

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: OFC: Chapter 47 FCM Part 2

Rule Number(s): 5101:2-47-11, 5101:2-47-26.1 and 5101:2-47-26.2

Date: 1/14/14

**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☐ Rescinded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.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

5101:2-47-11 “ Reimbursement for Foster Care Maintenance Costs for

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Children's Residential Centers, Group Homes, Maternity Homes, Residential Parenting Facilities, and Purchased Foster Care Homes” outlines the reimbursement criteria for children who are eligible for foster care maintenance. The revision date of the JFS 02911 "Title IV-E Single Cost Report" was changed to July, 2013.

5101:2-47-26.1 “Public Children Services Agencies (PCSA), Private Child Placing Agencies (PCPA), Private Noncustodial Agencies (PNA): Title IV-E Cost Report Filing Requirements, Record Retention Requirements and Related Party Disclosure Requirements” clarifies the cost report filing requirements, the deadlines for filing the cost report, and record retention requirements. In paragraph (B)(1) the reference to the OMB circular A 122 was changed to CFR Part 230 ([www.whitehouse.gov/sites/default/files/omb/fedreg/2005/0083105a122.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2005/0083105a122.pdf)) and in paragraph (B)(2) the reference to OMB circular A 87 was changed to CFR Part 255 ([www.whitehouse.gov/sites/default/files/omb/fedreg/2005/0083105a87.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2005/0083105a87.pdf)).

5101:2-47-26.2 “Cost Report ‘Agreed Upon Procedures’ Engagement” outlines the requirement for a private child placing agency (PCPA) or a private noncustodial agency (PNA) that completes a JFS 02911 JFS "Single Cost Report" to have an annual JFS 02913 "Agreed Upon Procedures Engagement" conducted for its cost report. The "Agreed Upon Procedures Engagement" was changed from an appendix to a form.

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

<b>Rule</b>	<b>Statutory Authority</b>
5101:2- 47-11	5103.03, 5153.166
5101:2-47-26.1	5101.141, 5103.03, 5153.166
5101:247-26.2	5101.141, 5101.145

**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.*

No. 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)?**

These rules set forth the fiscal reporting process for a substitute care provider that allows ODJFS to establish a statewide foster care rate ceiling for public agencies to best utilize their local funding for substitute care placement costs. If a substitute care provider does not submit a cost report for rate setting, a child who is program eligible for Title IV-E foster care maintenance cannot be federally reimbursed for their cost of substitute care. As part of the cost report that provider must show that a license from ODJFS or ODMH to provide substitute care settings.

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

These regulations allow public entities to keep local tax dollars that can be used for in-home services without disrupting the lives of children in need of child welfare by placing them into substitute care.

**Development of the Regulation**

**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.*

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).

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

In November 2011 ODJFS began to facilitate three (3) workgroups with public and private agency stakeholders throughout the state to improve contracting for purchased care (substitute), improving the cost reporting for substitute care providers, and establishing foster care ceiling rates. The workgroups met no less than quarterly with one group acting as the oversight committee. The oversight committee included the directors from the public and private statewide associations, OACCA and PCSAO. ODJFS hopes to

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keep placement costs at a minimal level while improving outcomes for children. These rules went through the ODJFS clearance process from November 18, 2013 to December 2, 2013 and received no comments.

**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?**

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. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

The agency did not consider a performance-based initiative at this time as the goal for the workgroups is to establish a standard across the board for level of care.

**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 rate ceilings and contracting for substitute care.

**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.**

These rules outline the procedures for meeting the requirements for cost reporting, claiming federal reimbursement and record retention for public and private substitute care providers.

**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;**

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The direct impact of these rules is for both private non-custodial agencies and private child placing agencies. There are 125 agencies in Ohio who have submitted cost reports for establishing a foster care rate.

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

Private agencies are required by rule to hire a certified public accountant (CPA) to perform an “Agreed upon Procedure Engagement” as part of their cost reporting. The CPA completes the tool used for testing the accuracy of the figures reported on the agency’s cost report. This testing tool has been agreed upon by all parties to ensure the figures reported on the cost report are accurate.

**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 cost report requirement and rate setting process has been in place for upwards of ten years and ensures fiscal accountability as well as appropriate rates for foster care placement costs and allows for proper claiming of federal funding. In surveying agencies regarding the cost for the CPA to perform the “Agreed Upon Procedures Engagement” the report their annual cost to be between \$5000.00 and \$10,000.00 depending on the size of the agency.

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

The statute authorizes ODJFS to monitor and review costs associated with private substitute care provider’s fiscal accountability as it relates to providing substitute care services to children who are eligible for federal foster care funding. Without the costs being reported annually the private agency charges the public child placing agency rates for placing children that are not in line with their expenditures.

**Regulatory Flexibility**

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

The CPA who performs the “Agreed Upon Procedures Engagement” (testing of the agencies costs) can submit to ODJFS a waiver request to not complete any of the requirements on the “Agreed Upon Procedures Engagement.”

**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?**

Agencies have the choice as to whether to submit a cost report to ODJFS to establish an IV-E foster care rate. IV-E rate setting by ODJFS is a safeguard for making sure a public agency does not seek federal reimbursement for foster care payments for setting that is not licensed, certified or approved by ODJFS or ODMH. If a Title IV-E agency places a child in a setting that is not reimbursable (not licensed), no federal reimbursement will be disbursed. This eliminates ineligible payments of federal funds and prevents audit findings for the public agency.

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

ODJFS provides annual cost report training for all public and private agencies. On-going technical assistance is provided by the Bureau of Fiscal Accountability in the Office of Families and Children at 614-466-1213.