

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Wilderness Camp Rules

Rule Number(s): 5101:2-1-01, 5101:2-5-02, 5101:2-5-03, 5101:2-5-13, 5101:2-5-18 and
5101:2-9-40

Date: 12/18/15

Rule Type:

New

Amended

5-Year Review

Rescinded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.

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OAC rule 5101:2-1-01, entitled "Children services definition of terms," provides guidance to agencies on the definitions of terms used in Chapters 5101:2-5, 5101:2-7, 5101:2-9, 5101:2-33, 5101:2-36, 5101:2-39, 5101:2-40, 5101:2-42, 5101:2-44, 5101:2-47, 5101:2-48, 5101:2-49, 5101:2-52 and 5101:2-57 of the Administrative Code. Paragraph (B)(21) was amended to refer directly to statute for the definition of "assessor." Paragraph (B)(147) was amended to bring the definition of "independent living arrangement" into compliance with new statutory language. Paragraph (B)(222) was amended to refer directly to statute for the definition of "planned permanent living arrangement. " Paragraph (B)(238) was added to define a private, non-profit therapeutic wilderness camp. Paragraph (B)(269) was amended to add a private, non-profit therapeutic wilderness camp as a type of residential facility. Paragraph (B)(324) was amended to comply with statutory language lowering the age of a child from sixteen to fourteen as part of the "treatment team. "

OAC rule 5101:2-5-02, entitled "Application for an agency to perform specific functions; amended applications," provides guidance to agencies on the requirements for requesting agency certification for functions related to foster care. Paragraph (I)(6) was amended to remove the timeframe of sixty days for the request of approval for implementing a change in a residential facility. The facility must now request the approval from ODJFS prior to implementing a change. This paragraph was also amended to include private non-profit therapeutic wilderness camps as a type of residential facility.

OAC rule 5101:2-5-03, entitled "Certification of an agency to perform specific functions," provides guidance to agencies on the types of certifications that foster care agencies may be certified for. Paragraph (D) was amended to include private non-profit therapeutic wilderness camps as a type of residential facility. Two grammatical changes were made to paragraph (F).

OAC rule 5101:2-5-13, entitled "Required agency policies, plans and procedures," provides guidance to agencies on all policies a foster care agency is to implement. Paragraph (A)(28) was amended to require the recommending agency to notify the custodial agency immediately, but no later than twenty-four hours from the time the agency is notified of an unauthorized absence of a foster child. Paragraph (A)(29) was amended to clarify that the psychotropic medication policy is required for PCSAs only. A new paragraph (A)(30) was added to ensure the required agency policies in section 5103.50 of the Revised Code for private non-profit therapeutic wilderness camps were addressed.

OAC rule 5101:2-5-18, entitled "Waivers and variances," provides guidance to agencies on the guidelines and procedures of requesting a waiver and the longevity of pre-existing variances. A new paragraph (A)(3) was added to allow a private, non-profit therapeutic wilderness camp to request a waiver.

OAC rule 5101:2-9-40, entitled "Private non-profit therapeutic wilderness camps," provides guidance to agencies on the specific regulations of a wilderness camp. As a result of the passage of Amended Substitute House Bill Number 64 of the 131st General Assembly, this rule was created due to new legislation requiring ODJFS to draft rules for the operation and licensure of non-profit, therapeutic wilderness camps.

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

| Rule Number | Statutory Authority |
|------------------|---|
| Rule 5101:2-1-01 | ORC 2151.412, 2151.421, 5103.03, 5153.166 |
| Rule 5101:2-5-02 | ORC 5103.03, 5153.16 |
| Rule 5101:2-5-03 | ORC 5103.03, 5153.16 |
| Rule 5101:2-5-13 | ORC 5103.03, 5103.0316 |
| Rule 5101:2-5-18 | ORC 5103.02, 5103.03 |
| Rule 5101:2-9-40 | ORC 5103.02, 5103.03, 5103.50 |

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.

Rules 5101:2-1-01, 5101:2-5-02, 5101:2-5-03, 5101:2-5-05, 5101:2-5-13, 5101:2-5-18, and 5101:2-9-40 do not implement a federal regulation and are not being established to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

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

These rules are not written as a requirement of Federal Law, nor do they exceed any Federal requirements. The rules are specific to child welfare and follow state statute to ensure the safety of the children in substitute care.

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)?

For rule 5101:2-1-01, the purpose of the rule is to provide guidance to agencies on the definitions of terms used in Chapters 5101:2-5, 5101:2-7, 5101:2-9, 5101:2-33, 5101:2-36, 5101:2-39, 5101:2-40, 5101:2-42, 5101:2-44, 5101:2-47, 5101:2-48, 5101:2-49, 5101:2-52 and 5101:2-57 of the Administrative Code.

