

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: FYR of OAC 5101:2-42, Part 1 – No Change Packet for Substitute Care

Rule Number(s): 5101:2-42-06, 5101:2-42-07, 5101:2-42-19.1, 5101:2-42-66

NO CHANGE RULES

Date: 8/1/2013

**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Rescinded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.*

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

**5101:2-42-06** *Agreement for temporary custody of child* sets forth the requirements of a temporary custody agreement.

**5101:2-42-07** *Extension of agreement for temporary custody of child* sets forth the requirements of a thirty-day extension of the temporary custody agreement.

**5101:2-42-19.1** *Requirements for independent living arrangements for independent living youth in custody* sets forth the requirements for the Public Children Services Agencies (PCSAs) and Private Child Placing Agencies (PCPAs) when placing a youth in its custody in an independent living arrangement.

**5101:2-42-66** *Administrative procedures for comprehensive health care for children in placement* sets forth the requirements of comprehensive health care for children in placement between the County Department of Job and Family Services (CDJFS) and the PCSAs and PCPAs.

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

**Rule Number     Statutory Authority**

**5101:2-42-06     5103.03, 5103.15, 5153.16**

**5101:2-42-07     2151.413, 5103.03, 5153.15, 5153.16**

**5101:2-42-19.1   5101.141, 5103.03**

**5101:2-42-66     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.**

**No, these rules do not implement federal requirements.**

However, rule 5101:2-42-66 does put in place the administrative procedures for comprehensive health care for children in placement. The Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program is a federally mandated program of comprehensive preventive health services available to Medicaid-eligible individuals from birth through age twenty years. In Ohio the program is called “healthchek” and is administered by the CDJFS. This rule requires the development of written interagency procedures to implement comprehensive health care for children in placement between the CDJFS and the custody holding agency (Public Children Services Agency (PCSA), Private Child Placing Agency (PCPA) or Private Noncustodial Agency (PNA).

4. If the regulation 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.**

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)?

**The purpose of the regulations in 5101:2-42-06 is to identify and set in place form JFS 01645 *Agreement for Temporary Custody of Child*, prescribed by the Ohio Department of Job and Family Services, pursuant to section 5101.15 of the ORC, outlining the responsibilities of a PCSA or a PCPA to hold temporary custody of a child; and for the parent, guardian or custodian to accept the responsibility as specified on the JFS 01655.**

**The purpose of the regulations in 5101:2-42-07 is to create an extension of the JFS 01655, pursuant to section 5103.15 of the ORC, that can be utilized for an additional thirty-day extension of an agreement for temporary custody of a child between the PCSA or PCPA and the parents, guardians or custodians.**

**The purpose of the regulations in 5101:2-42-19.1 is to set the requirements for PCSAs and PCPAs when placing a youth in its custody in an independent living arrangement.**

**The purpose of the regulations in 5101:2-42-66 is to set forth the requirements of comprehensive health care for children in placement between the CDJFS and the PCSAs and PCPAs.**

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

**For rules -06, -07, and 19.1 are monitored through the certification process. Rule -66 is monitored through ODJFS licensing specialists in a random sampling review.**

### **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.***

**In 2012, the State was awarded a three-and-a-half-year federal grant through the U.S. Department of Health and Human Services, Children's Bureau. ODJFS, Office of Families and Children, in partnership with stakeholders (Partners for Ohio's Families), has been working to examine and reform the State's child welfare service delivery**

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**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

system and the relationship with both public and private child welfare agencies. The work is being conducted through the Midwestern Child Welfare Implementation Center (MCWIC), a member of the National Child Welfare Training and Technical Assistance Network.

Representatives from 88 county PCSAs, PCPAs and PNAs were invited to the table for discussion, input and revisions. It was decided that all rules would go forward with no changes.

8. 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 clearance on 7/1/13 through 7/15/13. No comments were received.**

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?

**There were no other alternatives considered for rules 5101:2-42-06, 5101:2-42-07, 5101:2-42-19.1, and 5101:2-42-66 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 the well-being of every child in temporary custody.**

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

**The JCARR prong for invalidation: "Rules do not conflict with a rule of its own or another rule-making agency" has been an ongoing deterrent to duplication. JFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.**

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.

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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.

### **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;**

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 PCPAs and PNAs.

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

5101:2-42-06 – The requirements of JFS 01645 must be met in order for PCPAs to obtain and/or maintain certification by the State.

5101:2-42-07 – The requirements of JFS 01645 must be met in order for PCPAs to obtain and/or maintain certification by the State.

5101:2-42-19.1 – The requirements in paragraph B of the rule must be met to ensure a youth's independent living arrangement meets the requirements by the State. Failure to do so will result in a loss of certification for non-compliance.

5101:2-42-66 – The PCPA must develop procedures to implement and track healthchek procedures and comprehensive health care for children in placement. Failure to do so will result in a loss of certification for non-compliance.

**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.

**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, the adverse impact of these rules is necessary.

### **Regulatory Flexibility**

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

**For rules 5101:2-42-06, 5101:2-42-07, 5101:2-42-19.1, and 5101:2-42-66, there is 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 5101:2-42-06, 5101:2-42-07, 5101:2-42-19.1, and 5101:2-42-66, there are no fines or civil penalties for non-compliance 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 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.**