

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Rule Number(s): 5101:2-47-23.1 New/Rescinded

Date: 8/6/14

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☒ Rescinded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.

Two rules of the same intent or purpose are being filed (among other reasons) to meet the five year rule review – a rescinded rule and new rule of the same number and similar title. Per the Legislative Service Commission's "Rule Drafting Manual" requirements, when fifty percent of the language of the rule is being updated, that rule must be rescinded and rewritten as a new rule. Any adverse impact

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the language of the rescinded rule may have imposed has been addressed throughout the BIA in the explanation of the language of the new rule.

This rule which is entitled, Title IV-E Agency Contracting and Contract Monitoring sets forth the contract and contract monitoring requirements for Title IV-E agencies (public entities) that contract for substitute care with a private agency provider. ODJFS originally detailed the requirements into a sample contract which the public agencies could modify to meet their specific needs. A standardized contract has been created to alleviate the need for various modifications to the sample. Currently there are nearly 30 different versions of contracts being used by public agencies throughout Ohio.

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

| Rule | Statutory Authority |
|-----------------|-----------------------------|
| 5101:2- 47-23.1 | 5101.141, 5103.03, 5153.166 |

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 designated by the federal government as the pass-through agency that administers the federal 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)?

The standardized contract shall be used by public Title IV-E agencies when contracting for substitute care with a Private Child Placing Agency (PCPA) or a Private Non-custodial Agency (PNA). Any additional contracting requirements and non-substitute care services agreed upon shall be written as an addendum. At a minimum, the agreed upon per diem for placement maintenance and placement administration shall be specified for all levels of care. Agencies may agree to contract for and specify the agreed upon amount for foster care per diems in some or all of the remaining categories listed in the contract. For all substitute care contracts entered into with a private foster care network, the agreed upon per diem for maintenance shall be the amount paid directly to the foster parent. The agreed upon maintenance payment shall cover all maintenance allowable costs as defined in 5101:2-47-01 of the Administrative Code. Invoicing procedures shall, at a minimum, correspond to the agreed upon per diem as specified on the contract. Without this regulation, the private agency could invoice the placing agency for more than the agreed upon amount as well as without this regulation

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there would be no way to track that the maintenance per diem is being paid directly to the foster parent.

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

It was brought to ODJFS' attention that Title IV-E agencies were utilizing nearly 30 versions of the contract for purchasing substitute care from a private agency provider. The multiple versions of the contract created a more cumbersome process for developing, agreeing to, and monitoring the contract agreement by both entities (public and private). Prior to the creation of a statewide contract, a sample contract was provided to public agencies for contracting purposes.

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.

Beginning in November 2011, a subcommittee of public children service agencies, private non-custodial agencies, ODJFS, county prosecutors, Ohio Association of Child Caring Agencies (OACCA) and Public Children Services Agencies of Ohio (PCSAO) met quarterly to discuss better outcomes for children in substitute care. One of the methods to achieve better outcomes was centered on the contracting of purchased care. The group concurred that having a standardized method for contracting would alleviate the cumbersome process for which contracting is currently being done in Ohio. The group concluded with a new contract agreement which will be produced through the statewide automated child welfare information system by entering the placing agency and child's demographic information with the provider's services to be utilized for this child and then shared by both entities in a paper format for signature. The new standardized format for contracting will alleviate the need for the Title IV-E and private agency providers to monitor multiple versions of a contract, will create a standardized contracting of services from providers that will end up costing less for both, and that the agreed upon services are being delivered and children are receiving quality services.

Members of the committee:

Bruce Anderson, Licking Co. DJFS
Shelia Kochis, Franklin Co. CSB
Lora Wolf, Hamilton Co. DJFS
Tracey Izzard, Youth Advocate Services
Nancy Peppler, Beech Brook
*Mark Mecum, OACCA

*Helen Lehman, South Central Ohio DJFS
*Donald Warner, Oesterlen Services for Youth
Rusty Alexander, Specialized Alternatives for Youth
Michelle Stratman, Buckeye Ranch
John Stoia, The Twelve Inc.
* Crystal Allen Ward, PCSAO

* Members of the Oversight Committee

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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?

