

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: FYR of OAC Chapter 5101:2-42, Substitute Care, Part 3

Rule Number(s): 5101:2-42-67, 5101:2-42-87, 5101:2-42-88, 5101:2-42-89,
5101:2-42-92

Date: 10/30/2013

Rule Type:

☐ New

☒ 5-Year Review

☒ Amended

☐ Rescinded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.

5101:2-42-67 Preparation of lifebook provides the requirements for Public Children Services Agencies (PCSAs) and Private Child Placing Agencies (PCPAs) to begin the preparation of a lifebook when a child remains in substitute care.

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5101:2-42-87 Termination of substitute care and custody of a child provides the requirements and for PCSAs and PCPAs in terminating substitute care and custody.

5101:2-42-88 Requirements for substitute care placement disruptions provides that PCSAs and PCPAs shall document when there is a disruption of a child in substitute care.

5101:2-42-89 Public children services agency and private child placing agency procedures when a child is receiving services or is in agency custody dies provides the requirements of PCSAs and PCPAs to have written policies and procedures when there is a child fatality.

** Although these rules are being reviewed according to their statutory five-year review requirement, all changes made at this time are non-substantive to update formatting, to make minor grammatical updates, and for clarity.

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

Rule number	Statutory Authority
5101:2-42-67	5153.16, 5103.03
5101:2-42-87	5103.03, 5153.16
5101:2-42-88	5101:03, 5153.16
5101:2-42-89	5103.03, 5153.166
5101:2-42-92	5103.03, 5153.16

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 5101:2-42-67, 5101:2-42-87, 5101:2-42-88, 5101:2-42-89, 5101:2-42-92 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 of the rules is specific to child welfare and follows 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 5101:2-42-67 the purpose is to require PCSAs and PCPAs to begin a “lifebook” for a child in substitute care containing information to be kept on file, shared with the child, and to accompany a child during placement. The lifebook provides information to the child on who they are, where they come from, and contains pertinent medical information.

For rule 5101:2-42-87 the purpose is to create a process for properly assessing the need for continuing or terminating custody of a child.

For rule 5101:2-42-88 the purpose is to create a process of documenting a disruption in the substitute care placement of a child and to require that information to be kept in the case record and caregiver’s record.

For rule 5101:2-42-89 the purpose is to create procedures to be taken by PCSAs and PCPSs when a child receiving services or in agency custody dies.

For rule 5101:2-42-92 the purpose is to provide guidelines to PCSAs and PCPAs regarding the schedule of visitation for a child in temporary custody.

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

Outcomes will be measured against the criteria specific to the rule content.

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 Ohio Association of Child Caring Agencies (OACCA), the Ohio Family Care Association (OFCA), representatives from county agencies and the Ohio Council of Behavioral Health and Family Services Providers. These interest groups were part of the Midwest Child Welfare Implementation Center (MCWIC) meetings that OFC conducted during 2012. The meetings were held in person and also allowed for online input toward rule suggestions and changes. The group discussed and came to conclusions on each rule. The rules also went through the clearance process on February 15, 2013. There were a few comments made and responses were provided to the stakeholders. No additional questions were received.

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 at that time language was developed that was agreeable to all. Through the clearance comment process, ten revisions were made by internal review, all but one of the changes were made within this packet.

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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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 5101:2-42-67, 5101:2-42-87, 5101:2-42-88, 5101:2-42-89, 5101:2-42-92 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.

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 substitute care agencies and no other rules address these specific issues. These rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure they do not duplicate 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 the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

14. Adverse Impact to Business

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**

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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 rules of the Administrative Code in Chapter 5101:2-42 contain requirements for substitute care agencies that include public and private agencies. For all rules, requirements must be met to obtain and/or maintain certification.

The adverse impact involves:

5101:2-42-67 – The timeframe for preparing a “lifebook” and completing updates every six months.

