

# 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 5 – Amendment for Substitute Care

Rule Number(s): 5101:2-42-04, 5101:2-42-64, 5101:2-42-65, 5101:2-42-66.1, 5101:2-42-66.2, 5101:2-42-71, and 5101:2-42-93

Date: 4/15/14

**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Rescinded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.*

5101:2-42-04 *Authority to assume and retain custody of a child* sets forth the requirements of placing a child in substitute care setting apart from parent(s).

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5101:2-42-64 *Preplacement services* sets forth the requirements for the PCSAs and PCPAs to provide or arrange preplacement services to the child and parent(s).

5101:2-42-65 *Caseworker visits and contacts with children in substitute care* sets forth the requirements for the PCSAs and PCPAs through visits and contacts with the child and substitute caregiver to ensure the child's safety, well-being and to assess whether the placement and services continue to meet the child's needs.

5101:2-42-66.1 *Comprehensive health care for children in placement* sets forth the requirements that PCSAs and PCPAs shall coordinate comprehensive health care for children in the agency's care or custody.

5101:2-42-66.2 *Documentation of comprehensive health care for children in placement* sets forth the requirements for PCSAs and PCPAs to document and maintain a record of physical health examinations, developmental and psychological assessments, and treatment for each child in agency care or custody.

5101:2-42-71 *Approval of adult-supervised living arrangements* sets forth the requirements of the PCSAs and PCPAs to assume responsibility for the care of a pregnant minor, unmarried minor parent and the child of a minor parent and provide an adult-supervised living arrangement.

5101:2-42-93 *Change of placement or visitation plan prior to journalization of case plan* sets forth the requirements of the PCSAs and PCPAs to modify with the court a change in the child's placement or visitation, approval is required prior to a change.

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

5101:2-42-04	5103.03, 5153.166
5101:2-42-64	5101.03, 5153.166
5101:2-42-65	5103.03, 5153.166
5101:2-42-66.1	5103.03, 5153.166
5101:2-42-66.2	2151.421, 5103.03, 5153.166
5101:2-42-71	5103.03, 5107.05
5101:2-42-93	5153.166, 5103.03

**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.

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**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 regulation in 5101:2-42-04 is to set in place the requirements for PCSAs and PCPAs to provide placement services for a child through the direct placement of the child by his parent, guardian, or custodian into a facility operated by the PCSA or PCPA.

The purpose of the regulation in 5101:2-42-64 is set to provide or arrange preplacement services to the child and his or her parent, guardian, or custodian when substitute care placement of the child is to occur.

The purpose of the regulation in 5101:2-42-65 is set to provide requirements to the agency which holds custody of a child shall comply with the provisions set forth in this rule regarding caseworker visits and contacts with the child and the substitute caregivers to ensure the child's safety and well-being, and to assess whether the placement and services continue to meet the child's needs in accordance with the case plan.

The purpose of the regulation in 5101:2-42-66.1 is set to provide requirements for both PCPAs or private non-custodial agency's (PNAs) to coordinate comprehensive health care for each child in its care or custody from the child's existing and previous medical providers who is placed into substitute care.

The purpose of the regulation in 5101:2-42-66.2 is set to provide requirements for both the PCPA and the PNA to document in the child's record from the child's existing and previous medical providers a record of physical health examinations, developmental and psychological assessments, and treatment for each child in the care or custody.

The purpose of the regulation in 5101:2-42-71 is set to provide requirements for the PCPA or PNA. These agencies shall be responsible for investigating any complaint received on an adult-supervised living arrangement that the agency has approved and arrive at a determination to continue approval of the setting, revoke the approval for the setting, or initiate a corrective action plan. If the complaint involves alleged child abuse and neglect, the PCPA or PNA shall immediately report the complaint to the PCSA for investigation. The PCPA or PNA shall develop written procedures for reviewing complaints or disapprovals of agency actions involving adult-supervised living arrangements.

The purpose of the regulation in 5101:2-42-93 is set to provide requirements for the PCPA to file a motion to modify a placement order and receive court approval prior to effecting a change in the child's placement.

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

These rules are 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 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.

Representative from 88 county PCSAs, PCPAs and PNAs were invited to the table for discussion, input and revisions.

**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 ODJFS clearance process from 1/02/2014 through 1/16/2014. Three external participants provided comments.

