



# Common Sense Initiative

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

Joseph Baker, *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):

Background checks for foster caregivers and employees of foster care agencies (FYR)

Rule Number(s): 5101:2-5-09 and 5101:2-5-09.1

Date of Submission for CSI Review: 11/8/23

Public Comment Period End Date: 11/15/23

**Rule Type/Number of Rules:**

New/ 1 rules

No Change/      rules (FYR?     )

Amended/ 1 rules (FYR? Y)

Rescinded/ 1 rules (FYR?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 5101:2-5-09 entitled Personnel and prohibited convictions for employment provides guidance to agencies on the process for completing background checks for agency employees. The rule was amended to remove all background check requirement language. Specifically, paragraphs G through U were removed. This language was moved to rule 5101:2-5-09.1. Appendix A was removed and moved to rule 5101:2-5-09.1. No other significant changes were made.

OAC 5101:2-5-09.1 entitled Criminal records required for certain prospective employees and certified foster caregivers was rescinded and given a new title Criminal and background checks for college interns, subcontractors, volunteers, employees, board presidents, administrators, and foster caregivers. This is a new rule that consolidates all background check requirements into one location to make it easier for agencies to locate. Appendix A was added which is the former appendix A for rule 5101:2-7-02. Appendix B was added which is the former appendix A for rule 5101:2-5-09. Appendix C was added that lists the rehabilitation criteria for foster caregivers and Appendix D that lists the rehabilitation criteria for agency employees. New criminal codes were added to appendix A and B to align with statutory changes in HB 33 of the 135<sup>th</sup> General Assembly.

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.**

<u>Rule Number</u>	<u>Statutory Authority</u>
Rule 5101:2-5-09	ORC 5103.03
Rule 5101:2-5-09.1	ORC 2151.86, 5103.03, 5103.0310, 5103.037

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.**

Yes. Background checks for foster caregivers and employees are required by SEC. 471. [42 U.S.C. 671] (a) (20) of the Social Security Act.

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.**

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)?**

Both 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 5101:2-5-09, the purpose of the regulation is to provide guidance to agencies on the requirements and structure of the governing body of the foster care agency.

For rule 5101:2-5-09.1, the purpose of the regulation is to provide guidance on the requirements for the completion of background checks for both foster caregivers, members of the caregiver's household and agency employees.

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

Rules 5101:2-5-09 and 5101:2-5-09.1 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?**

*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 rules went through the public clearance process on September 6, 2023, through September 20, 2023. No external comments were received.

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

There were no comments received from stakeholders regarding the rules as the majority of the changes were already implemented. The requirements were consolidated into one rule from multiple rules to assist agencies in locating the information. The only additions to the current regulations were new ORC violations added to the Appendix for rule 5101:2-5-09.1 as a result of their addition to the prohibited crimes listed in ORC section 109.572 (A)(4).

- 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? *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.***

There were no other alternatives considered for the rules as requirements are driven by statute.

**13. 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.

**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.**

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**
- 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.*

- a. Scope of impacted business community:

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

- b. Quantify and identify the nature of adverse impact:

The rules require the organization/governance of a private agency and the required background checks for both foster caregivers and agency employees. 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 it involves the time and resources it takes for an agency to set up their governing body or, in the case of background checks, to complete a homestudy. This would include the time to review the background check results for the homestudy. There is a cost involved for the request of a criminal check, however, per statute, the agency may pass this cost along to the applicant.

The current average wage for use in the examples below for a social worker is \$22 per hour, according to Zip Recruiter. However, the specific anticipated cost of compliance for an impacted agency to comply with this rule would vary, depending on administrative and staffing variables.

**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*).**

The proposed changes do not change what was is currently in place. The proposed changes only implements recent legislation which adds additional prohibitive crimes for a person applying to be a foster caregiver or employee of an agency.

**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 5101:2-5-09 and 5101:2-5-09.1, there are no apparent alternative means of compliance or possible exemptions given the nature of the rules.

**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 5101:2-5-09 and 5101:2-5-09.1, 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. JFS helpdesk is also available for directing questions via email at Help-Desk-OCF@jfs.ohio.gov.