

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Title IV-E FCM: reimbursement, fiscal accountability, and cost reports

Rule Number(s): 5101:2-47-11, 5101:2-47-26, 5101:2-47-26.1, and 5101:2-47-26.2

Date: 12/18/2018

**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☐ Rescinded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.*

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OAC 5101:2-47-11 “Reimbursement for Title IV-E Foster Care Maintenance (FCM) Costs for Children's Residential Centers (CRC), Group Homes, Maternity Homes, Residential Parenting Facilities, Private Foster Homes, and a Substance Use Disorder (SUD) Residential Facility.” This rule outlines the reimbursement criteria for children who are eligible for FCM. Changes include: updating the revision date of the JFS 02911 "Single Cost Report" to 8/2018; adding a facility type, “substance use disorder (SUD) residential facility”; adding a paragraph for specific reimbursement requirements for SUD residential facilities; correcting the website for emanuals; and making grammar clarification throughout the rule.

OAC 5101:2-47-26 “Title IV-E agencies, private child placing agencies (PCPA), private noncustodial agencies (PNA), residential care facilities, substance use disorder (SUD) residential facilities: penalties for failure to comply with fiscal accountability procedures.” Changes include: outlining the penalties that can be enacted if an identified agency fails to comply with ODJFS fiscal accountability procedures; and adding facility types of “residential care facilities” and “substance use disorder (SUD) residential facilities” throughout the rule.

OAC 5101:2-47-26.1 “Public Children Services Agencies (PCSA), Private Child Placing Agencies (PCPA), Private Noncustodial Agencies (PNA), Residential Care Facilities, Substance Use Disorder (SUD) Residential Facilities: Title IV-E Cost Report Filing Requirements, Record Retention Requirements and Related Party Disclosure Requirements.” This rule clarifies the cost report filing requirements, the deadlines for filing the cost report, and record retention requirements. In paragraph (B) the reference to the CFR Part 225 and Part 230 were revised to the most recent versions. The date of the cost report instructions for JFS 02911 was revised. In addition, facility types of “residential care facilities” and “substance use disorder (SUD) residential facilities” were added throughout the rule.

OAC 5101:2-47-26.2 “Cost Report "Agreed Upon Procedures" Engagement.” This rule outlines the requirements for a private child placing agency (PCPA), a private noncustodial agency (PNA), residential care facility, or SUD residential facility that completes a JFS 02911 JFS "Title IV-E Single Cost Report" to have an annual JFS 02913 "Title IV-E Agreed Upon Procedures Engagement" conducted for its cost report. The date and title of the JFS 02911-I "Instructions for Completing JFS 02911, Title IV-E Single Cost Report" was revised.

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

Rule	Statutory Authority
5101:2- 47-11	5103.03, 5153.166, 5101.11, 5101.141, 5101.1414, 5101.145
5101:2-47-26	5101.145, 5101.146, 5101.147, 5101.148, 5101.24, 5101.11
5101:2-47-26.1	5101.141, 5101.145, 5103.03, 5153.166
5101:2-47-26.2	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.*

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Yes. The Family First Prevention Services Act, part of the Bipartisan Budget Act of 2018 or Public Law 115-123, made effective on October 1, 2018, states that Title IV-E agencies may claim Title IV-E reimbursements for children in custody and placed with a parent in a residential treatment facility for substance use. 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 the provider must show licensure from ODJFS or Ohio Mental Health and Addiction Services (OhioMHAS) in order to provide substitute care settings.

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

The measure of success will be found by following Federal mandates that allow public entities the funding necessary to keep children, along with a parent, safe and in the least restrictive placement while in agency custody.

### **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 Children's Alliance, Public Children Services Agencies of Ohio (PCSAO). These rules went through the ODJFS internal and external clearance process from October 26, 2018 to November 9, 2018. These rules were presented via teleconference with the PCSAO rules committee on November 1, 2018.

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

One comment of support was received during clearance for the Family First Prevention Services Act.

**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 because these rules follow the mandates of the federal Family First Prevention Services Act.

**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. These rules follow federal mandates.

**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 and follow federal mandates.

### **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;**

The scope of the business community would be the total number of providers of these services. This includes PCPAs, PNAs, residential providers, group homes licensed by ODJFS or OhioMHAS.

**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 fifteen years and ensures fiscal accountability as well as appropriate rates for foster care placement costs and allows for proper claiming of federal funding. In a previous survey to agencies regarding the cost for the CPA to perform the “Agreed Upon Procedures Engagement” they 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 agency’s costs) can submit to ODJFS a waiver request to not complete any of the

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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 a setting that is not licensed, certified or approved by ODJFS or OhioMHAS. 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 Operations in the Office of Families and Children.