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Hearing Date: 7/17/2019

Today's Date: 8/12/2019

Agency: Department of Job and Family Services

Rule Number(s): 5101:2-5-13, 5101:2-9-05, 5101:2-9-06, 5101:2-9-08, 5101:2-9-10, 5101:2-9-12, 5101:2-9-14, 5101:2-9-16, 5101:2-9-17, 5101:2-9-19, 5101:2-9-20, 5101:2-9-21, 5101:2-9-22, 5101:2-9-23, 5101:2-9-24, 5101:2-9-25, 5101:2-9-28, 5101:2-9-29, 5101:2-9-30, 5101:2-9-32, 5101:2-9-34

If no comments at the hearing, please check the box.

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Mr. Tim Schaffner, Director of Trumbull County Children Services on rule numbers 5101:2-5-13 and 5101:2-9-21
2. Michael O'Brien, State Representative, Ohio House of Representatives on rule numbers 5101:2-5-13 and 5101:29-21
3. Richard Tvaroch, Trumbull County Children Services, on rule numbers 5101:2-5-13 and 5101:2-9-21
4. Bobbie Beale, CIP/CRWM on rule numbers 5101:2-5-13 and 5101:2-9-21
5. Marilyn Pape, Trumbull County Children Services, on rule numbers 5101:2-5-13 and 5101:2-9-21
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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Mr. Tim Schaffner, as an experienced expert on providing services to children with behavioral health and emotional needs, argued before the Department that the agency should remove language in 5101:2-5-13 related to the restrictions and prohibition on the use of a transitional hold, otherwise known as a temporary prone restraint. Mr. Schaffner argued that the transitional hold/prone restraint for children in certain situations is a valuable technique in order to help control and calm children in their facility while also ensuring the safety of their staff and others. Mr. Schaffner and Trumbull County Children's Services stated that the proposed rule change would eliminate the use of any transitional holds/prone restraints, which conflicts with Executive Order 2009-13S, issued by Governor Strickland and still in force, as the order makes a distinction between a prone restraint and a transitional hold, which is prone in nature but is limited in timeframe. He recommended adoption of current OMHAS language, defining a transitional hold and prone restraints.

Additionally, Mr. Schaffner recommended that ODJFS amend in rule 5101:2-5-13 to add "for ODJFS approval," mandating that the Department approve policies, plans and procedures related to Departmental-approved functions.

Mr. Schaffner argued that the proposed changes to the rule did not go through a robust stakeholder process, the RSFA is not accurate as to the local cost impact, and the proposed change in language conflicted with the requirements of ODJFS in ORC 5103.03, requiring the agency to adopt rules that are adequate and competent for the management of institutions. Mr. Schaffner also discussed the case of a specific child in custody and used this specific case in which the staff at the facility face complicated situations and the appropriateness of the transitional hold/prone restraint.

Mr. Richard Tvaroch agreed with Mr. Schaffner's testimony and emphasized that Executive Order 2009-13S defines a "prone restraint" and a "transitional hold" and that the proposed language does not comply with that order and definition.

Dr. Bobbie Beale added that the use of the transitional hold/prone restraint is far superior to a supine hold and is much less traumatizing. She stated that not holding or restraining children in these facilities is not realistic and in fact, without a hold like the transitional hold/prone restraint, law enforcement would be called, forcing the removal of the child and additional trauma.

Marilyn Pape agreed that the supine hold is very traumatizing and that staff at the facility are attempting to help the individual.

Representative O'Brien stated that Mr. Schaffner is an expert in his field and is offering valid testimony, as is Dr. Beale. He added that he attended the meeting on behalf of his constituents to represent them.

Hearing Summary Report

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

As a result of the comments offered during the public hearing, ODJFS is declining to make additional changes to the language currently proposed in both rules. ODJFS recognizes Mr. Schaffer's experience in the field and appreciates his review and comments to the proposed rule language. However, to the request to allow for current OAC language to continue in existence in 5101:2-5-13, prohibiting prone restraints for an extended period of time, ODJFS finds the current language vague and does not allow for the maximum protection of children in custody in licensed provider facilities. Additionally, the suggestion to adopt the current OMHAS language related to prone restraints and transitional holds would not clear up this ambiguity. ODJFS maintains that clarifying the imprecise time period for which a transitional hold/prone restraint is allowable, while additionally complying with and implementing the intent of Executive Order 2009-13S, the currently proposed language change in the rule is most appropriate.

ODJFS has thoroughly reviewed Trumbull County's comments through the rule making process and has additionally conducted research into the methods of restraint that other licensed entities utilize. After conducting the research in preparation for proposing amendments to the rules, the Department learned that Trumbull County Children's Services is the only licensed entity that utilizes a transitional hold/prone restraint. Indeed, an increasing number of licensed providers for these services have adopted operational plans that engage in no physical or mechanical restraints. After extensive consideration and re-consideration, the Department maintains that eliminating the utilization of the transitional hold/prone restraint for these licensed entities is implementing best practices and more properly ensures the safety of the children served and the staff employed in these facilities.

As to the recommendation on amending (B) in rule 5101:2-5-13 to add "for ODJFS approval," the Department does not concur that this would add any clarity or value to the current rule above the plain text currently in law in (B) and therefore will not pursue the requested change.