



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information: Michael Lynch

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

Prone Restraint

Rule Number(s): 5101:2-5-13, 5101:2-9-21

Date of Submission for CSI Review: 5/25/23

Public Comment Period End Date: 6/1/23

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 2 rules (FYR? Y)

Rescinded/___ rules (FYR?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.

OAC rule 5101:2-5-13 entitled "Required agency policies, plan and procedures" provides guidance if the agency is certified by the state of Ohio the policies are to be put into place regarding discipline, MEPA, approval of foster/adoptive placements, assessments, payments to foster caregivers, etc. The amendment is re-defining prone restraint to prohibit face down positioning at any time. An additional amendment to paragraph (B) has been added to provide clarity by adding additional language "for ODJFS review".

OAC rule 5101:2-9-21 entitled "Care, supervision and discipline" provides guidance concerning permitted and limited actions regarding the discipline of children within a residential facility. The title of the rule is being amended to "Residential care, supervision and discipline" to differentiate this rule from another foster care rule. The amendment is re-defining prone restraint to prohibit face down positioning at any time.

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.**

OAC 5101:2-5-13 Statutes: 5103.03, 5103.54, 5153.166

OAC 5101:2-9-21 Statute: 5103.03

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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.

These rules do not implement a federal requirement.

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 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)?**

These rules provide guidance for the care of children placed in residential facilities.

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

The implementation of these rules and subsequent outcomes are 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.

ODJFS has met with the Public Children Services Association of Ohio (PCSAO) on February 2, 2023, to discuss the rules prior to going into public clearance. The rules were discussed during the Ohio Children's Association (OCA) meeting on March 14, 2023. Prior to the most recent meetings ODJFS had met with PCSAO, Ohio Mental Health and Addiction Services (OhioMHAS) and other representatives from county and private agencies through regional meetings in 2021 and 2022. The rules are being amended to be in alignment with the Ohio Department of Education, Department of Developmental Disabilities (DODD), and OhioMHAS.

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

The rules went through the public clearance process February 6, 2023, through February 20, 2023. There were four comments submitted during this clearance process. A comment from Trumbull County was submitted requesting a change to OAC 5101:2-5-13 to add clarification

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on the process of ODJFS reviewing policies, plans and procedures. The rule has been amended to reflect the clarification requested.

Trumbull County and the Ohio Children's Alliance (OCA) submitted comments and objections to the inclusion of transitional holds as a prone restraint. ODJFS did not make any changes to the rule based on these comments. Ongoing efforts aligning Ohio Administrative Code Rule requirements among the Ohio Department of Education, Ohio Department of Developmental Disabilities, Ohio Department of Mental Health and Addiction Services, and the Ohio Department of Job and Family Services have resulted in the revised requirements. Additionally, all currently licensed providers governed by 5101:2-5-13 currently and independently elect to prohibit prone restraints/transitional holds in every case in their own policies, except one provider. Therefore, ODJFS elected not to make requested changes to the proposed rule, which would have kept ODJFS restraint policies out of alignment with other state licensing agencies and may have an adverse impact on the health and safety of children served by providers utilizing prone restraints/transitional holds under current OAC limitations.

There was an inquiry received from PCSAO regarding the impact to costs and capacity on residential facilities. ODJFS does not prescribe any specific type of restraint or restraint techniques. ODJFS licensing staff have reviewed and approved multiple behavior intervention policies for treatment foster and residential programs that include various restraint techniques for both public and private agencies in Ohio. Depending on providers current business model addressing prone restraint, there may be minimal costs related to retraining of staff. ODJFS does not anticipate any impact to capacity in Ohio due to the proposed change.

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 are no alternatives considered for the rules as the rules are based upon statute.

13. 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 reviewed rules to assure there is no duplication of an existing Ohio regulation. ODJFS holds responsibility of monitoring oversight and approval of certification and licenses.

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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.

Once the rule is final filed, a transmittal letter will be generated explaining the changes to the rule and the rationale for the changes. The transmittal letters can be viewed at <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>. 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

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

The rules of the Administrative Code in Chapters 5101:2-5 and 5101:2-9 contain requirements for foster care agencies that include 88 public and currently 108 private agencies. Requirements must be met to obtain and/or maintain certification.

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.

The adverse impact for each of the requirements would vary based upon the size and staffing of each. The adverse impact may include:

5101:2-5-13 – Agencies must ensure required policies, plans and procedures are performed. Updates to any policy, plan or procedure could require additional training to remain in compliance and maintain their certification. For regulated providers currently employing a prone restraint/transitional hold as a part of their restraint policy, there may be costs associated with retraining staff. However, ODJFS cannot offer a specific cost estimate for individual providers, as this would be unique to the provider's training regime, size and capacity, and other local factors.

5101:2-9-21 – Agencies must follow the proper care, supervision, and discipline guidelines. Updates to any guidelines could require additional training to remain in compliance and maintain their certification. For regulated providers currently employing a prone restraint/transitional hold as a part of their restraint policy, there may be costs associated with retraining staff. However, ODJFS cannot offer a specific cost estimate for individual providers, as this would be unique to the provider's training regime, size and capacity, and other local factors.

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*).
No.

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

The regulatory intent promotes the safety of children in substitute care settings.

Regulatory Flexibility

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

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?

There are no fine 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?

ODJFS has a regional office with a licensing specialist that will be assigned to assist the agency 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.