**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 5101:2-42-04, 5101:2-64, 5101:2-42-65, 5101:2-42-66.1, 5101:2-4266.2, 5101:2-42-71, and 5101:2-42-93 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.**

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;**

Chapter 5101:2-42 of the Administrative Code rules 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. There are 196 PNAs, 88 PCPAs and 42 IV-E Courts.

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

5101:2-42-04 – The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. These requirements include executing forms to either accept custody by permanent surrender or temporary custody and extending the custody episode if necessary. Identifying costs as they relate to time spent completing

forms depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing and availability of appropriate placements. All activities to assume or retain custody are to comply with rules 5101:2-42-07, 5101:2-42-08, and 5101:2-42-09 of the Ohio Administrative Code (OAC).

5101:2-42-64 – PCPAs are to provide or arrange pre-placement services when substitute care placement of the child is to occur. The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. The cost to the PCPAs as they relate to providing services depends on many different variables. Identifying the cost to the PCPAs as they relate to pre-placement services include; arranging at least one pre-placement visit with the caregiver, counseling and establishing communication with the child and his or her parent, guardian, or custodian regarding feelings of separation. All activities are to comply with rules 5101:2-39-03, 5101:2-52-04 and 5101:2-52-06 of the OAC.

5101:2-42-65 – The requirements for PCPAs regarding caseworker visits and contacts with the child and the substitute caregivers to ensure the child's safety and well-being, and to assess whether the placement and services continue to meet the child's needs in accordance with the case plan. The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. Identifying the costs as they relate to traveling to placement settings around the state and other such costs vary so greatly, that it is nearly impossible to approximate.

5101:2-42-66.1 – The requirements for comprehensive health care must be met in order for PCPAs to obtain and/or maintain certification by the state. There may be a cost to coordinate comprehensive health care, secure medical screenings and documentation of services in the case record. Identifying costs as they relate to time spent coordinating medical services with providers in the community depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing and availability of services and resources.

5101:2-42-66.2 – The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. There may be a cost to document, maintain case records and provide copies of all exams, assessments and treatments. Identifying costs as they relate to time spent completing forms depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing and the number of children in the agency's care.

5101:2-42-71 – The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. There may be a cost to: evaluate and process applicants for adult-supervised living arrangements; develop procedures for reviewing complaints and maintain records. Information must be reported on the JFS 01348. Identifying costs as they relate to time spent completing forms depends on so many different variables, that it is nearly impossible to approximate. These variables include the investigation of an adult-supervised living arrangement and the entire process of removing an applicant from a setting and terminating an adult-supervised living arrangement if the complaint is determined conclusive. All activities for adult-supervised living arrangements are to comply with Chapters 5101:2-5, 5101:2-7, and 5101:2-9 of the Ohio Administrative Code (OAC).

5101:2-42-93 – The requirements must be met in order for PCPAs to obtain and/or maintain certification by the state. All documentation related to notices to changes in placements or visitation plans and/or written decisions of a review agent required by this rule shall be maintained by the agency in the child's case record.

Identifying costs as they relate to time spent regarding a change of placement depends on so many different variables, that it is nearly impossible to approximate. These variables include agency composition and staffing and availability of appropriate placements. All activities to change placement of children in custody are to comply with this rule.

**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?**

As a certified, licensed agency receiving Federal and/or state funds to provide substitute care guidance is provided by Federal and legislative mandates. The Ohio Revised Code, section 5153.16 outlines the duties of an agency on behalf of children in the county whom are considered to be in need of care or protective services. In order to provide a regulatory system for all child welfare agencies this standardization of rules and regulations has been set

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in place to provide guidance and the ability to monitor the practice of the rules. The court issues changes in custody, therefore the judicial process protects parental rights are ensured through the court system. To ensure the rights of parents and the safety of children in substitute care, the adverse impact of these rules are necessary.

### **Regulatory Flexibility**

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

For rules 5101:2-42-04, 5101:2-42-64, 5101:2-42-65, 5101:2-42-66.1, 5101:2-42-66.2, 5101:2-42-71, and 5101:2-42-93, 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 5101:2-42-04, 5101:2-42-64, 501:2-42-65, 5101:2-42-66.1, 5101:2-42-66.2, 5101:2-42-71, and 5101:2-42-93, there are no fines or civil penalties for non-compliance other than the forfeiture of certification through denial or revocation of license.

**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.