



Department of
Developmental Disabilities

Hearing Summary Report

Hearing Date: 11/16/2018

Today's Date: 11/21/2018

Rule Numbers:

Rescind: 5123-9-26, 5123:2-9-06, 5123:2-9-13, 5123:2-9-20, 5123:2-9-21, 5123:2-9-23, 5123:2-9-24, 5123:2-9-29, 5123:2-9-31, 5123:2-9-32, 5123:2-9-35, 5123:2-17-02

New: 5123-9-06, 5123-9-12, 5123-9-13, 5123-9-20, 5123-9-21, 5123-9-23, 5123-9-24, 5123-9-29, 5123-9-31, 5123-9-32, 5123-9-35, 5123-9-48, 5123-17-02

Amend: 5123-9-22, 5123-9-25, 5123-9-30, 5123-9-34

If no comments at hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

5123-9-12

- Melina Draper, Medicaid Manager, Delaware County Board of Developmental Disabilities
- Lori Stanfa, Senior Policy Analyst, Ohio Association of County Boards Serving People with Developmental Disabilities
- Christine Touvelle, Policy Analyst, Ohio Provider Resource Association

5123-9-13

- Christine Touvelle, Policy Analyst, Ohio Provider Resource Association

5123-9-31

- Christine Touvelle, Policy Analyst, Ohio Provider Resource Association

5123-17-02

- Dan Housepian, Director of ICF Services, Luther Home of Mercy
- Nancy Richards, Executive Director, Clearwater Council of Governments
- Christine Touvelle, Policy Analyst, Ohio Provider Resource Association

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

5123-9-12 (Assistive Technology):

(B)(5)(b): The Ohio Provider Resource Association requests after the words "web-based monitoring" the following language be inserted: "or other device that meets the requirements set forth in the rule." This is the current language in the Remote Monitoring rule and helps to capture all of the options currently in use and allows flexibility consistent with changes rapidly taking place in the technology market.

Department's Response: In response to your suggestion, the paragraph was revised as indicated.

"Assistive technology equipment" means the cost of equipment comprising the assistive technology and may include engineering, designing, fitting, customizing, or otherwise adapting the equipment to meet an individual's specific needs and internet service necessary for operation of the equipment comprising the assistive technology. Assistive technology equipment may include equipment used for remote support such as motion sensing system, radio frequency identification, live video feed, live audio feed, ~~or~~ web-based monitoring, or other device that meets the requirements set forth in this rule and rule 5123-9-35 of the Administrative Code. Assistive technology equipment does not include non-technical, non-electronic equipment (e.g., grab bars or wheelchair ramps) or items otherwise available as environmental accessibility adaptations or specialized medical equipment and supplies.

(D)(6)(c): Consider defining or giving examples of "general utility."

Department's Response: "General utility" is a long-standing concept, but based on your comment, we will address the meaning in training and guidance materials.

(D)(6)(e): Revise as indicated.

Purchase or rental of a personal computing device such as a desktop, laptop, or tablet that duplicates any similar equipment and is used for the same function in the possession of, or service currently used by, the individual.

Department's Response: We believe it is reasonable for a person who has similar equipment to use it for multiple functions to meet his or her needs.

(D)(7)(d): This paragraph sets requirements for maintenance and repair. There is in practice a difference between Remote Monitoring Equipment and other types of Assistive Technology. Under Remote Monitoring, the provider has historically understood their ongoing role and responsibilities for maintenance and repair of equipment. This can be different for other types of Assistive Technology. Some of this can be as simple as purchase and installation. If the Department expects further ongoing requirements as defined in the

proposed rule, then expect higher rates charged for the service. It might be appropriate to break out the requirements by Remote Monitoring and other Assistive Technology. Or, reference that some products have existing warranties and use those as applicable.

Department's Response: We do not understand your concern. The rule allows payment at the provider's usual and customary rate. If it costs more to maintain equipment for Remote Support than other types of Assistive Technology equipment, the provider may charge that higher rate. The overall cap remains at \$5,000 per waiver eligibility span. It is expected that a county board of developmental disabilities would seek to have an item repaired through an existing warranty (or any other available resources) prior to authorizing waiver services to cover the cost.

(F)(3): Consider creating a prior authorization process to exceed the \$5,000 annual limit.

Department's Response: The Department is moving forward with the cap that was agreed upon by stakeholders during rule development. We will monitor utilization to see if the cap needs to be adjusted.

The Ohio Association of County Boards Serving People with Developmental Disabilities (OACB) is fully supportive of this new waiver service and agrees with the comments and recommendations from the Delaware County Board of Developmental Disabilities.

Department's Response: Thank you; we appreciate the work of OACB staff and members in developing this new service and rule.

The Ohio Provider Resource Association and its members appreciate the Department's expressed commitment to explore Remote Support outside of residential settings and look forward to its implementation.

Department's Response: We look forward to working with stakeholders to develop a convincing case for expansion of the service.

5123-9-13 (Career Planning):

The Ohio Provider Resource Association and its members are appreciative of the Department's written commitment to eventually allowing Career Planning to be provided at a one-to-four ratio and look forward to its implementation.

Department's Response: We apologize for the delay in this intended revision.

