CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Adoption Assistance Rules – Part 2

Rule Number(s): 5101:2-49-17, 5101:2-49-21

Date: 1/14/2014

Rule Type:

- ☐ New
- X Amended
- X 5-Year Review
- ☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

5101:2-49-17 "Case record requirement for adoption assistance" outlines the case record requirements for each Adoption Assistance (AA) case. Minor changes have been made to clarify what documents are needed to be in the adoption assistance

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case record that is managed by the Title IV-E agency, which in Ohio are the 88 Public Children Services Agencies (PCSA). The new JFS 01470 "Adoption Assistance State Mediation Conference Request" (rev. 1/2014) and JFS 01471 "Waiver Request to Exceed the Title IV-E Adoption Assistance Statewide Maximum" (rev. 1/2014) have been added to the case record requirements and updates to the revision dates of other forms required in the case record have been made. Paragraph (E) outlines the PCPA requirements.

5101:2-49-21 "Reimbursement of nonrecurring adoption expenses for a child with special needs" outlines the requirements for eligibility for nonrecurring adoption expenses and reimbursement of the nonrecurring adoption expenses. Language has been added in paragraph (E) and (I) to meet federal requirements to allow reimbursement of nonrecurring adoption expenses if the adoption disrupted before finalization. In this circumstance, the adoptive parent(s) must submit the request for payment or reimbursement and proof of expenditures within two years from the date of disruption prior to the adoption finalization. The JFS 01438 "Agreement for payment or reimbursement for nonrecurring expenses incurred in the adoption of a child with special needs" has been revised to incorporate the changes made to 5101:2-49-21 of the Administrative Code. The nonrecurring adoption program can provide up to $1,000 for each child with special needs that are determined eligible for the program to cover expenses such as adoption fees, court costs, attorney fees, adoption homestudy, and health and psychological examinations. Paragraphs (B), (D), (N)(3) and (O)(3) outline the PCPA requirements.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule	Authorizing Statute
5101:2-49-17	5101.141
5101:2-49-21	5101.141

3. 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. Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 670 (1980), section 473 as amended requires the Department of Job and Family Services to administer federal payments for foster care and adoption assistance.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

These rules do not exceed federal requirements.

5. 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)?

For rule 5101:2-49-17, the purpose is to ensure that all Private Child Placing Agencies (PCPAs) who hold permanent custody of a child are required to provide the Public Children Services Agency (PCSA) with verification of dates of the documents needed in the adoption assistance case record, and for auditing purposes these documents shall be provided upon request.

For rule 5101:2-49-21, the purpose is to ensure that all Private Child Placing Agencies and Private Non-Custodial Agency (PNA) inform the adoptive parent about the nonrecurring adoption assistance program and to provide the PCSA with the documentation required by OAC 5101:2-49-17 and 5101:2-49-21 so the PCSA can determine eligibility for the nonrecurring adoption reimbursement.

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

The success is measured in great part by and through the language of these rules that ensure the Adoption Assistance program and the reimbursement of Nonrecurring Adoption expenses is administered correctly and funds are distributed and reimbursed to adoptive parents who qualify to receive them; through the proper placement of children; by increasing the number of successful adoptions.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Through the Partners for Ohio's Families (PFOF) rule review initiative which started in 2012, ODJFS met with stakeholders from Public Children Service Agencies, Private Child Placing Agencies, Adoption Advocates and adoptive parents to gather information. Many discussions were held to amend the rules to provide clarity and equity for the Title IV-E agencies and adoptive parents.

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

The rules were reviewed and revised with the interested parties' involvement and language was that was agreeable to all. These rules went through the clearance process(clearance control number 7472) with an official clearance comment period from November 18, 2013 through December 2, 2013, but our agency accepted comments from interested parties until the original file with 9 individuals from public children service agencies (PCPA), private children placing agencies (PCPA), private non-profit foster care agencies, adoptive parents, adoption advocates such as North American Council on Adoptable Children (NACAC) and staff from the Office of Families and Children commenting on the entire rule package.

