



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### Business Impact Analysis

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

Rule Contact Name and Contact Information: Michael Lynch  
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Regulation/Package Title (a general description of the rules' substantive content):

Termination of substitute care and custody of child requirements.

Rule Number(s): 5101:2-42-87

Date of Submission for CSI Review: 2/3/2021

Public Comment Period End Date: 2/10/2021

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

No Change/\_\_\_ rule (FYR? )

X Amended/\_\_\_1\_\_\_ rule (FYR? \_X\_)

☐ Rescinded/\_\_\_ rules (FYR?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):**

☒ **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.*

This rule provides guidance on the continuation of care or termination of a child placed in a substitute care setting and the termination of custody. Language has been added to specify the length of time a child has to be in placement before the evaluation of remaining in care begins. The rule also references two child protection rules and the references have been changed to align with OAC 5101:2-38-09 and OAC 5101:2-37-04.

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.**

Ohio Revised Code 5103.03 and 5153.166

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.*

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No, this rule does not implement federal requirements.

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

This rule does not exceed 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)?**

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

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

Compliance with this rule is 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.*

This rule has been reviewed at the Public Children Services Association of Ohio (PCSAO) Rules Committee Meeting held on October 9, 2020. The PCSAO Rules Committee includes PCSAO representation, along with a number of county agency PCSA members who serve on the PCSAO Rules Committee, with the purpose of providing stakeholder review and feedback on rules being reviewed/developed by the Office of Families and Children. During the pre-clearance review of this rule on October 9, 2020, feedback was provided by Summit County Children Services with the suggestion to confirm alignment with reunification assessment requirements in OAC 5101:2-37-04. This was taken into consideration and further addressed (with the suggested changes accepted and revised in the rule) through the clearance process as summarized more fully below in response to #10.

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

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This rule went through the ODJFS clearance process from 10/20/20 to 11/3/20 and received 2 comments. The comments were regarding the alignment to the child protection rules and the changes within the rule were made. Specifically, the 2 comments (Champaign County JFS and Summit County Children Services) were concerning suggested alignment with language OAC 5101:2-38-09 and 5101:2-37-04. These 2 comments were accepted and the language in this rule was revised to clarify alignment with the requirements of OAC 5101:2-37-04 and OAC 5101:2-38-09, as follows:

(A) Each public children services agency (PCSA) shall determine the necessity for continuing or terminating custody of a child in a legally authorized placement for thirty days or more, 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 by completing the following. ~~Such assessment shall be documented in the case record. In making a determination that there is no need for continued custody, the agency shall:~~

- (1) Complete the ~~JFS 01404 "Comprehensive Assessment Planning Model—I.S. Reunification Assessment"~~ (rev. 2/2006) ~~pursuant to rule 5101:2-37-04~~ case review pursuant to rule 5101:2-38-09 of the Administrative Code.
- (2) ~~Use 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.~~ Complete the "Reunification Assessment" pursuant to rule 5101:2-37-04 of the Administrative Code.

**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?**

There are no alternatives considered for the rule because the rule is driven by statute.

**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.

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

ODJFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation. No known duplication with this rule exists in the Ohio Administrative Code.

**15. 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.**

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**

**16. 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**

The rules of the Administrative Code in Chapter 5101:2-42 contain requirements for children in temporary custody and placed into substitute care by public and private agencies. Requirements must be met to obtain and/or maintain certification for Private Child Placing Agencies (PCPAs) and Private Non-custodial Agencies (PNAs). There are currently 26 certified PCPAs and 141 PNAs in Ohio.

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

The requirements of the rule must be met to determine if children are to remain in custody and this evaluation is to be done on a regular basis.

**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 adverse impact would only be regulated to time spent adhering to rule regulations and reporting the information necessary for rule compliance.

The current average wage for a social worker is \$22 per hour, according to Zip Recruiter. If a worker takes 4 hours to ensure completion of the review and assessment requirements for continued child placement or termination of substitute care as required by this rule, it would cost the agency of this rule, it would cost the \$88 for each review. Since the rule requires this review of placement every 3 months from date of initial placement and at each semiannual administrative review, the review would essentially be conducted every 3

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months, or on a quarterly basis. At that rate, the cost could be \$88/per review x 4 reviews per year=\$352 annually per placement being reviewed.

**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 this rule is necessary.

**Regulatory Flexibility**

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

For this rule, there is no alternative means of compliance.

**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?**

N/A

**20. 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 process including assistance with the proper information required by this rule.