Public and private agency stakeholders participated in a workgroup to improve contracting for purchased care (substitute), improving the cost reporting for substitute care providers, and establishing foster care ceiling rates. The workgroup met no less than quarterly to discuss changes to the rule and the creation of a standardized contract and addendum. The group spent countless hours combing through the more than 30 contracts currently being used to purchase substitute care in Ohio. With an agreement of the final version of the rule and contract, the group completed the task in February 2014. Because the contracted services and additional service addendums will be entered into the statewide automated child welfare information system (SACWIS), ODJFS will be able to view public agency contracts and addendums via SACWIS at any given time to track how many addendums are being created and for what purpose.

Mark Mecum of OACCA submitted the following clearance comment:

"We request ODJFS to exercise its leadership over the state child welfare system by mandating a Master Contract that prohibits a reasonable portion of the contract terms from being amended. Without drawing that line in the sand, the ODJFS Master Contract initiative will produce another "Model", not "Master", Contract, of which many PCSAs will not use and offers no value to private agencies. Establishing uniformity with contracts will tear down major obstacles in business operations in the State of Ohio -- both in the private and public child welfare sector. It has the potential to save money and free up resources in county PCSA and Prosecuting Attorney Offices and in private agencies. We ask ODJFS to consider exercising its authority to establish sufficient uniformity in the Master Contract terms. Otherwise, we believe the hard work of your staff and of the members of the Master Contract Committee will be wasted."

ODJFS Response:

Thank you for your comment. The Office of Families and Children will proceed with the Agreement and rule as is. The belief of the Contract Group made up of both public and private agencies is that many counties will use the agreement without change. The Contract Group will monitor additions and amendments to the Agreement placed in the addendum. The Contract Group will work to amend any language in the Master Agreement where certain Articles are being amended frequently to lessen future changes.

On 7/7/2014, Mark Mecum requested ODJFS consider amending the rule to include a requirement for PCSAs to send their contracts to an ODJFS Email box so the Agency could monitor and review the provisions/addenda within the each of the contracts. ODJFS representatives explained to Mr. Mecum that the SACWIS data system is currently able to capture, query, and review all PCSA original contract language plus

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any/all addenda information and that creating an email box for PCSAs to submit contract language would be duplicative to the capabilities of SACWIS.

With that understanding, Mr. Mecum was agreeable to moving forward with the original filing of the rule without any further amendments.

Chip Spinning, Director of Franklin Co. Children Services submitted the following clearance comment:

PCSA is a statutorily created entity with specific duties and responsibilities. One of the duties of a PCSA under R.C. 5153.16(C) is to contract for services. Under Section (C) only a county children services board appointed under section 5153.03 of the Revised Code that is a public children services agency may contract under division (C)(2)(a) of this section. If an entity specified in division (B) or (C) of section 5153.02 of the Revised Code is the public children services agency for a county, the board of county commissioners may enter into contracts pursuant to section 307.982 of the Revised Code regarding the agency's duties.

To mandate the use of a standardized contract interferes with the independence of a county PCSA to enter into agreements that meet the specific needs of children in each county. It also undermines the authority of counties to determine the terms and conditions of a contract that best meets the needs of that particular county.

The proposed format of the contract, a set of standard terms and conditions, with individual agency requirements included as an addendum or exhibit to the contract is a concern. The interpretation of a contract is by order of precedence; the body of the contract is the first order of precedence; addendums, exhibits, etc. are additions or supplements to a contract. When questions of interpretation arise, the contract document will always prevail over addendums, exhibits. If an agency's specific terms are an attachment to the main contract, issues of interpretation will most likely arise.

Contracts for services must fit the individual needs and goals of an agency. Further a contract must also contain terms that protect a county agency and ultimately, the tax payer, in that services purchased can be evaluated for effectiveness and quality. A "one size fits all" contract does not offer this protection. The effectiveness of a contract is determined by its details and specificity; it's also critical for FCCS to update contracts periodically to align with current goals and concerns and to address changing needs of the population being served.

