

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5101:2-49-03

**Rule Type:** Amendment

**Rule Title/Tagline:** Special needs criteria for adoption assistance.

**Agency Name:** Department of Job and Family Services

**Division:** Division of Social Services

**Address:** OFC- 4200 E. 5th Ave., 2nd fl. L2-01 P.O. Box 183204 Columbus OH 43218-3204

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#### **I. Rule Summary**

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 3/5/2019
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5101.141
5. **What statute(s) does the rule implement or amplify?** 5101.11
6. **What are the reasons for proposing the rule?**

This rule is proposed for amendment as a result of a five-year rule review.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

OAC rule 5101:2-49-03 entitled "Special Needs Criteria for Title IV-E Adoption Assistance (AA)" sets forth the criteria for a child with special needs to be eligible for the AA program. Changes were made to the rule to provide clarity. The definition of a "qualified professional," their role and responsibilities were updated in the rule

as well as the addition of a "certified nurse practitioner," "physician assistant," and "school psychologist" to the "qualified professional" listing. Language was included to define, and list developmental disabilities as defined in Section 35.108, "Definition of Disability," of the Code of Federal Regulations, August 11, 2016 and section, 5123.01, "Department of Developmental Disabilities," of the Revised Code. The JFS 01453 "Title IV-E Adoption Assistance Agreement" has been amended to incorporate the changes made to rule 5101:2-49-03 of the Administrative Code. Changes to the form title and revision date. The title to the rule has been amended.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code (OAC). This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(3).

This rule incorporates one or more references to the Ohio Revised Code (ORC). This question is not applicable to any incorporation by reference to the ORC because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(1).

This rule incorporates one or more dated references to an ODJFS form or forms. Each cited ODJFS form is dated and is generally available to persons affected by this rule via the inner-web at <http://innerapp.odjfs.state.oh.us/forms/inner.asp> or on the inter-net at <http://www.odjfs.state.oh.us/forms/inter.asp> in accordance with RC 121.75(E).

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

04/09/2019 in paragraph (A)(1), "or a child that meets the requirements of a child with special needs who is the subject of an independent adoption in accordance with rule 5101:2-49-02 of the administrative code" was added to clarify the eligibility requirements to receive AA for children who are being adopted through an independent adoption who are not under the responsibility of a public or private adoption agency.

04/04/2019 In paragraph (A), "in the Statewide Automated Child Welfare Information System (SACWIS)" was added to clarify the reporting system that is used to input a child's special needs.

*In paragraph (A)(1), "independent adoption" was added as a requirement when a child cannot be returned to his or her parent(s) and legally available for adoption.*

*The word "approved" in paragraph (A)(2)(g) was deleted, leaving a "qualified professional" listing of those who may provide a written statement of the services provided as they relate to the child's diagnosis.*

## **II. Fiscal Analysis**

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

No fiscal effects expected on current or future budgets.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

No new costs.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

## **III. Common Sense Initiative (CSI) Questions**

- 15. Was this rule filed with the Common Sense Initiative Office? No**

- 16. Does this rule have an adverse impact on business? No**

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No**

- B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**
  
- C. Does this rule require specific expenditures or the report of information as a condition of compliance? No**

**ASSISTANCE AGREEMENT**

The following assistance agreement, hereinafter called "the agreement" has been entered into by and between hereinafter called "agency," and the adoptive/adopting parent(s), hereinafter called the "adoptive parent(s)," residing at

This is an: ☐ Initial Agreement ☐ Amended Agreement  
☐ Family has an approved Nonrecurring Agreement per rule OAC 5101:2-49-21 (*please attach JFS 01438 "Agreement for Payment of Reimbursement for Title IV-E Nonrecurring Expenses incurred in Adoption of a Child."*)

**ARTICLE I: GENERAL PROVISIONS**

1. The adoptive parent(s) intends to adopt or has adopted a child that is (*please check one below*):
  1. ☐ Under the permanent custody of \_\_\_\_\_ (*Agency Name*) or
  2. ☐ Eligible for AA through an independent adoption.
2. The adoptive name of the child is \_\_\_\_\_ (*Child's Name*)
3. Adoption assistance may begin no earlier than the date the child is placed for adoption. The adoption assistance agreement must be signed by the adoptive parent(s) and the agency prior to the adoption finalization, unless the child is determined eligible for adoption assistance after the adoption finalization as the result of an appeal through the state hearing system.
4. The initial adoption assistance agreement or any that is subsequently amended shall remain in effect regardless of the county or state in which the adoptive parent(s) and the adoptive child are residents.
5. The agreement remains in effect as long as the adoptive parent(s) continues to be legally responsible for the child's care and **continues to provide support for the child through the month of the child's eighteenth birthday**, or 21 years of age if the child has a mental or physical disability.
6. The adoption assistance payment shall be provided to assist the adoptive parent(s) in incorporating the child into the adoptive family and meeting any special needs of the adoptive child. The adoption assistance payment is not restricted to meeting the daily support of the child, but may be used or put aside to fund any other needs of the child, including such services as education.
7. The agreement may be amended or terminated at any time by the mutual consent of the adoptive parent(s) and the agency.
8. Both the adoptive parent(s) and agency are legally bound by this agreement.