After reviewing the comments for these two rules, minor language changes were made to provide more clarity such as spelling out the term "Aid to dependent children (ADC)" in rule 5101:2-49-17. In rule 5101:2-49-21 changes were made after clearance to clarify the term "disruption" by changing language to say " finalization or disruption prior to the adoption finalization".

9. **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.

10. **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 are no alternative regulations because ODJFS is required to administer the Title IV-E adoption assistance program pursuant to section 473 of the social security act and 5101.141 of the Ohio Revised Code.

11. **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 state followed federal regulations driven by section 473 of the Social Security Act and 5101.141 of the Ohio Revised Code.

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

There is no duplication as this rule is specific to the administration of the adoption assistance program and no other rules address these specific issues. This rule was reviewed by the (PFOF) rule review team, Public Children Services Agency Organization (PCSAO), adoptive parents and adoption advocates, members of the North American Council on Adoptable Children (NACAC), members of Ohio Family Care Association and legal staff at ODJFS to ensure they do not duplicate any existing Ohio regulations.

13. **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 is following federal guidelines as outlined in section 473 of the Social Security Act, the adoption assistance program is monitored by ODJFS through case record reviews to ensure compliance with the rule standards. This process is measured by the number of adopted children determined eligible for the adoption assistance program and reimbursement for the nonrecurring adoption expenses that find permanent homes.

Adverse Impact to Business

14. **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;

There are 58 PCPAs in Ohio that will be impacted by this.

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

For 5101:2-49-17, if the PCPAs do not provide the documentation required in this rule, the PCSA can't determine eligibility for the adoption assistance program that will assist the adoptive parent in caring for the adopted child. The adverse impact includes time and money involved in providing copies of various forms and documents outlined in the rule to the PCSA.

For 5101:2-49-21, if the PCPAs do not inform the adoptive parents about the nonrecurring adoption expenses for reimbursement, the adoptive parents will not know where to apply or whether or not they are eligible for the nonrecurring adoption expenses reimbursement. The adverse impact includes time and money involved in providing nonrecurring adoption expense reimbursement information to the adoptive parent(s).

c. Quantify the expected adverse impact from the regulation.

For 5101:2-49-17, the PCPAs are required to provide documentation listed in this rule, so the PCSA can determine eligibility for the adoption assistance program. Without this documentation, the eligibility for the adoption assistance program will be denied and the adoptive parents will not be able to receive adoption assistance.

For 5101:2-49-21, the PCSAs and PNAs are required to inform all adoptive parents about the availability of the reimbursement for nonrecurring adoption expenses. If the adoptive parents aren't aware of the program, they wouldn't know to apply for the $1,000 reimbursement of nonrecurring adoption expenses.

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

ODJFS is driven by section 473 of the Social Security Act to administer the adoption assistance program.

Regulatory Flexibility

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

There is no alternative means for compliance to these rules.

17. 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 rule 5101:2-49-17 there are no fines or civil penalties for non-compliance, but if the Private Child Placing Agency (PCPA) does not provide the needed documentation for eligibility determination and the adoption assistance case record,

the Public Children Service Agency (PCSA) can't determine the eligibility for the child.

For rule 5101: 2-49-21 there are no fines or civil penalties for non-compliance, the adoptive parents are just not informed about the availability of the nonrecurring adoption reimbursement.

For both rules, if the adoptive parents make a complaint to the ODJFS licensing department, the department will review the PCPAs records and if found in violation, cite them for rule violations and request a corrective action plan.

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

The required forms are available on the ODJFS website under forms on the inter-net at http://www.odjfs.state.oh.us/forms/inter.asp in accordance with RC 121.75(E). There is also a JFS 01985 "Adoption Subsidies Guide" (rev.11.2013) that explains programs that are available for adopted children.