



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

Business Impact Analysis

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

Rule Contact Name and Contact Information: Michael Lynch

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

Five Year Rule Review Substitute Care and Licensing

Rule Number(s): 5101:2-5-40, 5101:2-9-02, 5101:2-42-65, 5101:2-42-66.1

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 4 rules (FYR? Y)

Rescinded/___ rules (FYR?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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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 5101:2-5-40 entitled "Preplacement and continuing training programs" provides guidance to agencies seeking to operate a preplacement training program or a continuing training program. This rule is amended to remove the requirement of the annual submission of agency training plans and was replaced to require training plans be submitted when there is a new plan or changes to existing plans.

OAC 5101:2-9-02 entitled "Staffing requirements" provides guidance to agencies on supervision in the residential facility to ensure appropriate level of supervision in all areas of the facility. The number of hours a new staff member is required to have before being left unsupervised with residents, is being reduced.

OAC 5101:2-42-65 entitled "Caseworker visits and contacts with children in substitute care" provides guidance to agencies regarding caseworker visits and contacts with the child and the substitute caregiver(s). Language requiring weekly contact with caregivers for children placed in special, exceptional, or intensive needs placements is removed.

OAC 5101:2-42-66.1 entitled "Comprehensive health care for children in placement" provides guidelines for the public children service agencies (PCSAs) and private child placing agencies (PCPAs) on the coordination and provision of health care for each child in the agency's care or in the custody, placed into substitute care. This rule is amended to remove the requirement for medical screenings when a child's placement changes or when a child is placed into foster care directly from a medical setting.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

| Rule | Statute | Rule Amplification |
|--------------------|-------------------|---|
| OAC 5101:2-5-40 | 5103.0316 | 5103.034, 5103.302, 5103.0311, 5103.039, 5103.038, 5103.036, 5103.035 |
| OAC 5101:2-9-02 | 5103.03 | 5103.02, 5103.03 |
| OAC 5101:2-42-65 | 5103.03, 5153.166 | 5103.03, 5153.16 |
| OAC 5101:2-42-66.1 | 5153.166, 5103.03 | 5103.03, 5153.166 |

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.*

OAC 5101:2-42-66.1 does implement a federal requirement, however this rule does not exceed the Federal requirements. And the other three rules are not written as a requirement of Federal Law and do not exceed any Federal requirements.

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The rules do not exceed 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)?

The rules set up structure for the provision of permitted actions and services when children are in an out of home placement.

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

The implementation of the rule and subsequent outcomes are monitored through the certification process.

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?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

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.

The rule went through the public clearance on September 1, 2023, through September 15, 2023. There were no external comments provided.

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

In the interest of reducing organizational red tape and improving casework efficiency, ODJFS thoroughly considered multiple recommendations from county partners to determine what rule requirements could be revised to reduce organizational red tape, improve efficiency, and assist agencies in the provision of service to children in out-of-home care while not compromising child safety and permanency and meeting Ohio Revised Code and federal requirements. The strategies implemented to increase efficiency during the COVID-19 pandemic were determined to comply with child safety and permanency standards and in review of results of the strategies implemented in 2022.

- 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?**

No scientific data was used to develop the rules.

- 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.***

No alternative regulations were considered for the rules, as the rules are driven by statute.

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

The rules were reviewed by the legal staff and rule developers at ODJFS prior to the clearance process to ensure it did not duplicate any existing Ohio regulations.

- 14. 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.**

Once the rule is final filed, a transmittal letter will be generated explaining the changes to the rule and the rationale for the changes. The transmittal letters can be viewed at <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>. 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

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

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.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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 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:

5101:2-5-40 - Agencies must follow the guidelines and procedure for submitting training proposal(s) to ODJFS. It is estimated it takes a worker 10 hours to prepare and submit the training plan and receive approval, it will cost the agency \$220.

5101:2-9-02 – Agencies are to provide supervision for the children in care. It is estimated that a 24 hour shift coverage will cost \$528.

5101:2-42-65 – Agencies must follow the requirements for Caseworkers to visit the children and the caregivers. If a worker takes 2 hours to complete the requirements, it will cost the agency \$44.

5101:2-42-66.1 – Agencies are to arrange and coordinate health care for children as they enter into care. If it takes an agency worker 30 minutes to complete the plan, it will cost the agency \$11.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

5101:2-5-40 eliminates the requirement to submit a training plan every two years.

5101:2-9-02 reduces training hours for a staff member to work unsupervised with youth.

5101:2-42-65 eliminates weekly case worker contacts with caregivers

5101:2-42-66.1 eliminates medical screenings for children placed from the hospital and medical screenings when a child changes placements.

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 the rule is necessary.

Regulatory Flexibility

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

There are no alternative means of compliance.

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?

Not Applicable.

20. 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.