

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: Adoption Assistance Rules

Rule Number(s): OAC 5101:2-49-01, 5101:2-49-17, and 5101:2-49-21

Date: 2/26/19

**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Rescinded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.*

Ohio Administrative Code (OAC) rule 5101:2-49-01 entitled "**Administration of the Title IV-E Adoption Assistance (AA) Program**" outlines the AA administrative requirements for public children services agencies (PCSA). This rule also contains requirements for Private child placing agencies (PCPAs). Changes include updates to revision dates in paragraph (B),

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(F) and (I); correction to form name in paragraph (F)(2)(b)(i); clarification in paragraph (E)(2)(c) regarding agency responsibility has been amended to placement and care/custody; approval or denial of an eligibility determination application request has been changed from thirty working days to thirty calendar days; and language has been stricken in (H)(1) referencing CRIS-E as a source of verification and information to determine eligibility. This can now be done by launching the Ohio Integrated Eligibility System (OIES) interface in the Statewide Automated Child Welfare Information System (SACWIS). The JFS 06612 "**Health Insurance Information Sheet**" is no longer available on the JFS Form Central website. The form is available through the Ohio Department of Medicaid, Medicaid Forms Listing website which can be accessed through JFS Forms Central. The title to the rule has been amended.

OAC rule 5101:2-49-17 entitled "**Case Record Requirements for Title IV-E Adoption Assistance (AA)**" outlines the case record requirements for each adoption assistance case. Changes were made to the rule to provide clarification. Language was added in paragraph (B)(17) to include eligibility documentation of a child of a minor parent who is eligible for Title IV-E foster care maintenance (FCM) payments. Paragraph (B)(18) indicates the eligibility documentation of a child placed in the custody of a Public Children Services Agency (PCSA) as a result of a JFS 01645 or JFS 01666 to be included in the case record. Reference in the rule to the adoption assistance connection (AAC) to age twenty-one program has been removed from the rule. Rules pertaining to the AAC program can now be found in Chapter 5101:2-51 of the Administrative Code. The title to the rule has been amended. The JFS 01451-B "**Title IV-E Adoption Assistance Annual Assurance of Legal Responsibility, School Attendance and Eligibility for Continued Medicaid Coverage**" has been amended to incorporate the changes made to 5101:2-49-17 of the Administrative Code. The JFS 01453 "**Title IV-E Adoption Assistance Agreement**" has been amended to incorporate the changes made to 5101:2-49-17 of the Administrative Code.

Ohio Administrative Code (OAC) rule 5101:2-49-21 entitled "**Reimbursement of Nonrecurring Adoption Expenses for a child with Special Needs**" outlines the requirements for eligibility for nonrecurring adoption expenses and the reimbursement of the nonrecurring adoption expenses. Changes were made to clearly explain requirements. Language was added to paragraph (L)(1) to clarify that the application for reimbursement of nonrecurring adoption expenses, the JFS 01421 entitled "Application for Reimbursement of Nonrecurring Adoption Expenses," to the Public Children Services Agency (PCSA) that holds permanent custody, or the case of an independent adoption is submitted in the county that the adoptive parent(s) resides. Submission of the JFS 01421 "Application for Reimbursement of Title IV-E Nonrecurring Adoption Expenses" shall be submitted to the county where the adoptive parent(s) reside. In paragraph (R)(3), language was included for a final decree of adoption by a foreign country which now constitutes a final adoption. The

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JFS 01421 "Application for Reimbursement of Title IV-E Nonrecurring Adoption Expenses"; JFS 01421-I "Instruction for Completing JFS 01421, Application for Reimbursement of Title IV-E Nonrecurring Adoption Expenses"; and JFS 01438 "Agreement for Payment of Reimbursement for Title IV-E Nonrecurring Expenses incurred in Adoption of a Child" have been amended to incorporate the changes made to 5101:2-49-21 of the Administrative Code. The JFS 01453 "Title IV-E Adoption Assistance Agreement" has been amended to incorporate the changes made to 5101:2-49-21 of the Administrative Code.

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

<u>Rule</u>	<u>Authorizing Statute</u>
5101:2-49-01	5101.141
5101:2-49-17	5101.141
5101:2-49-21	5101.141

**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.*

5101:2-49-01, Yes. Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C. 670 (1980) section 473, as amended requires the Department of Job and Family Services to administer the adoption assistance program.

5101:2-49-17 and 5101:2-49-21, Yes. Title IV-E of the "Social Security Act," 94 Stat/ 501, 42 U.S.C. 670 (1980), section 473 as amended requires the Department of Job and Family Services to administer federal payments for foster care and adoption assistance.

