

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

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

**Regulation/Package Title:** OFC: Penalties for Failure to Comply With Fiscal Accountability Procedures.

**Rule Number(s):** OAC 5101:2-47-26

**Date:** 06/20/2014

**Rule Type:**

☐ New

☒ Amended

☒ 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☐ Rescinded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.**

OAC rule 5101:2-47-26 establishes corrective action plans and penalties for non-compliance with fiscal accountability procedures for public and private agencies.

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

ORC 5101.146, 5101.147, 5101.148, 5101.24

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- 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?**

No. Ohio Department of Job & Family Services (ODJFS) is the pass-through agency that administers the Title IV-E program funding to local Title IV-E agencies. ODJFS sets the monitoring standards for this federally funded program.

- 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)?**

This rule sets forth a fiscal accountability procedures compliance process for a Title IV-E agency, private child placing agency (PCPA), or private noncustodial agency (PNA). Corrective Action Plans (CAP) are developed to correct areas determined to be in noncompliance by the IV-E agencies, PCPA or PNA. If a Title IV-E agency, PCPA, or PNA is determined by ODJFS to have been solely or partially responsible for an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanctions or penalties issued by the federal government, they are required to reimburse ODJFS for the amount ODJFS pays to the federal government. If the rule did not exist, ODJFS would not be assured that non-compliance is corrected and ODJFS would be required to pay for all federal overpayments based on the non-compliance found.

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

The child and family services review is a results-focused approach to monitoring a federally-assisted State child welfare program. The review measures State compliance with the State plan requirements, which include the fiscal accountability procedures, under titles IV-B and IV-E of the Social Security Act. State child welfare programs are reviewed in (1) outcomes for children and families served by the child welfare system; and (2) systemic factors that directly affect the State's capacity to deliver services leading to improved outcomes. Outcomes are focused on children's safety, permanency, and child and family well-being. Systemic factors include whether a State has in place and is successfully operating systems for reviewing the cases of recruiting prospective adoptive parents. This approach focuses the reviews on the quality of services provided, future reductions, and non-compliance findings and over payments.

### **Development of the Regulation**

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**7. 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.*

Stakeholders were notified through the clearance process which began on 5/29/2014. Stakeholders included but are not limited to Public children service agencies, private non-custodial agencies, ODJFS, county prosecutors, Ohio Association of Child Caring Agencies (OACCA), Public Children Services Agencies of Ohio (PCSAO), Public Child Placing Agencies (PCPA), and the Ohio Department of Job and Family Service Director Association (ODJFSDA).

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

The clearance process was from 5/29/2014 to 6/12/2014. There were no Clearance comments provided by the stakeholders that affected the draft regulation being proposed by the Agency. The draft regulation proposed was due to minor grammatical errors that were corrected in the rule.

**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?**

The process is a two-tiered review that uses qualitative and quantitative data comprised of a statewide assessment and an on-site review. The statewide assessment involves Health and Human Services (HHS) preparing and transmitting to the State data profiles that have aggregate data on the State's foster care and in-home service population. The data profiles include information on whether the State has met a national standard, set by HHS, for certain permanency and safety data indicators, such as length of stay in foster care and rates of repeat maltreatment of children. The data profiles provide an overall picture of how well the State is performing. The statewide assessment is then completed by the State and its external partners primarily to further evaluate the programmatic issues behind the statewide data in the areas of safety, permanency, and well-being of children, which includes compliance with fiscal accountability procedures.

Following the statewide assessment, an on-site review is conducted by a joint Federal-State team, conducted every three years. The Federal-State team evaluates outcomes by examining a sample of children receiving in-home services and those in foster care. The quantitative and qualitative data from the statewide assessment and the on-site portion of the review are used together by the Department of Health and Human Services (DHHS) to determine the State's compliance on the outcomes and systemic factors. A disallowance is taken for all cases that fail the requirements. If a State fails more than a specific percentage of cases, the State is out of compliance with the Federal foster care program requirements. As a condition of non-compliance, the State is required to complete a one-year program improvement plan (PIP)

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and undergo a second review at the end of the year. After the second review, if the State is still not in compliance, a larger disallowance is assessed based on the total population of children in foster care.

**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?**

No other regulations would apply. ODJFS is the designated agency to administer the Title IV-E Foster Care program.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

This is a performance based regulation as non-compliance found through the Office of Fiscal and Monitoring Services, Bureau of Program Integrity and the Office of Families and Children, Bureau of Fiscal Accountability Title IV-E audits identify performance of compliance which could lead to corrective action and penalties.

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

There are no other statutes that regulate the Title IV-E agencies, private child placing agencies (PCPA), and private noncustodial agencies (PNA) for fiscal accountability performance measures.

**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, Bureau of Fiscal and Monitoring Services, Auditor of State and DHHS, Administration for Children and Families all periodically monitor state and federal regulations to ensure accuracy and consistency of applied state and federal regulations.

**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;**  
27 Certified Private Child Placing Agencies (PCPA's) in Ohio  
136 Private Non-Custodial Agencies (PNA's) in Ohio
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

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Failure to comply with rule may result in denial or revocation of certification; Cost of canceling the private agencies reimbursement ceiling; Cost of audit findings and time and cost of developing a corrective action plan.

**c. Quantify the expected adverse impact from the regulation.**

1. Denial or revocation of certification will cost in future revenue as public custodial agencies will be forced to move children from their care and no longer place children with the private agency.
2. Cancellation of the private agencies reimbursement ceiling will result in the initial loss of revenue to the public agency as federal reimbursement will not be allowed. Subsequently, the public custodial agencies will not place future children with the private agency causing a loss of revenue to the private agency.
3. Cost of audit findings is dependent on the nature and scope of the finding and associated federal overpayments and penalties.
4. Time and cost of developing a corrective action plan is dependent on the staff's technical ability to complete the corrective action plan and their salary and benefit costs.

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

The adverse impact of these rules is necessary to ensure agency compliance with fiscal accountability procedures and ultimately the safety of children in substitute care.

**Regulatory Flexibility**

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

There is no alternative means of compliance.

**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?**

A corrective action plan must be developed. Subsequent non-compliance results in the loss of certification.

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

ODJFS has a regional licensing specialist assigned to provide technical assistance. Electronic manuals are available for viewing on the internet. Ohio has multi-disciplinary teams to provide direct assistance or training when needed.