



Common Sense Initiative

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

Joseph Baker, *Director*

MEMORANDUM

TO: Mike Lynch, Ohio Department of Job and Family Services

FROM: Michael Bender, Business Advocate

DATE: September 10, 2024

RE: **CSI Review – Continuous Certification 2 (OAC 5101:2-5-05, 5101:2-5-08, 5101:2-5-11, 5101:2-5-18, and 5101:2-5-30)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of five amended rules proposed by the Ohio Department of Job and Family Services (ODJFS) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on August 27, 2024, and the public comment period was held open through September 3, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 27, 2024.

Ohio Administrative Code (OAC) 5101:2-5-05 allows private child placing agencies (PCPAs), private noncustodial agencies (PNAs), and public children services agencies to appeal findings of noncompliance. The rule is amended to update language, transfer responsibilities to the Ohio Department of Children and Youth (DCY), and incorporate the Ohio Certification for Agencies and Families (OCAAF) system. OAC 5101:2-5-08 provides for the governance and administration of PCPAs and PNAs. The rule is amended to update language and a citation as well as transfer responsibilities to DCY. OAC 5101:2-5-11 describes how complaints are handled with respect to an agency acting in violation of regulatory requirements. The rule is amended to update language,

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transfer responsibilities to DCY, and remove provisions authorizing ODJFS to petition courts of common pleas as they are duplicative of statute. OAC 5101:2-5-18 authorizes waivers to be granted from certain requirements. The rule is amended to update language, transfer responsibilities to DCY, incorporate the OCAF system, and remove a reference to a certification period due to continuous certification. OAC 5101:2-5-30 requires agencies to amend the foster homestudy when certain changes occur. The rule is amended to update language, transfer responsibilities to DCY, incorporate the OCAF system, and remove a reference to a certification period due to continuous certification.

During early stakeholder outreach, DCY took the lead in overseeing the proposed rule changes in advance of the upcoming transfer of the rule maintenance responsibilities from ODJFS in January 2025. DCY presented at a Public Children Services Association of Ohio (PCSAO) rules committee meeting and an Ohio Children's Alliance (OCA) committee monthly meeting. Additionally, the rules went through a public clearance process in April 2024. No comments were received through the public clearance process, but stakeholders at the PCSAO and OCA meetings provided feedback regarding the continuous certification process in general. This input was reflected in the proposed rule changes. During the CSI public comment period, ODJFS received one comment from Adriel School, Inc. (Adriel). Adriel believed that OAC 5101:2-5-30 should be rescinded and that any changes referenced in the rule should be taken care of during the subsequent periodic review, arguing that completing amendments to a homestudy within thirty days of a change and then a periodic review every four years was redundant and a waste of resources. DCY replied that this process will eventually be done electronically, thereby reducing the time involved in documenting changes. However, DCY stressed that these changes require a re-evaluation of the household's ability to maintain foster care certification and proper care for the children placed. DCY added that not every item in OAC 5101:2-5-30 is addressed in the four-year periodic review required by OAC 5101:2-5-24. Although the comment resulted in no changes, DCY made a grammatical correction to the rules.

The business community impacted by the rules includes foster care and adoption agencies. According to ODJFS, there are eighty-eight public and more than one hundred private agencies in Ohio. The adverse impacts created by the rules include the costs associated with appealing findings of noncompliance, identifying a governing body, establishing policies, handling complaints, requesting waivers through the appropriate process, and amending the foster homestudy. Foster agencies must meet these requirements to obtain and/or maintain certification or approval. The actual cost of the requirements depends on the size and staffing of each agency. Citing ZipRecruiter, ODJFS notes that the current average wage for a social worker is \$22 per hour. Foster home or agency certificates may be denied or revoked due to improper actions or failure to complete requirements. ODJFS points out that enacting the continuous certification process will reduce the regulatory burden on businesses by reducing paperwork and allowing more flexibility with respect to time frames for agencies and resource caregivers to complete requirements. ODJFS states that the adverse impacts to business are justified to implement the statutory requirement to ensure the safety of children in substitute care.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that ODJFS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.