



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: The Ohio Department of Medicaid

Rule Contact Name and Contact Information:

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

DODD Authorization for ICF-IID Program

Rule Number(s): 5160-3-90 (Amend)

Date of Submission for CSI Review: 11/21/22

Public Comment Period End Date: 11/28/22

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___1___ rules (FYR? yes)

Rescinded/___ rules (FYR?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(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.

Rule 5160-3-90 entitled “Authorization for the Ohio department of developmental disabilities (DODD) to administer the medicaid program for services provided by intermediate care facilities for individuals with intellectual disabilities (ICFs-IID)” sets forth the provisions that authorize DODD to administer the Medicaid program services provided by ICFs-IID, and the responsibilities of the Ohio Department of Medicaid to oversee DODD’s administration of that program. The changes to this rule are:

- Clarifying language is being added and superfluous language is being removed.
- Administrative Code references are being updated.
- Regulatory restrictions and inapplicable citations are being removed throughout the rule.

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.**

Statutory Authority: ORC 5162.02

Amplifies: ORC 5162.35

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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.

No, this regulation does not implement a federal requirement.

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

Not applicable

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)?**

The public purpose of this rule is to ensure proper administration of the ICD-IID program by the Ohio Department of Developmental Disabilities (DODD), and adequate oversight and payment monitoring of the program by the Department of Medicaid.

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

The success of this rule will be measured by the extent to which the ICF-IID program is properly administered by DODD, and the extent to which there is effective oversight of the program by the Department of Medicaid.

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.

None of the proposed rules are being submitted pursuant to these specified sections of the Revised Code.

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.

The primary ICF-IID stakeholder is:

- Ohio Department of Developmental Disabilities (DODD)

DODD was involved in review of the draft rules when the Department of Medicaid emailed the draft rule and a summary of the rule changes to DODD on September 8, 2022.

The majority of the regulations around ICF-IID facilities are in DODD's rules as they administer the program. DODD and ODM worked together on our related rules with DODD working with the other ICF-IID providers.

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

DODD requested that a revision be made to paragraph (A) to update a reference to their rule. The requested revision was made.

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?

Scientific data was not applicable to the development of these rules.

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?

Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

No alternative regulations were considered. The Department of Medicaid considers Administrative Code the most appropriate type of regulation for the provisions contained in this rule.

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

The Department of Medicaid's staff reviewed the applicable ORC and OAC to ensure this rule does not duplicate any of the Department of Medicaid's rules or any other regulations in the ORC or OAC.

14. 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 final rule as adopted by the Ohio Department of Medicaid will be posted on the Register of Ohio. This is a FYR review, and no procedural regulations are changing as a result of the five-year review.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

This rule impacts 417 privately owned ICF-IID providers and 8 state-operated developmental centers (DCs).

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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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In accordance with paragraph (B) of this rule, during a review by the Department of Medicaid, ICF-IID providers will provide any records related to the administration or provision of ICF-IID services to the Department of Medicaid, the Centers for Medicare and Medicaid Services (CMS), the Medicaid Fraud Control Unit, and any of their designees in accordance with the Medicaid provider agreement. This rule does not require the retention of any additional documents. The adverse impact to an ICF-IID provider is difficult to quantify because the reviews can vary a great deal in terms of how extensive a review might be, what or how many records a facility might be required to provide, or to how many agencies the documents would have to send records to. The cost would consist of the hourly wage of the employee (which type of employee would depend on the nature of the records that are being required) multiplied by the number of hours it would take the employee of the facility to identify, retrieve, and send the necessary records.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

There are no proposed changes to the rules that will reduce a regulatory burden imposed on the business community.

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

The adverse impact associated with this rule is justified because this rule helps ensure the ICF-IID program is properly administered by DODD, and that there is adequate oversight of the program by the Department of Medicaid to ensure health, safety, and program integrity.

Regulatory Flexibility

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

No. The provisions in these rules are the same for all ICF-IIDs regardless of size.

- 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?**

ORC section 119.14 is not applicable to this regulation.

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

Providers in need of assistance may contact The Ohio Department of Medicaid Provider Hotline at 800-686-1516.

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5160-3-90

Authorization for the Ohio department of developmental disabilities (DODD) to administer the medicaid program for services provided by intermediate care facilities for individuals with intellectual disabilities (ICFs-IID).

- (A) The Ohio department of developmental disabilities (DODD), through an interagency agreement with the Ohio department of medicaid (ODM), and with oversight by ODM, administers the medicaid program for services provided by intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) ~~on a daily basis~~ in accordance with section 5162.35 of the Revised Code. Pursuant to section 5162.021 of the Revised Code, DODD may develop rules and policies governing the administration of the ICF-IID program, which ~~shall be~~ are filed in ~~Chapter~~ Chapter 5123-7 ~~5123:2-7~~ of the Administrative Code upon review and approval by ODM ~~in compliance with 42 C.F.R. 431.10 (July 15, 2013)~~.
- (B) In collaboration with DODD, ODM ~~shall~~ will create and implement oversight measures related to the ICF-IID program in accordance with Chapter 5124. of the Revised Code. Reviews may consist of, but are not limited to, physical inspections of records and sites where services are provided, and interviews of providers and recipients of ICF-IID services. ICF-IID providers ~~shall~~will provide any records related to the administration ~~and/or~~ provision of ICF-IID services to ODM, the centers for medicare and medicaid services (CMS), the medicaid fraud control unit, and any of their designees in accordance with the medicaid provider agreement.
- (C) ODM will monitor payment made under authority of this rule as necessary to ensure that funding is used for authorized purposes in compliance with federal and state laws, regulations, and policies governing the medicaid program. ODM and DODD may recover any overpayment identified by requesting voluntary repayment, or through provider payment offsets, or formal adjudicatory or non-adjudicatory recovery proceedings.
- (D) Whenever an applicant for or recipient of ICF-IID services is affected by any action proposed or taken by DODD ~~and/or~~ or ODM, the entity recommending or taking the action will provide medicaid due process in accordance with section 5101.35 of the Revised Code and as specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code. Such actions may include, but are not limited to, the approval, denial, or termination of enrollment or a denial of ICF-IID services. If an applicant or enrollee requests a hearing related to an action taken by DODD, the participation of DODD is ~~required~~necessary during the hearing proceedings to justify the decision under appeal.