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

These rules (5101:2-49-01, 5101:2-49-17, and 5101:2-49-21) 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)?**

For rule 5101:2-49-01, ODJFS is the state agency that is responsible for administering the Title IV-E program. In Ohio the Title IV-E program is county administered by the Public Children Service Agencies (PCSAs) and state supervised. Under the authority of Ohio Revised Code (ORC) 5101.141, Ohio Department of Job and Family Service (ODJFS) drafts standards for the Title IV-E agencies to administer the program. It is the responsibility of the Private Child Placing Agencies (PCPAs) who hold permanent custody of a child to inform all adoptive parent(s) about the adoption assistance program and provide the PCSAs with

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documents to help them determine adoption assistance eligibility for a child with special needs.

For rule 5101:2-49-17, the purpose is to ensure that all Private Child Placing Agencies (PCPAs) who hold permanent custody of a child are required to provide the Public Children Services Agency (PCSA) with verification of dates of the documents needed in the adoption assistance case record, and for auditing purposes these documents shall be provided upon request.

For rule 5101:2-49-21, the purpose is to ensure that all Private Child Placing Agencies (PCPAs) and Private Non-Custodial Agencies (PNAs) inform the adoptive parent(s) about the nonrecurring adoption assistance program and to provide the PCSA with the documentation required by OAC 5101:2-49-17 (Case Record Requirements for Title IV-E Adoption Assistance (AA) and OAC 5101:2-49-21 so the PCSA can determine eligibility for the nonrecurring adoption reimbursement.

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

5101:2-49-01, The success is measured in great part by and through the language of this rule that ensures the Adoption Assistance (AA) program is administered correctly and funds are distributed and reimbursed to adoptive parent(s) who qualify to receive them; the proper placement of children is being carried out; by improving outcomes for children in need of a permanent family; are improving the number of successful adoptions; and ensures adoption assistance, if eligible, is provided based on federal guidelines from section 473 of the Social Security Act.

5101:2-49-17 and 2-49-21, The success is measured in great part by and through the language of these rules that ensure the Adoption Assistance program and the reimbursement of Nonrecurring Adoption expenses is administered correctly and funds are distributed and reimbursed to adoptive parent(s) who qualify to receive them; through the proper placement of children; by increasing the number of successful adoptions.

**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.*

Through a collaborative partnership with county partners from across Ohio, the Bureau of Fiscal Operations, Title IV-E staff worked with multiple counties to have a diverse input with the amendment of the adoption assistance program rules. In 2018, we convened an adoption subsidy workgroup in which thirty-eight (38) counties from across the state participated. This

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was a two-day roundtable discussion held on April 17<sup>th</sup> and April 23<sup>rd</sup> to discuss a “Best Practice” model that could be created and utilized across the state. From this discussion, the need for rule amendments for the adoption assistance program was then necessary. Following the round table discussions in April, we kept the momentum going by conducting AA Five-Year Rule Review Workgroup. Thirteen (13) counties participated in this three-month process that was held from June through September 2018. There were weekly face-to-face and telephone conference meetings to review sixteen (16) AA rules and eight (8) forms. Additional conference calls occurred through November 2018 with County partners, State Hearings, and Federal contacts prior to the proposed amended rules going into Clearance in December 2018.

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

These rules were reviewed and revised with the interested parties’ involvement and language was established that was agreeable to all through the rule review workgroup. The rules went through two clearance processes. The Pre-Clearance process was held from October 2, 2018 through October 22, 2018. This was an announcement that the entire chapter of Adoption Assistance rules (Chapter 49) would be amended as part of a five-year rule review. The second clearance process (clearance control number 8251) was held from December 12, 2018 through December 26, 2018 with an official clearance comment period in which our agency accepted comments from interested parties until the original file with individuals from public Children Service Agencies (PCSA), Children Services Board (CSB) we received five comments, and Public Children Services Agency of Ohio (PCSAO), Contracts and Acquisition, State Mediation/Hearing Department and staff from the Office of Families and Children commenting on the entire rule package.

After reviewing the comments from the Clearance process on these rules, no additional amendments were made. The amendments that were made are listed for each rule under "Regulatory Intent."

**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?**

There are no alternative regulations because ODJFS is required to administer the Title IV-E adoption assistance program pursuant to section 473 of the Social Security Act and 5101.141 of the Ohio Revised Code.

**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 state followed federal regulations driven by section 473 of the Social Security Act and Section 5101.141 of the Ohio Revised Code.

