



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:
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Regulation/Package Title (a general description of the rules' substantive content):

Title IV-E Agency Contract and Contract Monitoring

Rule Number(s): 5101:2-47-23.1

Date of Submission for CSI Review: 4/1/2021

Public Comment Period End Date: 4/8/2021

Rule Type/Number of Rules:

New/___ rules	<input type="checkbox"/> No Change/___ rules (FYR? __)
X Amended/___1 rules (FYR? _yes_)	<input type="checkbox"/> Rescinded/___ rules (FYR?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?

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

2. Please briefly describe the draft regulation in plain language.

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

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 for the placement of children. With the passage of the Family First Prevention Services Act, a Qualified Residential Treatment Program (QRTP) is required to provide six months of aftercare support which includes monthly contact and referral to services. Title IV-E agency may also contract with a QRTP to provide aftercare services.

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.

5103.03, 5153.166 and 5101.141

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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, 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.

5. 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.

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)? With the passage of the federal Family First Prevention Services Act, all group homes and children residential centers are to provide six months of aftercare support to any youth who was placed into the facility for more than fourteen days as part of the discharge plan. The discharge planning begins upon placement and the plan is developed by the family and permanency team. The permanency team is to consist of all appropriate family members, relatives, and kin of the child, as well as appropriate professionals who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy.

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. Aftercare support is federally required to be provided to any youth discharged after fourteen days of placement in a Qualified Residential Treatment Program. At a minimum, the agreed upon per diem rate for placement maintenance and placement administration shall be specified for all levels of care on the Title IV-E Schedule A Rate Information document which may include aftercare support. Agencies may also agree to contract for six months of aftercare services. If the Title IV-E Agency agrees to contract for aftercare services, the rates for the service shall be on the Title IV-E Schedule B Aftercare Services Rate Information document attached to the agreement.

Aftercare services shall be billed at the Medicaid rate found on the Ohio Medicaid website: [Manuals and Rates \(ohio.gov\)](#). 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

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invoice the placing agency for more than the agreed upon amount as well as without this regulation there would be no way to track that the maintenance per diem is being paid directly to the foster parent.

7. 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.

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?

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.

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

Public children services agencies, private non-custodial agencies, ODJFS, Ohio Children's Alliance, Public Children Services Association of Ohio (PCSAO). These rules went through the ODJFS internal and external clearance process in which ended on March 22, 2021.

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

Beginning in November 2020, a subcommittee of public children service agencies, private non-custodial agencies, ODJFS, Ohio Childrens Alliance and Public Children Services Agencies of Ohio (PCSAO) met bi-weekly to discuss QRTP aftercare support and aftercare services contracting requirements. The rule was shared with workgroup members and the PCSAO Rules Committee prior to going into clearance. The rule went through the clearance process from March 8 – March 22, 2021. There were no comments submitted.

Members of the committee:

Donald Warner	Oesterlen Services for Youth
Lora Wolfe	Hamilton County DJFS
Todd Gordan	The Village Network
Beth Harris	Erie County DJFS
Brenda Duncan	Butler County DJFS
Lynne Smith	Clark County DJFS
Leah Zuck	Franklin County CS

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Angela Sausser	Public Children Services Association of Ohio (PCSAO)
Brent Laman	Hamilton Juv. Ct.
Cassandra Holtzmann	Crawford County DJFS
Emily Keuper	Hamilton County JFS
Josephine Davidson	Montgomery County DJFS
Jonathon Hart	Summit County CS
Vickie Thompson-Sandy	The Buckeye Ranch
Gary Stammler	The Buckeye Ranch
Stephen Geib	Agape for Youth
Matt Kresic	Cadence Care Network
Joanne Sidener	Allen County CS
Kate Rossmann	Ohio Childrens Alliance
Roger Stauffer	Agape for Youth
Randall Galbraith	Hancock County DJFS
Otis Crockron	Athens County CS

**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?**

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?

No other regulations would apply. ODJFS is the federally designated agency to administer the Title IV-E Foster Care program.

**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 performance-based regulations are not applicable in this context.

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

JFS Legal staff and rule developers diligently review rules to assure there is no duplication of an existing Ohio regulation.

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.

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/>

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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. ODJFS Office of Fiscal and Monitoring Services review the agencies contract to ensure the regulations are applied consistently and they offer technical assistance in areas of inconsistency.

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

The direct impact of these rules affects public IV-E agencies throughout Ohio that will be required to aftercare support in the per diem rate for each child that is placed into a private agency setting. The private agency will have to continue to invoice the public agency as they did previously breaking down the maintenance and administrative placement costs, including the aftercare support 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 69.83% for maintenance for children who are determined eligible). Aftercare services is paid through Medicaid, private insurance/third party payor or the IV-E agency may pay. Note: A youth may be eligible for Family First Prevention Services during aftercare and the prevention services will be paid through Transition Act funds or Medicaid.

b. Identify the nature of all adverse impact (e.g., 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 agency receives a penalty for misuse of funds, that agency could be in jeopardy of losing their license. Without a license, IV-E agencies would not place children in their settings which would create a loss in revenue. 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.

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.

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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 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. The costs may increase in future cost reports submitted to ODJFS once the federal Family First Prevention Services Act requirements are implemented.

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

The regulation brings the state into compliance with the federal requirements that ensures IV-E funding.

Regulatory Flexibility

18. 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.

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?

Not applicable

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

ODJFS provides 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.