5101:2-42-87 – The timeframe for completing forms JFS 01404 and JFS 01645.

5101:2-42-88 – The timeframe for documenting into the case record a disruption of a child’s substitute care placement.

5101:2-42-89 – The timeframe for completing form JFS 01987.

5101:2-42-92 – The timeframe for reviewing for JF 1413 to assist in decisions to guide the frequency, duration and location of visits or to determine the level of supervision needed during visits.

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, any adverse impact these rules may impose is necessary.

**None of the non-substantive updates made at this time will impose adverse impact on PCPAs.

Regulatory Flexibility

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

For rules contained in this BIA, there are 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?

For rules 5101:2-42-67, 5101:2-42-87, 5101:2-42-88, 5101:2-42-89, 5101:2-42-92 there are no fines or civil penalties for noncompliance 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

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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.

*** DRAFT - NOT YET FILED ***

5101:2-42-67

Preparation of lifebook.

- (A) When a child remains in substitute care for longer than ~~twelve~~six months, the public children services agency (PCSA) or private child placing agency (PCPA) shall begin to prepare a lifebook ~~no later than thirty days after the annual court review.~~ The lifebook shall be updated every six months so long as the child remains in substitute care and ~~may include information such as~~shall include, but not limited to, the following information:
- (1) Information regarding the child's birth.
 - (2) Information regarding the birth parent and birth family.
 - (3) The child's developmental milestones.
 - (4) Information on placements.
 - (5) The child's education history.
 - (6) Any sports and hobbies in which the child is involved.
 - (7) The child's medical history.
 - (8) Photos.
- (B) The PCSA or PCPA may prepare a lifebook for a child sooner than ~~twelve~~six months after the child's placement.
- (C) The PCSA or PCPA shall ensure that the lifebook is shared with the child during the placement, as appropriate to the child's age and understanding, and the lifebook should accompany the child when a placement move occurs and when the child is leaving substitute care ~~should accompany the child when he or she leaves substitute care.~~
- (D) The PCSA or PCPA shall not place identifying information, as defined in rule 5101:2-1-01 of the Administrative Code, in the lifebook. The child may add identifying information to the lifebook.
- (E) The PCSA or PCPA shall document in the child's case record the date it began to

prepare the lifebook, ~~the date the lifebook was completed,~~ and the date of each update to the lifebook as required in paragraph (A) of this rule.

- (F) If a child in the permanent custody of a PCSA or PCPA is placed for adoption, ~~a copy~~ of the lifebook shall be given to the child and a copy shall be maintained in the child's record.

Effective:

R.C. 119.032 review dates:

Certification

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Prior Effective Dates:	9/28/87, 1/1/89, 2/13/98 (Emer.), 5/14/98, 8/18/03, 12/19/2008.

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5101:2-42-87

Termination of substitute care and custody of a child.

(A) Each public children services agency (PCSA) shall determine the necessity for continuing or terminating custody of ~~each~~ a child, whether the child's custody is by agreement or court order or whether the child's custody status is temporary or permanent. The agency shall assess the need for continued custody at least every three months from date of initial placement and at each semiannual administrative review. Such assessment shall be documented in the case record. In making a determination that there is no need for continued custody, the agency shall~~The agency shall determine that there is no need for continued custody when the child, if returned to his or her home, would not be vulnerable and in need of protection from child abuse or neglect. In making such a determination, the agency shall:~~

~~(1) Update the JFS 01500 "Family Risk Assessment Model: Part I; Family Risk Assessment Matrix" (rev. 1/2001) pursuant to rule 5101:2-34-33 of the Administrative Code or the JFS 01404 "Comprehensive Assessment Planning Model - I.S. Reunification Assessment" (rev. 2/2006) pursuant to rule 5101:2-37-04 of the Administrative Code.~~

(1) Complete the JFS 01404 "Comprehensive Assessment Planning Model - I.S. Reunification Assessment" (rev.2/2006) pursuant to rule 5101:2-37-04 of the Administrative Code.