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

There is no duplication as these rules are specific to the administration of the adoption assistance program and no other rules address these specific issues. These rules were reviewed by our county partners rule review workgroup, Public Children Services Agency Organization (PCSAO), Federal contacts, legal staff at ODJFS, and staff at the Office of Families and Children to ensure they do not duplicate any existing Ohio regulations.

**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 is following federal guidelines as outlined in section 473 of the Social Security Act. The adoption assistance program is monitored by ODJFS through case record reviews to ensure compliance with the rule standards. This process is measured by the number of adopted children determined eligible for the adoption assistance program that find permanent homes.

**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;**

There are 58 Private Child Placing Agencies (PCPAs) in Ohio that will be impacted by this.

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

For OAC 5101:2-49-01, if the PCPAs do not provide the information about the adoption assistance program to the adoptive parent(s), the parent(s) will not be informed about the adoption assistance program that can assist them in incorporating an adopted child into their family. The adverse impact includes the time and money involved in providing copies of the JFS 01616 (Social and Medical History), JFS 01673 (Assessment for Child Placement), JFS 01692 (Application for Adoption of a

Foster Child or Sibling Group) and other information to the PCSA and providing adoption assistance information to each person that inquires about adoption.

For 5101:2-49-17, if the PCPAs do not provide the documentation required in this rule, the PCSA can't determine eligibility for the adoption assistance program that will assist the adoptive parent(s) in caring for the adopted child. This adverse impact includes time and money involved in providing copies of various forms and documents outlined in the rule to the PCSA.

For 5101:2-49-21, if the PCPAs do not inform the adoptive parent(s) about the nonrecurring adoption expenses for reimbursement, the adoptive parent(s) will not know where to apply or whether they are eligible for the nonrecurring adoption expenses reimbursement. The adverse impact includes time and money involved in providing nonrecurring adoption expense reimbursements information to the adoptive parent(s).

**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.*

For 5101:2-49-01, The PCPAs are required to complete a homestudy on each adoptive family with whom they are placing a child. Part of the homestudy process involves completing the following forms JFS 01616, JFS 01673, JFS 01692 and any out-of-state approved homestudy forms. These forms are required to be sent to the PCSA so that the agency can determine eligibility for the AA program. A homestudy is unique to each adoptive parent and used to gather information to determine if the potential adoptive family can be approved for adoption and then to find a child that fits into the adoptive family. Some of the component parts of the homestudy include: criminal background checks, domestic violence checks, social and medical information of the adoptive parent(s), home safety, fire safety, bedroom capacity, determining what type of child the prospective adoptive parent(s) is willing to adopt, etc.

For 5101:2-49-17, the PCPAs are required to provide documentation listed in this rule, so the PCSA can determine eligibility for the adoption assistance program. Without this documentation, the eligibility for the adoption assistance program will be denied and the adoptive parent(s) will not be able to receive adoption assistance.

For 5101:2-49-21, the PCPAs and PNAs are required to inform all adoptive parents about the availability of the reimbursement for nonrecurring adoption expenses. If the adoptive parent(s) are not aware of the program, they would not know to apply for \$1,000.00 reimbursement of nonrecurring adoption expenses.

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

ODJFS is driven by section 473 of the Social Security Act to administer the adoption assistance program.

**Regulatory Flexibility**

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

There is no alternative means for compliance to these rules (5101:2-49-01, 2-49-17, and 2-49-21).

**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?**

For rule 5101:2-49-01, there are no fines or civil penalties for non-compliance, but if the PCPA does not inform the adoptive parent(s) about the program the adoptive parent(s) will not know to make an application for the adoption assistance program.

For rule 5101:2-49-17, there are no fines or civil penalties for non-compliance, but if the PCPA does not provide the needed documentation for eligibility determination and the adoption assistance case record, the PCSA can't determine the eligibility for the child.

For rule 5101:2-49-21, there are no fines or civil penalties for non-compliance, the adoptive parent(s) are just not informed about the availability of the nonrecurring adoption reimbursement.

For rules 5101:2-49-17 and 2-49-21, if the adoptive parents make a complaint to the ODJFS licensing department, the department will review the PCPAs records and if found in violation, cite them for rule violations and request a corrective action plan.

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

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The required forms are available on the ODJFS website under forms on the inter-net at <http://www.odjfs.state.oh.us/forms/inter.asp> in accordance with RC 121.75(E). There is also a JFS 01985 "Adoption Subsidies Guide" (rev. 3/2018) that explains programs that are available for adopted children.