



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Job & Family Services

Rule Contact Name and Contact Information:

Michael Lynch 614-466-4605

Regulation/Package Title (a general description of the rules' substantive content):

Foster homes, residential treatment facilities and newly certified Qualified Residential Treatment Programs cost report filing requirements.

Rule Number(s): 5101:2-47-10, 5101:2-47-11, 5101:2-47-11.1, 5101:2-47-26, 5101:2-26.1 and 5101:2-47-26.2

Date of Submission for CSI Review: _____

Public Comment Period End Date: June 26, 2020

Rule Type/Number of Rules:

☒ New/ 2 rules

☐ No Change/ _____ rules (FYR? ____)

☒ Amended/ 3 rules (FYR? yes)

☒ Rescinded/ 1 rules (FYR? no)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

Any agency that wants to establish a IV-E reimbursement rate ceiling will have to submit a cost report.

The rule(s):

- ☐ a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ☐ b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ☒ c. **Requires specific expenditures or the report of information as a condition of compliance.**
- ☐ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- e. **Please briefly describe the draft regulation in plain language.**

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

OAC rule 5101:2-47-10 entitled "**Reimbursement for Title IV-E foster care maintenance (FCM) costs for a foster home.**" This new rule was created to outline the cost report filing requirement for a foster home. This is a new rule was created to include the language regarding the requirements for a foster home that was in rule 5101:2-47-11 that is being rescinded. The requirements for a foster home agency to file a cost report remains unchanged. OAC rule 5101:2-47-11 entitled "**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 substance use disorder (SUD) residential facilities.**" The rule is being rescinded and replaced with a new rule under the same number. Language pertaining to foster homes has been removed from this rule and added to a new rule 5101:2-47-10. This rule outlined the cost report requirements for a children's residential center certified prior to October 1, 2020. The replacement rule no longer includes language regarding foster home cost report requirements since foster homes. Foster homes are not certified as Qualified Residential Treatment Programs as part of the Family First Prevention Services Act of 2018. OAC rule 5101:2-47-11 entitled

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"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 certified prior to October 1, 2020." This rule outlines the cost report requirements for a children's residential center certified prior to October 1, 2020. This rule replaces a rule of the same number that no longer includes language regarding foster home cost report requirements and does not include language for QRTP certified after October 1, 2020. Foster homes are not considered Qualified Residential Treatment Program as part of the Family First Prevention Services Act of 2018. OAC rule 5101:2-47-11.1 entitled **"Reimbursement for Title IV-E foster care maintenance (FCM) costs for Qualified Residential Treatment Program (QRTP) certified after October 1, 2020."** This rule outlines the cost report requirements for a Qualified Residential Treatment Programs (QRTP) certified after October 1, 2020 as part of the Family First Prevention Services Act of 2018. OAC rule 5101:2-46-16 entitled **"Title IV-E foster care maintenance (FCM) program: Reimbursable placement settings."** This rule outlines the requirements for placement settings that are eligible for foster care maintenance reimbursement. The rule is being amended to include a Qualified Residential Treatment Program (QRTP) as defined in rule 5101:2-9-42 of the Administrative Code. OAC rule 5101:2-47-26 entitled **"Title IV-E agencies, private child placing agencies (PCPA), private noncustodial agencies (PNA), Qualified Residential Treatment Program (QRTP), residential care facilities, substance use disorder (SUD) residential facilities: penalties for failure to comply with fiscal accountability procedures."** This rule outlines the penalties that can be enacted if an identified agency fails to comply with ODJFS fiscal accountability procedures. The rule is being amended to include a Qualified Residential Treatment Program (QRTP) as defined in rule 5101:2-9-42 of the Administrative Code. OAC rule 5101:2-47-26.1 entitled **"Title IV-E Agencies, private child placing agencies (PCPA), private noncustodial agencies (PNA), qualified residential treatment programs (QRTP), 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. The rule is being amended to include a Qualified Residential Treatment Program (QRTP) as defined in rule 5101:2-9-42 of the Administrative Code. OAC rule 5101:2-47-26.2 entitled **"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 rule is being amended to include a Qualified Residential Treatment Program (QRTP) as defined in rule 5101:2-9-42 of the Administrative Code.

Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

5103.03, 5153.166, 5101.141 and 5101.145

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?

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If yes, please briefly explain the source and substance of the federal requirement.

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 into a qualified residential treatment program. 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.

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

No provisions were included that exceed the federal requirements.

- g. 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

- h. 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 when children are placed into a public or private foster home, residential facility or qualified residential facility.

- i. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

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

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

Public children services agencies, private non-custodial agencies, ODJFS, county prosecutors, Ohio Children's Alliance, Public Children Services Association of Ohio (PCSAO). These rules went through the ODJFS internal and external clearance process from June 15- June 26, 2020.

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

The rule went through the clearance process from June 15 – June 26, 2020. There were no comments submitted.

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?

Measurable outcomes and scientific data are 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 were no other alternatives considered for the rules; 5101:2-47-10, 5101:2-47-11, 5101:2-47-11.1, 5101:2-47-26, 5101:2-47-26.1 and 5101:2-47-26.2 as the rules are driven by federal guidelines. No other regulations would apply. ODJFS is the designated agency to administer the Title IV-E Foster Care program. Each agency must submit a cost report annually for ODJFS to establish a per diem rate ceiling for federal reimbursement. Without a per diem rate ceiling established for the agency, the child placed into the facility will not be eligible for federal financial participation. Therefore, the public placing agency would receive no reimbursements for the cost of the child's care.

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.*

ODJFS did not consider a performance-based initiative, but rather followed federal guidelines prescribing that the department set standards to ensure cost report filings are submitted annually for a IV-E per diem rate can be established.

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

The JCARR prong for invalidation: "Rules do not conflict with a rule of its own or another rule-making agency: has been an ongoing deterrent to duplication. JFS Legal staff and rule

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developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

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.

Once the rule is final filed, a transmittal letter will be generated explaining the new rule and the rationale for the addition of this rule. The transmittal letters can be viewed at: <http://emanuals.jfs.ohio.gov/FamChild/FCASM/FCASMTL/>

The rule does not prescribe anything that would not be applied consistently. ODJFS licensing specialists review the agencies to ensure the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

Adverse Impact to Business

12. 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; and

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

b. Identify the nature of all adverse impact (e.g., 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 more than 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 surveying agencies regarding the

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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.

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

13. 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.”

14. 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 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.

15. 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.

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