5123-9-31 (Homemaker/Personal Care Daily Billing Unit):

The Ohio Provider Resource Association (OPRA) appreciates the efforts of the Department to simplify billing for those using the daily rate. Education and training for both providers and county boards of developmental disabilities staff is essential if there is to be a successful initial implementation. Based on feedback from providers who listened to the past Monthly

Rate Calculator webinar, many left with more questions than answers. OPRA suggests a more robust and interactive training and education schedule from the Department for providers and county boards. Initial feedback on topics needing clarification include how the 3% risk corridor may impact provider pay, that county boards of developmental disabilities must and will change the Cost Projection Tool when the delivered hours are off by more than 3%, and that the need for service hours to be recorded within 30 days does not mean the agency has to bill within that timeframe. OPRA encourages the Department to address all questions and concerns through official written guidance, frequently asked question documents, and to provide trainings with the opportunity for providers to ask questions at the end of the session. OPRA extends the invitation to use any of the OPRA platforms to offer trainings or disseminate additional relevant materials. OPRA commits to working with the Ohio Association of County Boards and other stakeholders to provide additional, complimentary training to ensure all affected parties are prepared for implementation. OPRA anticipates more questions to emerge as implementation rolls out along with occasional unintended consequences. OPRA asks the Department to monitor the implementation closely so adaptations can be made and best ensure the positive outcomes as intended.

Department's Response: We agree that training is essential and are committed to ensuring all questions are answered. The Department has scheduled multiple webinar trainings and live chats during which both providers and county boards will have an opportunity to ask questions about the new daily billing unit. A recorded webinar and interactive guide that includes responses to frequently asked questions will be posted at the Department's website. The Department has agreed to support OPRA's efforts to provide supplemental training to its members. In addition, the Department will be providing information on the daily billing unit at the upcoming conference of the Ohio Association of County Boards Serving People with Developmental Disabilities. We appreciate the collaborative spirit of providers and county boards to ensure a successful implementation.

5123-17-02 (Addressing Major Unusual Incidents and Unusual Incidents):

(C)(16)(a)(x): Revise paragraph as indicated:

Verbal abuse. "Verbal abuse" means the use of words, gestures, or other communicative means to purposefully threaten, coerce, intimidate, harass, or humiliate an individual that creates a likely risk of harm to the health or welfare of an individual.

Department's Response: The revision you suggest is unnecessary. Words or gestures used to coerce, intimidate, harass, or humiliate, by their nature, create a risk of harm to the individual's welfare.

(C)(16)(b)(iii): Why is "medical emergency" not a Category C level major unusual incident? Hospitalizations are.

Department's Response: Medical Emergencies are in Category B because they involve implementing a life-saving measure. The incidents reported are significant and could result

in the death of an individual had the intervention not been implemented. In addition, Category B cases are reviewed by the Department prior to being closed.

(C)(16)(b)(v)(c)(i): Revise as indicated:

Results in ~~examination or~~ treatment by a physician, physician assistant, or nurse practitioner; or

Department's Response: Based on a question submitted when the rule was posted for clearance in advance of filing (i.e., If the treatment is obtained for purely precautionary measures based on the agency's policy and no significant injuries are noted, would this meet this criteria?), we revised the paragraph from "Results in an injury that is treated by a physician, physician assistant, or nurse practitioner; or" to its current form. If the event is significant enough to lead to clinical examination, it should be reported.

(C)(16)(b)(v)(c)(ii): Revise as indicated:

Involves strangulation, ~~a bloody nose, a bloody lip,~~ [Delete unless in treatment by a physician.] a black eye, a concussion, or biting which causes breaking of the skin; or

Department's Response: The Peer-to-Peer Physical Act was revised to provide clarification. Based on the seriousness of head injuries, we believe that a bloody nose or bloody lip should remain in the definition.

(C)(16)(b)(v)(e): Revise as indicated:

Verbal act which means the use of words, gestures, or other communicative means to purposefully threaten, coerce, or intimidate the other individual when there is the opportunity and ability to carry out the threat that creates a likely risk of harm to the health or welfare of an individual.

Department's Response: The definition as drafted already establishes the risk by including the words, "when there is the opportunity and ability to carry out the threat."

(D)(6): Revise as indicated because they are not doing anything about it in four hours. This is unrealistic and just sounds good.

The provider shall immediately, ~~but no later than four hours after discovery of the major unusual incident,~~ notify the county board through means identified by the county board of the following incidents or allegations:

Department's Response: We respectfully disagree. These reporting requirements mirror the currently effective rule and are commonly understood by the field. Four hours is allowed to ensure that immediate actions are taken to safeguard the individual or individuals involved.

(P)(3): At the risk of being offensive, either make the Health and Welfare Alerts a rule or stop this. These are not rules; they are someone's opinions. They are nice but should not be forced as rules. If they are important, make them such.

Department's Response: We believe Health and Welfare Alerts are sufficiently important that we are referencing them in paragraphs (P)(1) through (P)(3) of this rule. Health and Welfare Alerts are based on review of statewide pattern and trend data and

recommendations from the statewide Patterns and Trends and Mortality Review committees.

(K)(5)(b): We request that the Department continue to close "failure to report" cases rather than county boards of developmental disabilities. If county boards have the latitude to close these cases and the Department is not involved in reviewing them or closing them, we think there is a propensity that the more serious failure to report cases will not be addressed or followed up on like when they were when the Department was involved.

Department's Response: The Department intends to review Failure to Report cases when reviewing the associated Abuse, Neglect, or Misappropriation cases through the Incident Tracking System. Currently, the Failure to Report case and the associated case would be two separate cases; moving forward, they will be reviewed together. Additionally, the Department reviews each major unusual incident upon filing.

The Ohio Provider Resource Association (ORPA) and OPRA members are incredibly grateful for the revisions to the Major Unusual Incident rule. OPRA believes the changes to the rule will move the system forward allowing for individuals with intellectual/developmental disabilities to have increased dignity of risk and allow for increased stability in direct support professional staffing. OPRA extends the invitation to use any of the OPRA platforms to offer trainings or disseminate additional relevant materials.

Department's Response: OPRA has been a collaborative partner throughout the rule development process. We appreciate support from OPRA and its members to make changes that will improve outcomes for the individuals we serve.

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

The Department incorporated feedback as indicated above.