



October 7, 2021

Family, Children and Adult Services Manual Transmittal Letter No. 476

To: Family, Children and Adult Services Manual Holders
From: Matt Damschroder, Director
Subject: Amendment to Ohio Administrative Code (OAC) Rule 5101:2-38-04 PCPA Requirements for Completing the Semiannual Review

This letter transmits amendment to the Ohio Administrative Code (OAC) rule 5101:2-38-04 which was amended as part of the five-year rule review. This rule will be effective October 15, 2021.

The following is a brief explanation of the changes to this rule:

OAC 5101:2-38-04 entitled **PCPA Requirements for Completing the Semiannual Review** sets forth the requirements that apply to a private child placing agency (PCPA) when completing a semiannual administrative review. The paragraph order has been restructured throughout the rule and language has been updated to reflect the changes to the family case plan. Language has been included to support additional time for case review approval after submission by a caseworker. Language was added to include the notification requirements of permanency team members for a child in a Qualified Residential Treatment Program (QRTP).

INSTRUCTIONS:

The following chart indicates the materials that should be removed from the Family, Children and Adult Services Manual (FCASM) and the materials that should be added.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
SOCIAL SERVICES	5101:2-38-04	5101:2-38-04
Transmittal Letters		FCASMTL No. 476

5101:2-38-04 **PCPA requirements for completing the semiannual administrative review.**

- (A) Each private child placing agency (PCPA) required to prepare a family case plan for a child pursuant to rules 5101:2-38-07 and 5101:2-38-03 of the Administrative Code shall complete the JFS 01416 "Semiannual Administrative Review for Private Child Placing Agencies" (SAR) (~~rev. 7/2016~~) for the family case plan.
- (B) The PCPA shall complete the SAR no later than every one hundred eighty days from whichever of the following activities occurs first:
- (1) Date the original court complaint was filed.
 - (2) Date of placement.
 - (3) Date of court ordered protective supervision.
 - (4) Date of parent, guardian, or custodian's signature on the family case plan for in-home supportive services only.
- (C) The PCPA shall continue to complete the SAR no later than every one hundred eighty days from the date established pursuant to paragraph (B) of this rule.
- (D) The PCPA shall complete the SAR no more than thirty days prior to the due date.
- (E) The PCPA is to approve the SAR within five working days from the date of submission.
- (F) The PCPA is to provide at least seven days notice prior to the SAR, a written or electronic invitation including the date, time, and place convenient to the family to all of the following:
- (1) For in-home supportive services cases, all parties to the family case plan as outlined in paragraph (D) of rule 5101:2-38-07 of the Administrative Code.
 - (2) For protective supervision and substitute care cases:
 - (a) All parties to the family case plan as outlined in paragraph (D) of rule 5101:2-38-07 of the Administrative Code.
 - (b) The substitute caregiver, as defined in rule 5101:2-01-01 of the Administrative Code.
 - (c) For substitute care cases in which the child is age fourteen and older, two individuals as outlined in paragraph (E)(1)(c) of rule 5101:2-38-07 of the Administrative Code.

(d) The permanency team members for a child placed in an approved qualified residential treatment program (QRTP) pursuant to rule 5101:2-42-12 of the Administrative Code.

(G) The PCPA does not have to include any individual listed in paragraph (F) of this rule if any of the following apply:

- (1) Cannot be located after reasonable efforts to do so;
- (2) Declines to participate in the SAR after being contacted; or
- (3) Fails to appear for the scheduled review.

(H) For a child adjudicated as a deserted child, pursuant to section 2151.3519 of the Revised Code an invitation and participation of the child and parent in the SAR is not required.

(I) For in-home supportive services cases, a review panel of at least two people is to conduct the SAR. The review panel is to include but not limited to:

- (1) A caseworker with day-to-day responsibility for, or familiarity with, the management of the family case plan.
- (2) A supervisor or designee.

(J) For protective supervision and substitute care cases, a review panel of at least three people is to conduct the SAR. The review panel is to include but not limited to:

- (1) A caseworker with day-to-day responsibility for, or familiarity with, the management of the family case plan.
- (2) A person, not responsible for the management of the family case plan or for the delivery of services to the child, the child's parent, guardian, custodian, pre-finalized adoptive parent, or substitute caregiver.
- (3) A supervisor or designee.

~~(E)~~(K) A court hearing may take the place of a SAR with the individuals listed in paragraph (J) of this rule if all of the following requirements are met:

- (1) The hearing is held in time to comply with paragraph (B) of this rule.
- (2) Notification is made to the parties to the family case plan as outlined in paragraph (D) of rule 5101:2-38-07 of the Administrative Code.

