

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Developmental Disabilities

Regulation/Package Title: Abuser Registry

Rule Number(s): 5123:2-17-03

Date: October 18, 2017

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☒ Rescinded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.

Pursuant to Section 5123.52 of the Revised Code, the Ohio Department of Developmental Disabilities maintains an Abuser Registry, a list of persons determined by the Department to have committed an offense that makes them ineligible for employment in Ohio's developmental disabilities service delivery system. After one year, a person may petition the Department for removal of his or her name from the Abuser Registry. If the petition is denied, the person's name remains on the list.

Rule 5123:2-17-03 sets forth procedures to be used to determine whether the name of a person ("Developmental Disabilities Employee") should be placed on the Abuser Registry and standards for determining whether such person has been rehabilitated and may have his

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or her name removed from the Abuser Registry. The following are considered Developmental Disabilities Employees:

- Employees of the Ohio Department of Developmental Disabilities;
- Employees of county boards of developmental disabilities;
- Persons who are employed in positions that include providing specialized services (i.e., services designed and operated to serve primarily persons with developmental disabilities) such as employees of Agency Providers certified by the Ohio Department of Developmental Disabilities;
- Independent Providers certified by the Ohio Department of Developmental Disabilities; and
- Employees of residential facilities licensed by the Department.

As a result of the five-year review, the Department is revising the rule to align with changes made to the Revised Code by House Bill 158 of the 131st General Assembly. Although the Department is planning to rescind the existing rule and bring forth a new rule of the same number, a version that shows revisions being made is provided so stakeholders can readily see what is changing.

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

5123.54

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.

No.

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

Not applicable; the rule does not implement a federal requirement.

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)?

The rule protects Ohioans with developmental disabilities by keeping persons who have committed egregious offenses against people with developmental disabilities from working in the developmental disabilities service delivery system.

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

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The success of the rule is measured in terms of the number of Ohioans with developmental disabilities who are spared from harm caused by abuse, neglect, or misappropriation.

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.

In March 2017, the Department asked representatives of several stakeholder organizations (i.e., The Arc of Ohio, the Ohio Association of County Boards Serving People with Developmental Disabilities, and the Ohio Provider Resource Association) if they had comments or suggestions regarding the rule.

In September 2017, the draft rule was shared with the Abuser Registry External Review Committee for review and comment. The External Review Committee includes representatives of:

- Individuals and Families Who Receive Services
- Advocates
- Providers
- County Boards of Developmental Disabilities
- Office of the Ohio Attorney General

Through the Department's rules clearance process, the rule and the Business Impact Analysis will be disseminated to representatives of the following organizations for review and comment:

- Advocacy and Protective Services, Inc.
- The Arc of Ohio
- Autism Society of Central Ohio
- Councils of Governments
- Disability Housing Network
- Disability Rights Ohio
- Down Syndrome Association of Central Ohio
- Early Intervention Advisory Council
- Family Advisory Council
- The League
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Department of Medicaid
- Ohio Developmental Disabilities Council
- Ohio Health Care Association/Ohio Centers for Intellectual Disabilities
- Ohio Provider Resource Association

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Ohio Self Determination Association
Ohio SIBS (Special Initiatives by Brothers and Sisters)
Ohio Superintendents of County Boards of Developmental Disabilities
Ohio Waiver Network
People First of Ohio
Values and Faith Alliance

The rule and the Business Impact Analysis will be posted at the Department's *Rules Under Development* webpage (<http://dodd.ohio.gov/RulesLaws/Pages/Rules-Under-Development.aspx>) during the clearance period.

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

Stakeholder organizations and members of the Abuser Registry External Review Committee did not provide any comments or suggestions.

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?

Data regarding incidents of abuse, neglect, and misappropriation perpetrated against individuals with developmental disabilities informed Senate Bill 171 of the 123rd General Assembly which created the Registry. Data continue to support the need for the Registry; 70% of respondents with a disability participating in a 2012 survey by the Disability and Abuse Project (<http://disabilityandabuse.org/survey/index.htm>) indicated they had been victims of abuse.