**ARTICLE II: OBLIGATIONS OF ADOPTIVE PARENT(S)**

1. The adoptive parent(s) will
  - Notify the agency within fifteen calendar days of a change if the adoptive parent(s) is no longer legally responsible for the child's care, no longer providing support to meet the child's needs, or the child emancipated.
  - Notify the agency within fifteen calendar days when the family and/or child has a change of address or relocates.
  - Comply with any interstate requirements for adoption assistance in the event that the family moves to another state.
  - Notify the PCSA if health care insurance coverage is made available to the child and submit the ODM 06612 "Health Insurance Information Sheet" (Rev. 9/2016).
  - Provide documentation that the child is enrolled in school or is incapable of attending school full-time by completing and returning the JFS 1451-B "Title IV-E Adoption Assistance Annual Assurance of Legal Responsibility, School Attendance and Eligibility for Continued Medicaid Coverage" (Rev. 7/2019).

### **ARTICLE III: OBLIGATION OF THE AGENCY ADMINISTRATION**

1. The agency will notify the adoptive parent(s) of changes in agency, state, or federal policy that have a potential affect on the amount of the adoption assistance payment.
2. The agency will verify annually the child's continuing eligibility for adoption assistance. The criteria for continuing eligibility are:
  - The adoptive parent(s) continues to be legally responsible for the child's care.
  - The adoptive parent(s) continues to provide support for the child.
  - The child is under 18 years of age, or 21 years of age if the child has a mental or physical disability.

### **ARTICLE IV: ADOPTION ASSISTANCE PAYMENT**

1. The agency has provided the adoptive parent(s) with all information known about the child's family background and medical history.
2. The agency has discussed the child's emotional, medical, mental, developmental or physical diagnoses in light of the child's family background and medical history.
3. The agency and the adoptive parent(s) have had ongoing discussion about the child's needs and the adoptive parent's/parents' ability to incorporate a child with special needs into the adoptive family.
4. The agency has presented the adoptive parent(s) with information about the following adoption assistance programs: Title IV-E adoption assistance, Nonrecurring, SAMS, PASSS, and AAC.
5. Adoption assistance payments in the amount of \$            per month will be provided on behalf of (child's adoptive name)            for the identified service needs to begin on (MM/DD/YY) or adoption finalization.
6. The agency may negotiate the payment amount every            . The agency may request documentation by a qualified professional in accordance with 5101:2-49-03.

### **ARTICLE V: MEDICAL CARE**

1. The child is eligible for Medicaid benefits provided under Title XIX of the Social Security Act for as long as the agreement is in effect.
2. The child is eligible for Medicaid benefits in the state where the child resides.

### **ARTICLE VI: TITLE XX SOCIAL SERVICES AND OTHER SERVICES**

1. The child is eligible for Title XX funded social services as long as the agreement is in effect.
2. The child is eligible for Title XX funded social services in the state in which the child resides. If a needed service(s) specified in the adoption assistance agreement is not available in the new state of residence, the state making the original adoption assistance payments remains financially responsible for providing the specified service(s).
3. If the adoptive child moves to another Ohio county, the child will be provided with Title XX funded social services in the county where the child resides. If any of the Title XX funded social services specified in the adoption assistance agreement are not available in the county where the child resides, the county which entered into the adoption assistance agreement shall be responsible for providing/securing those services. Nothing shall prohibit the adoptive parent(s) from applying for Title XX funded social services in the county of residence, even if the services are not already specified in the adoption assistance agreement.
4. The child will be provided the following Title XX funded social services.

5. The agency shall provide or secure funding for the following services, whether or not they are available through Title XX.

#### **ARTICLE VII: SUSPENSION**

The adoption assistance payment is subject to suspension if the PCSA cannot establish contact with the adoptive parent(s) to determine if the adoptive parent(s) is providing any support to the child after concerted efforts were made in accordance with 5101:2-49-11.

#### **ARTICLE VIII: TERMINATION**

1. The agreement is subject to termination when the child reaches the age of 18, unless the child has a physical or developmental disability. If the child has a physical or developmental disability, the agreement may continue until the child reaches the age of 21 pursuant to 5101:2-49-04.
2. The agreement is subject to termination if the agency determines that the adoptive parent(s) is no longer legally responsible for the child's care, no longer providing support to meet the child's needs, or the child emancipates.

#### **ARTICLE IX: APPEAL**

1. The adoptive parent(s) may appeal any agency decision to deny, reduce, suspend or terminate adoption assistance or to deny the amount of adoption assistance payment requested by the adoptive parent(s).
2. The agency must inform the adoptive parent(s) in writing of any decision to deny, reduce, suspend or terminate adoption assistance or to deny the amount of the adoption assistance payment requested by the adoptive parent(s). The notice of denial must inform the adoptive parent(s) of the right to appeal through a state hearing as well as the procedure for requesting a state hearing.
3. The adoptive parent(s) may also appeal through a request for a state hearing in any case in which the agency fails to inform the adoptive parent(s) about potential financial, medical, or service benefits that may be available to the child through the Title IV-E adoption assistance program.

#### **ARTICLE X: AGREEMENT EFFECTIVE DATE**

1. This agreement is effective on \_\_\_\_\_.
2. This agreement shall be signed, dated and in effect prior to the final order of adoption.
3. Payments and services shall not begin prior to the effective date and signatures.

#### **SIGNATURES**

Adoptive Parent's Signature	Date (mm/dd/yyyy)
Adoptive Parent's Signature	Date (mm/dd/yyyy)
Agency Representative's Signature	Date (mm/dd/yyyy)

Agency Director or Designee Approval	Date (mm/dd/yyyy)
A signed copy of this Agreement was given/mailed to the adoptive parent(s) on: Date (mm/dd/yyyy)	