

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: MEPA citation 1808 and SACWIS access requirements

Rule Number(s): 5101:2-33-11 and 5101:2-33-70

Date: April 4, 2017

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☐ Rescinded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.

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.

In Rule 5101:2-33-11, each private child placing agency (PCPA) shall designate a person to serve as the agency's internal Multiethnic Placement Act (MEPA) monitor. Private child

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placing agencies (PCPAs) may share MEPA monitors from another PCSA or PCPA to fulfill MEPA monitoring functions.

In rule 5101:2-33-70 the statewide automated child welfare information system (SACWIS) shall be established and maintained in accordance with the requirements of 42 U.S.C. 674 (a)(3)(C) (2008). Access to and use of data in SACWIS shall be limited to the extent necessary to carry out the child welfare program under Title IV-B of the Social Security Act , of 1967, P.L. 109-288, 120 Stat. 1244 (2006), the Child Abuse Prevention and Treatment Act, 110 Stat. 3064 (1996) , 42 U.S.C. 5101, Title IV-E of the Social Security Act of 1967, 110 Stat. 2166 (1996) , 42 U.S.C. 670, and Title XX of the Social Security Act, 124 Stat. 803 (2010) , 42U.S.C. 1397.

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

Rule Number	Statutory Authority
5101:2-33-11	5101.141, 5103.03, 5153.166
5101:2-33-70	5101.134

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.

Yes, the Multiethnic Placement Act.

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

The rules do not include provisions not specifically required by the Federal government.

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)?

Rule 5101:2-33-11 prohibits PCPAs and PNAs, involved in foster care or adoption placements from delaying, denying, or otherwise discriminating when making a foster care or adoption placement decision on the basis of the parent's or child's race, color, or national origin. Failure to comply is a violation of Title VI of the Civil Rights Act.

In rule 5101:2-33-70 the statewide automated child welfare information system (SACWIS) shall be maintained, and access to and use of data in SACWIS shall be limited to the extent necessary to carry out the child welfare program. The data in SACWIS is

confidential and access to any child welfare information shall be pursuant to this rule or section 5101.132 of administrative code.

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

Outcomes will be measured on how well the PCPA and PNA agencies follow their procedures on discriminatory complaints and how the agencies resolve these complaints in a timely manner; also, on how thoroughly the MEPA monitor reviews agency cases and dissolve discriminatory issues that may be found in the cases.

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.

January 30, 2017 through February 13, 2017, *these rules were posted on Ohio's Families and Children Rule Review website (www.ohiorulereview.org)*, and the Job and Family Services clearance website (<http://www.odjfs.state.oh.us/clearances/public/index.aspx>) for stakeholders to review and comment.

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

Comments: In 5101:2-33-11, the JFS 01668 revision date is changed from 1/2014 to 8/2015. However, the JFS 01668 is one of the forms proposed to be revised with a 10/2016 date. Shouldn't the date in 5101:2-33-11 be changed from 1/2014 to 10/2016 (and not 8/2015)?

Response: When forms are revised, the forms in each rule should be updated with the revised date as well. In rule 5101:2-33-11 the forms revised date was not updated in rule. The last revised date is 8/2015, the JFS 01668 is not being revised at this time.

Comments: This states that private agencies will input information into SACWIS... however many private agencies do not have access to SACWIS. Is this going to be corrected/amended to state "those private agencies who have access must input this information"?

Response: Thanks for your comments, changes were made. Private child placing agencies (PCPAs) and private non-custodial agencies (PNAs) that have access to SACWIS shall enter the following information into SACWIS:

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?

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?

No, alternative regulations were considered at this time of amending rules for clarifying, non-substantive changes.

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 MEPA compliance of every child in care being prepared for adoption placement.

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

Division specialist and legal staff at ODJFS reviewed these rules 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 to 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; there are approximately seventy-five private child placing agencies (PCPAs), and thirty-five private noncustodial agencies (PNAs) in Ohio.

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b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and Failure to comply with rules would result in possible corrective action plan (CAP) and on-going training and technical assistance to those agencies not in compliance. This includes the time involved in preparing written notice for procedures on discrimination complaints; the cost of providing procedures to prospective existing foster caregivers; the cost of designating a MEPA monitor; completing the JFS 01668; and creating standards of conduct. In SACWIS failure of personnel having adequate access will result in the penalty listed in section 5101.99 of the Revised Code, which leads to possible costs and dismissal from employment for unauthorized access to or disclosure or use of data in SACWIS.

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.

In rule 5101:2-33-11 and 5101:2-33-70 staff will spend two to three hours revisiting their case files, accessing information in SACWIS, reading documented notes to make sure there are no issues of race, color or national origin. Staff will also spend two to three hours receiving technical assistance and training. In addition, there will be the time involved in selecting a MEPA monitor, completing forms, and creating written standards of conduct.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

If the agencies do not follow the guidelines set forth by the State’s rules and policy, the State will be fined for being out of compliance with the rules set forth by U.S. Department of Health and Human Services.

Regulatory Flexibility

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

There is no alternative means of compliance with these rules.

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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?

There are no fines, but failure to comply with rules would result in a possible corrective action plan (CAP) and on-going training and technical assistance to those agencies not in compliance.

18. What resources are available to assist small businesses with compliance of the regulation?

The county department of job and family services (CDJFS) enforces the rules set forth by ODJFS. ODJFS provides technical assistance through technical assistance staff, eManuals, and the Help Desk.

eManuals for children in substitute care is located at:

<http://emanuals.odjfs.state.oh.us/emanuals/>