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?

The Department considered adding language to further refine descriptions of Registry offenses but determined that doing so would require revisions to the 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.*

No; adding a person's name to the Abuser Registry is very serious matter that must be carried out by the Department in a methodical manner to ensure a consistent and fair process.

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

Section 5123.52 of the Revised Code requires the Department to establish the Abuser Registry for Ohio's developmental disabilities service delivery system. Other state agencies do not have authority to create such a registry.

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.

The changes being made to the rule are minor. The Department administers the rule and will continue to do so in a consistent and predictable manner. Department staff are available to provide technical assistance should any be required.

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;

The rule applies to Developmental Disabilities Employees throughout Ohio. The impacted business community includes approximately 2,000 Agency Providers (i.e., an entity that directly employs at least one person in addition to the chief executive officer for the purpose of providing services) and approximately 8,400 Independent Providers (i.e., a self-employed person who does not employ, either directly or through contract, anyone else to provide the services) certified by the Department and approximately 1,100 residential facilities licensed by the Department.

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

The purpose of the rule is to set forth procedures to place a person's name on the Abuser Registry which disqualifies the person for employment in the developmental disabilities service delivery system.

Paragraph (E)(4) requires a Developmental Disabilities Employee whose name is being considered for placement on the Abuser Registry and who has requested a hearing, to provide witness lists and lists of the exhibits to be introduced at the hearing.

Paragraph (E)(7) requires an employer of a Developmental Disabilities Employee who is being placed on the Abuser Registry to notify the Department of the employee's employment status.

Paragraph (E)(7) sets forth that the Department shall notify the entity responsible for regulating the Developmental Disabilities Employee's professional practice.

Paragraph (E)(7) sets forth that if the Department has issued a license, certification, registration, or other authorization to provide services to the Developmental Disabilities Employee, the Department shall initiate the process to revoke the license, certification, registration, or authorization.

Paragraph (F)(3) requires an entity seeking to hire, contract with, or employ a person in a position that provides specialized services to check the Abuser Registry and specifies that the entity may not hire, contract with, or employ the person if the person's name is included on the Abuser Registry.

Paragraph (G)(2) requires a person seeking to have his or her name removed from the Abuser Registry to submit a petition in writing with reasons demonstrating the appropriateness of removal of the person's name.

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.

The requirement for employers of Developmental Disabilities Employees to verify that a potential hire is not included on the Abuser Registry is set forth in Section 5123.52 of the Revised Code and exists independent of the rule. It takes only a few moments to check the Abuser Registry (https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx). If the name of a potential hire appears when checking the Abuser Registry, the hiring entity might spend additional time to verify that the potential hire and the person appearing on the Abuser Registry are one and the same.

Having one's name placed on the Abuser Registry would cause the Developmental Disabilities Employee to lose the opportunity to earn income as a provider of specialized services. The impact would vary based on the earnings or potential earnings of the Developmental Disabilities Employee.

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

Persons who have harmed Ohioans with developmental disabilities should not be permitted to continue to work in direct services positions where they have an opportunity to commit harm again.

Regulatory Flexibility

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

Paragraph (G) sets forth a process for a person whose name has been placed on the Abuser Registry to petition the Department to have his or her name removed when good cause exists.

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?

It is the policy of the Department to waive penalties for first-time or isolated paperwork or procedural regulatory noncompliance whenever appropriate. The Department believes the waiver of these penalties is appropriate under the following circumstances:

1. When failure to comply does not result in the misuse of state or federal funds;
2. When the regulation being violated, or the penalty being implemented, is not a regulation or penalty required by state or federal law; and
3. When the violation does not pose any actual or potential harm to public health or safety.

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

Department staff are available to provide technical assistance should any be required.