



## 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 and Family Services

Rule Contact Name and Contact Information: Michael Lynch, 614-466-8376

Regulation/Package Title (a general description of the rules' substantive content):  
OAC rule 5101:2-49-21 entitled "Reimbursement of Title IV-E 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.

Rule Number(s): OAC 5101:2-49-21

Date of Submission for CSI Review: 10/11/2019

Public Comment Period End Date: 10/18/2019

**Rule Type/Number of Rules:**

- New/\_\_\_ rules  No Change/\_\_\_ rules (FYR? \_\_\_)  
 Amended/ 1 rules (FYR? No)  Rescinded/\_\_\_ rules (FYR? \_\_\_)

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?**

The rule is not being filed to meet FYR and the amendments pose no adverse impact to businesses.

**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**

- 2. 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 5101:2-49-21 entitled "Reimbursement of Title IV-E 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. Reinstated original language in paragraph (I) to clarify the submission of a request for payment or reimbursement and proof of expenditures for nonrecurring expenses within two years of adoption finalization or disruption prior to adoption finalization. Minor edits were made throughout. No substantive changes were made to the rule. The JFS 01438 "Agreement for Payment or Reimbursement for Title IV-E Nonrecurring Expenses Incurred in the Adoption of a Child with Special Needs" form title has been amended to incorporate the changes made to rule 5101:2-49-21 of the Administrative Code.

- 3. 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.**

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Statute 5101.141 grants rule writing authority and statute 5101.11 is the statute the rule implements or amplifies.

- 4. 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.*

Yes, pursuant to section 5101.141 and Chapter 119 of the Ohio Revised Code (ORC) this rule is being amended to clarify policy relating to the administration of the Title IV-E adoption assistance program pursuant to OAC rule 5101:2-49-01 "Administration of the Title IV-E Adoption Assistance (AA) program." ORC 5101.141 "Administering federal payments for foster care and adoption assistance" and the Social Security Act 471 is the State Plan for Foster Care and Adoption Assistance which allows a state to be eligible for payments while 472 allows eligible states with an approved plan to make adoption assistance payments in accordance with section 473 which provides the state agency responsible for administering the program authorized by part B to administer, or supervise the administration of the program.

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

This rule does not exceed the federal requirement.

- 6. 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 5101:2-49-21, 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.

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

Rule 5101:2-49-21, 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.

- 8. 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?**

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

No. The rule contained in this rule package is not being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931.

### **Development of the Regulation**

**9. 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 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.

This rule was effective on August 1, 2019 as part of a five-year rule review. The rule then went through a 7-day clearance period, 08/19/2019 to 09/02/2019, to clarify policy relating to the administration of the Title IV-E adoption assistance program. Original language was reinstated in the rule to clarify the submission of a request for payment or reimbursement and proof of expenditures for nonrecurring expenses within two years of adoption finalization or disruption prior to adoption finalization.

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

After reviewing two (2) comments from the Clearance process on this rule, the rule was edited to include some suggested amendments for further clarification. The amendments that were made are listed rule under "Regulatory Intent."

**11. 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?**

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Not Applicable.

**12. 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.

**13. 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.

**14. 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.

**15. 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**

**16. 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**

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

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

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This rule is not being filed to meet FYR and the amendments pose no adverse impact to businesses.

Rule 5101:2-49-21, The existing adverse impact on unchanged parts of the rule 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.*

With regard to the existing, unchanged language of rule 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. It would take an average of one hour for the IV-E case worker to explain the program to a prospective adoptive parent(s), at an estimated median salary of \$49,260 (based off of current CareerExplorer salary data) would total \$23.68.

**17. 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. The AA program is a Federally funded, state supervised, county administered program. The federal Adoption Assistance and Child Welfare Act of 1980 attempted to give children with special needs a fair chance at being adopted. This law made it possible for families to receive subsidies and medical assistance to adoption children who have the hardest time finding permanent homes. Title IV-E Adoption Assistance provides financial assistance to families based on the child's special needs at the time of the adoptive placements. The benefits may include a monthly payment and/or a Medicaid card. With the benefits of the nonrecurring reimbursements, the program helps with the adoption process by assisting adoptive families with the reasonable and necessary cost of adoption.

**Regulatory Flexibility**

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

There is no apparent alternative means of regulation for compliance to the rule 5101:2-49-21.

**19. 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?**

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This rule does not impose any fines or penalties for non-compliance. Non-compliance would require an agency to be informed of proper administration of the rule and for the agency to acknowledge/identify how they will comply with the rule in the future.

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

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. Additional questions or information, please email [HELP-DESK-OCF@jfs.ohio.gov](mailto:HELP-DESK-OCF@jfs.ohio.gov).