(2) Use ~~either the JFS 01500 or~~ the JFS 01404 as a guide to determine whether the child's parent, guardian, or custodian is available, able and willing to demonstrate protective capacities for the child.

(3) Consider whether supportive services can provide adequate protection for the child if he or she were returned to his or her own home under a court order of protective supervision, or the agency's involvement is no longer deemed necessary and termination is sought.

(B) The PCSA's or private child placing agency's (PCPA) custody shall automatically terminate when one of the following occur:

(1) A court of jurisdiction issues an order terminating agency custody.

(2) A JFS 01645 "Agreement for Temporary Custody of Child" (rev. 4/2006) expires or is terminated early.

(3) A probate court issues a final decree of adoption or an interlocutory order of adoption becomes final.

- (C) While in substitute care, a child may be on leave from his or her current placement for a trial visit with his or her parent, guardian or custodian up to sixty consecutive days.
- (D) When the PCSA or PCPA plans to recommend that the court terminate custody, the agency shall give the substitute caregiver at least five days advance notice. Advance notice shall not be required if a court of jurisdiction terminates agency custody on its own accord, or the substitute caregiver agrees to a lesser advance notice. Documentation evidencing notice (written or oral) to a caregiver, including the caregiver's agreement, no less than five days advance notice of removal from substitute care placement, shall be maintained in the caregiver's record.
- (E) When termination of substitute care occurs, those services offered to and provided to the child and his or her parent, guardian, or custodian in preparation for the child's reunification, adoption or emancipation shall be noted in the child's case record. ~~Notes or other documentation evidencing notice (written or oral) to a caregiver, including the caregiver's agreement to less than five days advance notice of removal from substitute care placement, shall be maintained in the caregiver's record.~~
- (F) The agency shall provide the following services to prepare the child and his or her parent, guardian, or custodian when the child is to be returned home, which shall include, but not be limited to:
- (1) Arranging visits or other contacts as needed between the parent, guardian, or custodian and child to discuss what has transpired between the time of initial placement and the present.
 - (2) Increasing the length and number of home visits to help the child become reacquainted with his or her family, when applicable.
 - (3) Providing emotional support for feelings the child may have about leaving the substitute caregiver.
 - ~~(4) Completing the JFS 01404 and documenting in the case record requirements, pursuant to rule 5101:2-37-04 of the Administrative Code.~~
- (G) ~~Providing~~ The custodial agency shall provide case planning services to emancipating youth pursuant to rules 5101:2-42-19 and ~~either 5101:2-39-08.1 or 5101:2-38-05 of the Administrative Code~~ and pursuant to rule 5101:2-38-07 of the Administrative Code, if applicable for the PCPA.

~~(H) All services offered and provided in preparation for custody termination shall be documented in accordance with rule 5101:2-39-08.1 or 5101:2-38-05 of the Administrative Code, if applicable.~~

~~(H)~~ (H) ~~Informing~~ The agency shall inform the county department of job and family services (CDJFS) healthchek coordinator when the child has been returned home and custody has been terminated.

~~(I)~~ (I) The agency shall provide the parent, guardian, custodian, prefinalized adoptive parent, or a child who is emancipating with a copy of the child's health care record prepared pursuant to ~~rules 5101:2-48-14 or 5101:2-42-66.2 and 5101:2-38-08~~ of the Administrative Code upon termination of the child's custody. The agency shall provide the parent, guardian, custodian, prefinalized adoptive parent, or a child who is emancipating with information about the healthchek program, if the child was in the healthchek program during the child's stay in substitute care.

Effective:

R.C. 119.032 review dates:

Certification

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Statutory Authority:	5103.03, 5153.16
Rule Amplifies:	5103.03, 5153.16
Prior Effective Dates:	9/28/87(Emer.), 12/27/87, 1/1/89, 1/1/90, 10/1/97, 2/1/03, 4/20/2008.