FCCS issues a Request for Proposals (RFP) for placement services as required by procurement laws. The RFP reflects the type of placement services that align with the individual agency's mission, values, and the changing needs of the population we serve. The contract document is prepared to align with the RFP as those are the services proposed. To have one document that meets the needs of 88 different agencies is not realistic due to differences in populations served, funding, goals and mission of the individual agencies.

When contracts near expiration, FCCS issues a new RFP and the current contract is reviewed for any changes that are needed due to experience with the existing contract provider, changing needs of the population we serve, or a change in the philosophy of the agency relative to out-of-home care. These issues may require several modifications to a placement contract template. Further a standardized mandated contract assumes the agency will make no changes to future service delivery or provider requirements. A standardized contract mandated for all PCSAs may restrict a county's ability to change the terms and conditions when a new RFP is issued. Franklin County Children

ODJFS response:

Thank you for your comment. The Office of Families and Children will proceed with the Agreement and rule as is. The belief of the Contract Group made up of both public and private agencies is that many counties will use the agreement without change. The Contract Group will monitor additions and amendments to the Agreement placed in the addendum. The Contract Group will work to amend any language in the Master Agreement where certain Articles are being amended frequently to lessen future changes. As identified in Article III (A) "Agreement means this Agreement and the addenda thereto." Thus, the addendum is part of the agreement and is not cited as an exhibit. Thus, changes to Articles cited in the addendum to the agreement will take precedence. Any additions to or changes to Articles are to be negotiated and agreed upon and written into the addendum to the agreement. The Office of Families and Children is allowing changes to the Agreement via the addendum for this exact purpose.

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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 federally designated agency to administer the Title IV-E Foster Care program.

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

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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 standardized contract for purchased 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 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.

The requirements in this rule are not new for the public IV-E agencies. The only substantial change is the requirement to use the automated standardized contract which is accessible via the statewide automated child welfare information system. The contract requirements will prefill from the system into a form for signing by both parties.

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 direct impact of these rules affect public IV-E agencies throughout Ohio that will be required to use the standardized contract format for establishing the per diem rate for each child that is placed into a private agency settings. The private agency will have to continue to invoice the public agency as they did previously breaking down the maintenance and administrative placement costs to ensure the payment for maintenance is paid directly to the foster parent and the public agency claims for federal reimbursement at the current federal financial participation rates are properly documented (50% for administrative costs and the current 63.02% for maintenance for children who are determined eligible).

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

Private agencies are required to ensure the services that are agreed to in the contract for services are provided to children placed into their private agency setting. If, during a fiscal audit by ODJFS Office of Fiscal and Monitoring Services, the private

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agency receives a penalty for misuse of funds, that agency could be in jeopardy of losing their license. There was no identified increase in time for developing the contract except, invoicing for the payment of services or monitoring especially with fewer variances in the contracts being used by the public agencies. It is anticipated that less than one hour will be spent by private agencies in contracting for purchased care. It is anticipated that same amount of time will be spent invoicing the agency, and less time monitoring since the language among contracts will be the same.

b. 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.

Private agencies will no longer have up to 30 different versions of a contract to enter into an agreement with the public IV-E agency. The time involved in monitoring contracts will be decreased because of the uniformity of contracts and contracts being entered into SACWIS. The cost of penalties for misuse of funds will be based on the amount of inappropriately reported costs.

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

Title IV-E agencies are required under federal law to enter into a contractual agreement when the agency places children with a private agency provider. The agreement details the services and costs associated with those services. If the Title IV-E agency does not enter into an agreement, the provider could charge varying amounts to the daily cost for providing the services which would create substitute care costs to exceed the statewide foster care ceiling amounts for maintenance costs and increase the use of tax dollars that is needed to pay for children who are in the state's care and who need to be placed into foster care. Title IV-E agencies have made false claims for reimbursement without having the necessary documentation from the private agency provider.

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance for small businesses.

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?

Not applicable.

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

ODJFS provides on-going technical assistance through the Bureau of Fiscal Accountability in the Office of Families and Children at 614-466-1213.