For rule 5101:2-5-02, the purpose of the rule is to provide guidance to agencies on the requirements for requesting agency certification for functions related to foster care.

For rule 5101:2-5-03, the purpose of the rule is to follow through with statute by certifying agencies to perform specific functions based on the level of care provided to foster children placed into the care of the agency.

For rule 5101:2-5-13, the purpose of the rule is to provide agencies with requirements for subjects for policies that the agency develops. This allows the agency to have input on the specific policies that affect them. All agency policies are reviewed and approved by ODJFS.

For rule 5101:2-5-18, the purpose of the rule is to provide guidance to agencies on the guidelines and procedures of requesting a waiver and the longevity of pre-existing variances.

For rule 5101:2-9-40, the purpose of the rule is to provide guidance to agencies on the specific regulations of a non-profit therapeutic wilderness camp. Based on testimony provided to the Committee on Education and Labor, House of Representatives in October 2007 (GAO-08-146T) and other interested party input within Ohio, the state of Ohio passed legislation (Amended Substitute House Bill Number 64 of the 131st General Assembly) establishing non-profit therapeutic wilderness camps in order to provide guidance regarding safety concerns that surround these type of facilities. This new statutory language can be found in Revised Code section 5103.50.

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

The success of these rules can be measured by the completion of the statutory requirements, all necessary for the agencies to maintain their certification.

For rule 5101:2-1-01, the adherence to the definition of the terms provided in the rule.

For rule 5101:2-5-02, the completion of the rule requirements required for the agency to apply to perform functions related to foster care.

For rule 5101:2-5-03, the completion of rule requirements for the agency to be certified to perform specific functions related to foster care licensing.

For rule 5101:2-5-13, the completion of rule requirements for developing and implementing agency policies for various items.

For rule 5101:2-5-18, the completion of rule requirements regarding the request for a waiver of rule compliance.

For rule 5101:2-9-40, the completion of rule requirements required for operating and staffing a non-profit therapeutic wilderness camp.

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.

The rules were presented to several interest groups including the Ohio Association of Child Caring Agencies (OACCA) and a group comprised of members of the board for the Ohio Wilderness Boys Camp. The group discussed and came to conclusions on each rule. The rules also went through the clearance process on November 24, 2015 through December 8, 2015. There were no comments made by the public during that period.

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

The rules were reviewed and revised with the interested parties' involvement and language was developed to address the issues presented. There were minor changes made. These changes were:

Rule 5101:2-5-18 - Paragraph (A) was amended to allow a non-profit therapeutic wilderness camp to request a waiver.

Rule 5101:2-9-40 – The entire rule was presented line by line to the stakeholders and updated based on the agreement of all parties involved.

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?

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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 as all parties involved were satisfied with all 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 every institution and association that receives, or desires to receive and care for children, or places children in private homes is effectively and appropriately administering proper standards for safety. ODJFS also, according to statute, must be satisfied as to the care given such children, and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with. These rules are also specific because the safety of the children in care dictates a specified process to ensure compliance. Specifically, rules 5101:2-5-02, 5101:2-5-03 and 5101:2-9-40 are mandated by statute in sections 5103.02, 5103.03 and 5103.50 of the Revised Code.

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

There is no duplication as the rules are specific to foster care agencies and no other rules address these specific issues. The rules were reviewed by the legal staff at ODJFS prior to the clearance process to ensure there was no duplication of any existing Ohio regulations.

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 all regulations are applied consistently and that technical assistance is offered 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:

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- a. **Identify the scope of the impacted business community;**
- b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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.

a. Scope of impacted business community:

One hundred fifty-eight agencies will be impacted by the requirements of these rules. The agency number may vary slightly due to monthly openings or closings of facilities. This number includes both public and private agencies.

b. Nature of adverse impact:

Loss of certification if the agency does not adhere to the statutory requirements of the rules.

c. Quantify adverse impact:

Adverse impact would entail administrative time spent completing the certification process, reviews, appeals, governance, policies and staffing requirements necessary for statutory and rule compliance.

An agency needs to consider costs involved for a wilderness camp to ensure compliance with all regulations for the camp. The costs can vary greatly and would be based on the current facilities of a camp and what would be needed to bring the facility up to rule standards.

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

The Agency is carrying out the directives of sections 5103.02, 5103.03 and 5103.50 of the Revised Code.

Regulatory Flexibility

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

There is no alternative means of compliance.

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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?

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 process including assistance with the proper information required by these rules.