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5101:2-42-88

Requirements for substitute care placement disruptions.

- (A) When there is a disruption of a child's substitute care placement, the public children services agency (PCSA) or private child placing agency (PCPA) shall address and document in the case record the following information:
- (1) Length of time the child was in the particular substitute care setting.
 - (2) Circumstances which led to the child's removal.
 - (3) Any efforts to maintain the placement, including supportive services offered to the child and caregiver.
- (B) A disruption of a child's substitute care placement shall require an amendment to the case plan pursuant to rule ~~5101:2-39-08.1~~ or 5101:2-38-05 of the Administrative Code, if applicable for a PCSA or rule 5101:2-39-10 of the Administrative Code.
- (C) If a disruption of a child's substitute care placement occurs prior to the child's dispositional hearing, the PCSA or PCPA shall follow procedural requirements pursuant to rule 5101:2-42-93 of the Administrative Code.
- (D) The PCSA or PCPA shall maintain a ~~written~~ copy of the information identified in this rule in the case record and the caregiver's record.

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*** DRAFT - NOT YET FILED ***

5101:2-42-89

Public children services agency and private child placing agency procedures when a child is receiving services or is in agency custody dies.

(A) If a child in the temporary custody or a planned permanent living arrangement of a public children services agency (PCSA) or a private child placing agency (PCPA) dies, the PCSA or PCPA shall:

- (1) Notify the law enforcement agency with jurisdiction within one hour of its knowledge of the child's death pursuant to rule 5101:2-33-26 of the Administrative Code.
- (2) Contact the parent, guardian or custodian within one hour of its knowledge of the child's death.
- (3) Complete the JFS 01987 "Child Fatality Report Face Sheet" (rev. 10/2009) and send it to the Ohio department of job and family services (ODJFS) within five working ~~day~~days after receiving the report. The JFS 01987 shall be sent electronically as directed by the JFS 01987I "Instructions for completing JFS 01987 child fatality report face sheet" (rev. 10/2009).
- (4) Notify the local health department and/or the child fatality review board.
- (5) Assist the family in planning funeral arrangements, if requested.

(B) If a child in the permanent custody of a PCSA or PCPA dies, the PCSA or PCPA shall:

- (1) Notify the law enforcement agency with jurisdiction within one hour of its knowledge of the child's death as described in paragraph (A)(1) of this rule.
- (2) Determine whether notification of the parent, guardian, custodian or other relatives is appropriate.
- (3) Complete the JFS 01987 and send it to ODJFS as described in paragraph (A)(3) of this rule.
- (4) Notify the local health department and/or the child fatality review board.
- (5) Assume responsibility for funeral arrangements.

(C) If the death of a child is the result of suspected child abuse or neglect, the PCSA shall:

(1) Follow procedures set forth in its ~~"Memorandum of Understanding"~~ pursuant to rule ~~5101-2-33-26~~5101:2-36-01 of the Administrative Code regarding children with:

(a) Suspected child abuse and neglect as determined by law enforcement, medical or PCSA personnel.

(b) Prior involvement with the PCSA or any member of the household including:

(i) Open in-home voluntary cases.

(ii) Open court ordered protective supervision.

(iii) Open intake assessments within twelve months of the fatality.

(iv) A closed, inactive case within twelve months of the fatality.

(2) Complete part three of the JFS 01987 and send electronically to the assigned ODJFS regional field office.

(D) The PCSA or PCPA shall maintain documentation regarding the provision of notices as required by this rule in the child's case record and the custodial agency's provider record.

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*** DRAFT - NOT YET FILED ***

5101:2-42-92

~~Parent, guardian or custodian visits with a child in temporary custody~~
Visitation for child in temporary custody.

