



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information:

Mike Lynch Michael.Lynch@jfs.ohio.gov

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

OFC: HB 8 – Training changes

Rule Number(s): 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38

Date of Submission for CSI Review: xx/xx/22

Public Comment Period End Date: xx/xx/22

Rule Type/Number of Rules: _____

New/ rules

No Change/ rules (FYR)

☒ Amended/ 3 rules (FYR?)

Rescinded/ rules (FYR)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.

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

CSIPublicComments@governor.ohio.gov

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 5101:2-5-28 entitled Agency Cause for Denial of Initial Certification, Denial or Recertification or Revocation of a Foster Home Certificate provides guides to agencies on the process for recommending denial or revocation of a foster home. Paragraph (A) was updated for clarity. No change.

OAC 5101:2-5-33 entitled Foster Caregiver Pre-placement and Continuing Training provides guidance to agencies on the required training for certification for a foster caregiver. All the training topics listed throughout paragraph (C) were moved to a new appendix A. In paragraphs (C)(2)(b) and (C)(3)(b), there are newly required resource readiness training topics that will be effective January 1, 2023. Paragraph (F)(3) was amended to increase the number of permissible outside classroom hours to one-half of all required continuing training hours. Paragraph (F)(5) was amended to allow all training to be completed via live-synchronous training.

OAC 5101:2-5-38 entitled Payment of Foster Caregiver Training Stipends; Reimbursement of Training Allowances to Recommending Agencies provides guidance to agencies on the payment of training allowances and reimbursement of stipend payments regarding training of foster caregivers.

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

CSIPublicComments@governor.ohio.gov

Paragraph (B)(1) was amended to increase the amount of foster caregiver stipends from ten dollars per training hour to fifteen dollars per hour. Paragraphs (C)(2)(a)(ii) and (iii) were amended to reduce the number of reimbursable training hours for both family and treatment foster care to twenty-four. Paragraph (C)(3)(b) was amended to reduce the reimbursable family foster caregiver continuing hours to thirty. Paragraph (C)(3)(c) was amended to reduce the reimbursable specialized foster caregiver continuing hours to forty-five. Paragraph (D) was amended to increase the agency training allowance from fifteen dollars per training hour to twenty dollars per hour.

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

Rule Number	Statutory Authority
Rule 5101:2-5-28	ORC 5103.03
Rule 5101:2-5-33	ORC 5103.03, 5103.0316
Rule 5101:2-5-38	ORC 5103.0316

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

Rules 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38 do not implement a federal requirement.

5. 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 any 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)?

All of the rules are a result of the general rule writing authority regarding the safety of children in care as directed in section 5103.03 paragraph (A) of the Revised Code.

For rule 5101:2-5-28, the purpose of the regulation is to provide guidance on the investigation and potential cause for denial or revocation of a foster home certificate.

For rule 5101:2-5-33, the purpose of the regulation is to provide guidance regarding the training of foster caregivers.

For rule 5101:2-5-38, the purpose of the regulation is to provide guidance to agencies on the reimbursement to the agency for training stipends and allowances for foster caregivers.

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

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

CSIPublicComments@governor.ohio.gov

outcomes?

Rules 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38 will be measured against the criteria specific to the rule content. Licensing specialists will monitor compliance ensuring the health and safety of children in care and preventing those who are ineligible/prohibited to provide care.

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?

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 Ohio Children's Alliance (OCA), the Public Children Services Association of Ohio (PCSAO), and other representatives from county and private agencies through regional meetings and on several other occasions during the past few months to discuss the draft rules. Discussions were held by video-conference, phone, and through email communication. The groups discussed potential changes, provided feedback and came to conclusions on each rule.

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 a series of interest group meetings for several months in 2021. Some of these groups included the Ohio Children's Alliance, Public Children Services Association of Ohio, Ohio's University Consortium for Child and Adult Services and other interested individuals. Because of the reduced number of training hours, a survey was taken during these meetings which allowed agencies to prioritize the training topics so the most important topics could be addressed in pre-placement training, while the others would be able to be covered during the first certification period after the caregiver became certified. The rules also went through the public clearance process from April 18, 2022 through May 2, 2022. There were several comments received from multiple agencies. Several of the comments were identical and dealt primarily with the foster caregiver topic and hour requirements for pre-placement training as well as the required topics during the first certification period of the caregiver. Some comments called for more hours, some less hours, some called for more topics, others less topics. As a general response, ODJFS replied by stating the number of hours and the topic requirements were the best compromise when

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

CSIPublicComments@governor.ohio.gov

taking all organizations and feedback into consideration. None of the rules were revised as a result of the clearance comments.

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?

There were no other alternatives considered for rules 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38 as all parties involved were satisfied with the rules and because the rules are driven by statute.

13. 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.*

For rules 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38, 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.

14. 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. These rules were reviewed by the legal staff at ODJFS to ensure they do not duplicate any existing Ohio regulations.

15. 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.

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

16. 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;**

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

CSIPublicComments@governor.ohio.gov

- 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.

The rules included in this BIA contain requirements for foster care agencies that include eighty-eight public and over one hundred private agencies. Requirements must be met in order to obtain and/or maintain certification.

The adverse impact for each of the requirements would vary based upon the size and staffing of each agency and would include the actual cost of completing each requirement, in addition to the time needed for staff to complete the requirement and report or enter the needed information for rule compliance in meeting the requirement. The current average wage for use in the examples below for a social worker is \$22 per hour, according to Zip Recruiter. More specifically, the adverse impact includes:

5101:2-5-28 – Agencies must follow the guidelines and procedure for investigating complaints against a foster home and, if necessary, proceed with denial or revocation of the foster home certificate. If a worker takes 10 hours to investigate and proceed with denial or revocation, it would cost the agency \$220.

5101:2-5-33 - Agencies must ensure foster caregivers complete the required number of training hours in order to complete and maintain their certification. If a worker takes 10 hours to ensure the entire foster caregiver training is completed, it would cost the agency \$220.

5101:2-5-38 – Agencies must follow the proper guidelines to receive reimbursement for foster caregiver training stipends and training allowances. If it takes the worker 5 hours to complete the process for reimbursement, it would cost the agency \$110.

17. 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

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

For rules 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38, there are no apparent alternative means of compliance or possible exemptions given the nature of the rules.

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

CSIPublicComments@governor.ohio.gov

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?

For rules 5101:2-5-28, 5101:2-5-33 and 5101:2-5-38, there are no fines 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 regional office with licensing specialists assigned to each agency to assist in the obtaining and maintaining compliance. Specialists are available to provide technical assistance to meet the requirements of all regulations.