- (3) During the hearing, the court addresses each of the issues stated in paragraph ~~(E)~~(M) of this rule.
 - (4) The court hearing documents each issue either on the JFS 01416 or by journal entry.
- ~~(F) For in-home supportive services cases, a review panel of at least two people shall conduct the SAR. The review panel shall include but not be limited to:~~
- ~~(1) A caseworker with day-to-day responsibility for, or familiarity with, the management of the case plan.~~
 - ~~(2) A supervisor or designee.~~
- ~~(G) For protective supervision and substitute care cases, a review panel of at least three people shall conduct the SAR. The review panel shall include but not be limited to:~~
- ~~(1) A caseworker with day-to-day responsibility for, or familiarity with, the management of the case plan.~~
 - ~~(2) A person, not responsible for the management of the case plan or for the delivery of services to the child, the child's parent, guardian, custodian, pre-finalized adoptive parent, or substitute caregiver.~~
 - ~~(3) A supervisor or designee.~~
- ~~(H) No less than seven days prior to the SAR, the PCPA shall provide a written invitation including the date, time, and place to all of the following:~~
- ~~(1) For in-home supportive services cases, all parties to the case plan as outlined in paragraph (D) of rule 5101:2-38-07 of the Administrative Code.~~
 - ~~(2) For protective supervision and substitute care cases:
 - ~~(a) All parties to the case plan as outlined in paragraph (D) of rule 5101:2-38-07 of the Administrative Code.~~
 - ~~(b) The substitute caregiver, as defined in rule 5101:2-01-01 of the Administrative Code.~~~~
 - ~~(3) For substitute care cases in which the child is age fourteen and older, two individuals as outlined in paragraph (E)(1)(c) of rule 5101:2-38-07 of the Administrative Code.~~

~~(I)~~ The PCPA does not have to include any individual listed in paragraph (H) of this rule if any of the following apply:

- ~~(1)~~ Cannot be located after reasonable efforts to do so;
- ~~(2)~~ Declines to participate in the SAR after being contacted; or
- ~~(3)~~ Fails to appear for the scheduled review.

~~(J)~~ For a child adjudicated as a deserted child, pursuant to section 2151.3519 of the Revised Code an invitation and participation of the child and parent in the SAR is not required.

~~(K)~~(L) For in-home supportive services cases, the PCPA shall provide a copy of the SAR to all parties outlined in paragraph ~~(HF)~~(L)(1) of this rule no later than seven days after completion of the SAR. A copy of the JFS 01416 shall be maintained in the case record.

~~(L)~~(M) For protective supervision and substitute care cases the PCPA shall:

- (1) File with the court a copy of the SAR no later than seven days after completion of the SAR and shall include a copy of the ~~amended~~updated family case plan as applicable.
- (2) Provide a copy of the SAR to all parties to the family case plan in accordance with paragraph ~~(HF)~~(M)(2)(a) of this rule, before the end of the next business day, after filing the SAR with the court.
- (3) Indicate, in writing, the parties identified in paragraph ~~(HF)~~(M)(2)(a) of this rule shall have seven days after the date the written or electronic notice is sent to object to ~~proposed~~recommended changes in the family case plan as a result of the SAR and request a hearing of the ~~proposed~~recommended change.

~~(M)~~(N) The PCPA shall maintain a copy of the SAR and any resultant ~~amendments~~updates to the family case plan in the case record.

Effective: 10/15/2021
Five Year Review (FYR) Dates: 7/26/2021 and 10/15/2026

CERTIFIED ELECTRONICALLY

Certification

10/05/2021

Date

Promulgated Under: 119.03
Statutory Authority: 2151.416, 2151.412
Rule Amplifies: 2151.416, 2151.412
Prior Effective Dates: 01/14/1983, 11/01/1985 (Emer.), 01/31/1986,
01/01/1989, 01/01/1990, 01/01/1991, 07/01/1992,
06/01/1997, 03/18/1999 (Emer.), 06/17/1999,
04/01/2001, 12/01/2001, 03/01/2006, 10/01/2009,
12/31/2010, 12/01/2012, 05/30/2014, 08/01/2016



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, 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):

Chapter 38 – PCPA requirements for completing the semiannual administrative review

Rule Number(s): 5101:2-38-04

Date of Submission for CSI Review: 6/25/21

Public Comment Period End Date: 7/2/21

Rule Type/Number of Rules:

- New/___ rules No Change/___ rules (FYR? ___)
- Amended/ 1 rules (FYR? X) 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.

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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 rules for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule:

- ✗ 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.

Ohio Administrative Code (OAC) rule 5101:2-38-04 entitled PCPA requirements for completing the semiannual administrative review sets forth the requirements that apply to a private child placing agency (PCPA) when completing a semiannual administrative review. The paragraph order has been restructured throughout the rule and language has been updated to reflect the changes to the family case plan. Language has been included to support additional time for case review approval after submission by a caseworker. Language was added to include the notification requirements of permanency team members for a child in a Qualified Residential Treatment Program (QRTP).

- 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.**

ORC 2151.412, 2151.416

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- 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.

No, the rule does 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.**

The rule does not exceed a federal requirement.

