. The rule is amended to update language, citations, typography, and the rule title, transfer responsibilities to DCY, and incorporate continuous certification in place of recertification. OAC 5101:2-5-31 establishes the process for sharing or transferring a foster home. The rule is amended to update language, transfer responsibilities to DCY, incorporate the OCAF system, incorporate continuous certification in place of recertification, clarify that a foster caregiver may not transfer more than once in a two-year period, and clarify that agencies that receive a transfer request should interview all members of the foster caregiver's household based on age and development.

OAC 5101:2-5-33 contains the preplacement and continuing training requirements for foster caregivers. The rule is amended to update language, transfer responsibilities to DCY, incorporate continuous certification in place of recertification, incorporate the OCAF system, and clarify that continuous training, resource readiness topics, written assessments, and continuous training plans need to be completed in two-year intervals. Other amendments allow the mentor of a foster caregiver to receive credit for up to fifty percent of the required outside classroom training, allow mentees to also receive credit for the aforementioned training, require both a pre-test and post-test for outside classroom training, require alternative learning activities to be pre-approved by the agency and allow them to be used for training credit, allow pre-approved journals and articles to be used to meet twenty percent of continuing training, and reduce the amount of time that foster caregivers need to serve in the United States Armed Forces, Ohio National Guard, Ohio Naval Militia, or the Ohio Military Reserve from thirty days to fifteen days to be given an additional amount of time to complete the required continuing training. Appendix A to the rule contains the topics for foster caregiver training and is amended to transfer responsibilities to DCY. OAC 5101:2-5-38 provides for the payment of foster care training stipends and the reimbursement of training allowances to recommending agencies. The rule is amended to update language, transfer responsibilities to DCY, and incorporate the OCAF system. OAC 5101:2-9-08 sets forth fire safety requirements for agencies. The rule is amended to update language, remove an effective date, and remove a reference to recertification. OAC 5101:2-5-37 outlines the information that agencies must share with other entities. The rule is amended to update language and incorporate continuous certification in place of recertification.

During early stakeholder outreach, DCY took the lead in overseeing the proposed rule changes in advance of the upcoming transfer of the rule maintenance responsibilities from ODJFS in January 2025. DCY presented at a Public Children Services Association of Ohio (PCSAO) rules committee meeting and an Ohio Children's Alliance (OCA) committee monthly meeting. Additionally, the rules went through a public clearance process in April 2024. Comments were submitted by individuals affiliated with the OCA, Adriel School, Inc. (Adriel), and Beech Brook. Several comments opposed the proposed change reducing foster caregiver training from every two years to one year. DCY consequently decided to leave the training interval at every two years. Other comments asked for clarification regarding generalized flow and work in light of the switch to a continuous certification

period, to which DCY provided answers. Additionally, stakeholders at the PCSAO and OCA meetings provided feedback regarding the continuous certification process in general. This input was reflected in the proposed rule changes. During the CSI public comment period, ODJFS received comments from The OCA, Adriel, Specialized Alternatives for Families and Youth (SAFY), The Buckeye Ranch (TBR), and Caring for Kids, Inc. (CFK).

The OCA, TBR, SAFY, and Adriel were concerned with the proposed changes to the annual reimbursement limits despite foster caregiver training being required every two years, asserting that it would be burdensome to ensure that annual training aligns with these limits and that it would also result in a negative financial impact on recommending agencies and foster caregivers. DCY responded that this was an oversight and revised the rules to reflect a two-year reimbursement period to match training requirements. The OCA and Adriel recommended offering more flexibility for foster homes that do not complete the continuous certification application before their initial certificate expires. DCY replied that caregivers may apply through the OCAF system, which offers a more streamlined process, in lieu of using the form. DCY added that if a caregiver's certificate expires, there is no other way to expedite the process as there would then be no valid certification. CFK noted that the preplacement and continuing training requirements for pre-adoptive infant foster home still referenced a "certification period" and asked whether the training requirements for a foster home licensed at the treatment level outlined in OAC 5101:2-7-16 could be reviewed with required preplacement training at twenty-four hours. DCY said that the "certification period" reference was an oversight and corrected it. With regards to training requirements for homes licensed at the treatment level, DCY explained that it had a group reviewing such topics to determine what areas to improve and assured that it would align these rules in the future. Adriel pointed out that certain forms referenced in the rules needed to be updated. DCY agreed and stated that it would revise the forms to include the correct information. Lastly, DCY provided clarification to other questions and statements from the commenters and made several technical and grammatical corrections to the rules.

The business community impacted by the rules includes foster caregivers as well as foster care and adoption agencies. According to ODJFS, there are eighty-eight public and more than one hundred private agencies in Ohio. The adverse impacts created by the rules include the application and continuous certification process, with foster caregivers and agencies having to meet the requirements that come with these processes to obtain and/or maintain certification or approval. The actual cost of the requirements depends on the size and staffing of each agency. Citing ZipRecruiter, ODJFS notes that the current average wage for a social worker is \$22 per hour. Foster home or agency certificates may be denied or revoked due to improper actions or failure to complete requirements. ODJFS points out that enacting the continuous certification process will reduce the regulatory burden on businesses by reducing paperwork and allowing more flexibility with respect to time frames for agencies and resource caregivers to complete requirements. ODJFS states that the adverse impacts to business are justified to implement the statutory requirement to ensure the safety of children in substitute care.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODJFS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.