(A) Each public children services agency (PCSA) or private child placing agency (PCPA) shall arrange for and provide each child in temporary custody, whether custody is by agreement or commitment, an opportunity for regular and frequent visitation with his parent, guardian or custodian. Such visitation schedule shall be developed in accordance with the requirements of this rule and contained in the case plan as required by rule ~~5101:2-39-08.1~~ or 5101:2-38-05 of the Administrative Code, if applicable for the PCSAs and rules ~~5101:2-39-10~~ 5101:2-38-06 and ~~5101:2-39-11~~ 5101:2-38-07 of the Administrative Code for the PCPA. :

(B) The PCSA or PCPA shall consult with the parent, guardian, or custodian, child, when age-appropriate, and other service providers, when applicable, in developing the plan for visits. The PCSA or PCPA shall address the following criteria for planning the visits.

(1) Frequency of the visits shall be based on:

- (a) The attitudes and feelings between the child and parent, guardian, or custodian in the present relationship.
- (b) ~~Whether the~~ The case plan goal is ~~reunification or an alternative living situation.~~
- (c) The need to maintain or enhance the bonding relationship between the parent, guardian, or custodian and child.
- (d) What is determined to be in the child's best interest, and is ~~conductive~~ conductive to ~~his~~ the child's physical and emotional well-being.

(2) Duration of the visit shall be based on:

- (a) The amount of time needed to maintain or enhance the bonding relationship between the parent, guardian, or custodian and child.
- (b) A determination based upon the current relationship between the child and parent, guardian, or custodian on the length of time that would be in the child's best interest.

(3) Location of the visit shall be in:

(a) The least-restrictive setting consistent with the goals of the case plan. The following ~~listing~~list represents the order of least-restrictive to most-restrictive settings.

(i) Visitation in the home of the parent, guardian, or custodian.

(ii) Visitation in the home of a friend, relative, substitute caregiver or other noninstitutional setting.

(iii) Visitation at the agency or other ~~institutional~~substitute care setting.

(b) A location providing a safe setting for the child.

(4) Restrictions on the frequency, duration, location of visits, and supervision of visits shall be based on factors related to:

(a) Potential harm to the child as a result of the parent's, guardian's or custodian's behavior or pattern of conduct toward the child.

(b) Special needs or problems of the child.

(c) The parent's, guardian's, or custodian's failure to be available for more frequent or longer visits.

(5) The PCSA shall review ~~the JFS 01500, "Family Risk Assessment Model, Part I: Family Risk Assessment Matrix" (rev. 1/2001) or the JFS 1413 "Comprehensive Assessment and Planning Model - I.S., Case Review" (rev. 7/2006)~~(rev. 8/2010) pursuant to rule 5101:2-38-09 of the Administrative Code, if applicable to assist in arriving at a decision to ~~restrict~~guide the frequency, duration and location of visits or to determine the level of supervision needed during visits.

(C) The PCSA or PCPA also shall ensure that the child has an opportunity for other forms of communication with his parent, guardian, or custodian on a regular basis.

(D) In the child's best interest, the PCSA or PCPA shall make arrangements for visitation and communication with siblings ~~and other family members or individuals~~ and significant others integral to maintaining connections ~~to visit or communicate with~~

~~the child with those individuals.~~ The agency shall also make arrangements for visitations related to the maintenance and connection with Indian tribes pursuant to rule 5101:2-53-06 of the Administrative Code.

- (E) Withholding of visits shall never be used as a threat or form of discipline to the child or to control or punish the parent for failure to work with the agency or other community providers.
- (F) The PCSA's or PCPA's decision on each of the criteria identified in paragraph (B) of this rule and the need for visitation restrictions and supervision and the reason for the decision must be recorded in the case plan as required by rule ~~5101:2-39-08.1 or~~ 5101:2-38-05 of the Administrative Code, if applicable for PCSAs and rules ~~5101:2-39-10~~ 5101:2-38-06 and ~~5101:2-39-11~~ 5101:2-38-07 of the Administrative Code, if applicable for PCPAs.

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