- 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 rule establishes requirements a private child placing agency must make when completing a semiannual administrative review.

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

The private child placing agency (PCPA) must be licensed under current law. Licensure is dependent, in part, on complying with the standards in this rule.

- 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.

ODJFS placed the rule on the preclearance website prior to the formal clearance process.

During preclearance and clearance, the rule was presented to the Rule Committee of the Public Children Services Association of Ohio (PCSAO) where feedback was requested and received during the meetings.

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

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The feedback received from the stakeholder engagement meetings was incorporated into the rule.

This rule completed external clearance (5/27/21-6/10/21) without comments received.

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 the rule as the rule is 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.*

The concept of performance-based regulation does not apply to this rule, as the rule contains specific requirements for agencies completing a semiannual administrative review.

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

ODJFS policy and legal staff review the relevant regulations to PCSAs and PCPAs on a regular basis and no duplication with this rule is known to exist.

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.

When the rule is final filed, a transmittal letter will be generated explaining the changes to the rule and the rationale for the changes. ODJFS technical assistance specialists review agencies to ensure compliance and the regulations are applied consistently.

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; and

The rule of the Administrative Code contains requirements for private agencies (24 PCPAs) to make when completing a semiannual administrative review.

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

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The adverse impact includes specific expenditures and the report of information.

The adverse impacts of the requirements set forth in rule 5101:2-38-04 include the time required to document and share information as well as time spent completing forms, such as the JFS 01416 Semiannual Administrative Review for Private Child Placing Agencies (SAR). The SAR is required to be completed and held every 180 days, filed with the court, and provided to parties to the Family Case Plan. Obtaining the information, completion of the document, and the time spent reviewing the document with the parties would typically be completed by a caseworker/social worker. The time spent completing the activities varies based on each family.

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 expected adverse impact for rule 5101:2-38-04 includes: obtaining the information, organizing the documents, completion of the documents required of this rule, and time spent attending the meeting, and contacts with the family. All activities would typically be completed by a caseworker/social worker. The time spent completing the activities varies based on each family. The time spent could range from approximately one hour to several hours. The anticipated cost to comply with this rule would depend on the wage for the specific worker as well as the availability and accessibility of the information for each family. The current average wage for a child welfare caseworker in the State of Ohio is \$28 per hour, according to Salary Expert. Therefore, the anticipated cost of compliance for an impacted agency to comply with this rule would range from \$28 - \$140 per hour, depending on administrative and staffing variables. There is no additional cost because of the amendments to this rule.

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

The adverse impact is necessary to monitor and review family cases involved with the agency.

Regulatory Flexibility

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

There are no exemptions and no alternative means of compliance for rule 5101:2-38-04.

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?

N/A.

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20. What resources are available to assist small businesses with compliance of the regulation?

ODJFS publishes all rules online as an e-manual. All public and private agencies have access to this publication, which is located at <http://emanuals.jfs.ohio.gov/>.

ODJFS has regional offices with technical assistance specialists that will be assigned to assist the agency in compliance with the requirements of rule 5101:2-38-04.



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

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

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: July 23, 2021

RE: **CSI Review – PCPA Requirements for Semiannual Administrative Review (OAC 5101:2-38-04)**

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 one amended rule 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 June 25, 2021, and the public comment period was held open through July 2, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on June 25, 2021.

Ohio Administrative Code 5101:2-38-04 establishes requirements for private child placing agencies (PCPA) to complete a semiannual administrative review (SAR). PCPAs must complete the SAR every 180 days from either the date of the original court complaint, placement, court ordered protective supervision, or signing of the family case plan for home supportive services. The rule is amended to restructure the content, include invitations to permanency team members for a child placed in a qualified treatment program, and to allow for additional review time by a caseworker.

During early stakeholder outreach, ODJFS reviewed the proposed rule during meetings of the

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Public Children Services Association of Ohio's Rule Committee and made the rule available to stakeholders through a clearance process. Suggestions received during that time were incorporated into the rule. No comments were received during the CSI public comment period.

The business community impacted by the rule includes 24 PCPAs currently operating in Ohio. The adverse impact created by the rules is primarily the time required by PCPA staff to complete forms, document information, and review the information with members of the Family Case Plan. ODJFS states in the BIA that the rule is necessary to ensure that cases involving children are properly monitored.

Recommendations

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

Conclusion

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



**Department of
Job and Family Services**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Matt Damschroder, Director

TO: Jacob Ritzenthaler, Regulatory Policy Advocate
CC: Sean McCullough, Director of the Common Sense Initiative Office

FROM: Christine Dobrovich, Bureau Chief
Office of Families and Children

RE: CSI Review: OFC: Chapter 5101:2-38

OAC rule 5101:2-38-04, "PCPA requirements for completing the semiannual administrative review."

DATE: July 26, 2021

Thank you for your recent review of the referenced OAC rules. Based upon your recommendation for no changes to the rule, the Office of Families and Children will proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review (JCARR).

