

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Developmental Disabilities

Regulation/Package Title: January 2019 HCBS

Rule Number(s):

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

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, and 5123-9-48

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

Date: August 30, 2018

Rule Type:

☒ New

☒ Amend

☐ 5-Year Review

☒ Rescind

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.

The Individual Options, Level One, and Self-Empowered Life Funding (SELF) waivers are Medicaid Home and Community-Based Services (HCBS) waivers available to Ohioans with developmental disabilities so they may receive services in their own homes as an alternative to receiving services in an institutional setting. The Medicaid HCBS waiver program is

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authorized by Section 1915(c) of the Social Security Act. The program permits a state to furnish an array of services that assist Medicaid beneficiaries to live in the community. A state has discretion to design a waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State Plan and other federal, state, and local public programs as well as the support that families and communities provide. An individual with developmental disabilities is enrolled in a specific Medicaid HCBS waiver based on his or her needs. As of August 1, 2018, nearly 40,000 individuals were enrolled in waivers administered by the Department:

- Individual Options Waiver = 23,109
- Level One Waiver = 14,944
- SELF Waiver = 1,700

Additional information about the waivers administered by the Department is available at: <http://dodd.ohio.gov/IndividualFamilies/ServiceFunding/Pages/WaiverTypes.aspx>.

The Department is proposing actions involving rules governing HCBS waivers.

Technology Services

- New rule 5123-9-12 (Home and Community-Based Services Waivers - Assistive Technology Under the Individual Options, Level One, and SELF Waivers) is being adopted to implement the new Assistive Technology service. The rule defines Assistive Technology and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Assistive Technology will replace Personal Emergency Response Systems, Remote Monitoring Equipment, and the Assistive Technology Assessment component of the Career Planning service.
- Existing rule 5123:2-9-13 (Home and Community-Based Services Waivers - Career Planning under the Individual Options, Level One, and SELF Waivers) is being rescinded and replaced by a new rule of the same title numbered 5123-9-13. The rule defines Career Planning and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. New rule 5123-9-13 reflects elimination of the Assistive Technology Assessment component of the Career Planning service, because that component will instead be covered under the new Assistive Technology service described in proposed new rule 5123-9-12. Additionally, new rule 5123-9-13 permits the Career Exploration component of Career Planning to be delivered at a ratio of one staff to four or fewer individuals and increases the payment rate for the Benefits Education and Analysis component of Career Planning.
- Existing rule 5123-9-25 (Home and Community-Based Services Waivers - Specialized Medical Equipment and Supplies Under the Individual Options and Level One Waivers) is being amended. The rule defines Specialized Medical Equipment and Supplies and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to distinguish Specialized Medical Equipment and Supplies from the new Assistive Technology service described in proposed new rule 5123-9-12 and to reflect the adjustments made to the

Level One Waiver service limitations (described in more detail below).

- Existing rule 5123-9-26 (Home and Community-Based Services Waivers - Personal Emergency Response Systems Under the Level One Waiver) is being rescinded. The rule defines Personal Emergency Response Systems and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Personal Emergency Response Systems service is being eliminated because the service will instead be covered under the new Assistive Technology service described in proposed new rule 5123-9-12.
- Existing rule 5123:2-9-35 (Home and Community-Based Services Waivers - Remote Monitoring and Remote Monitoring Equipment Under the Individual Options, Level One, and SELF Waivers) is being rescinded and replaced by new rule 5123-9-35 (Home and Community-Based Services Waivers - Remote Support Under the Individual Options, Level One, and SELF Waivers). New rule 5123-9-35 reflects the renaming of Remote Monitoring to Remote Support and clarifies roles of Remote Support providers, Remote Support vendors, and backup support persons. The Remote Monitoring Equipment service is being eliminated because the service will instead be covered under the new Assistive Technology service described in proposed new rule 5123-9-12.

Level One Waiver Service Limitations

The Level One Waiver has two service limitations. A limitation of \$7,500 applies to the following services used alone or in combination by an individual in a three-year period:

- Environmental Accessibility Adaptations
- Home-Delivered Meals
- Personal Emergency Response Systems
- Remote Monitoring
- Remote Monitoring Equipment
- Specialized Medical Equipment and Supplies

A limitation of \$5,325 applies to the following services used alone or in combination per an individual's one-year waiver eligibility span:

- Community Respite
- Homemaker/Personal Care
- Informal Respite
- Money Management
- Participant-Directed Homemaker/Personal Care
- Residential Respite
- Transportation

Remote Monitoring and Remote Monitoring Equipment services have been subject to the \$7,500 limitation; the new Remote Support service (which is replacing Remote Monitoring) will be included in the \$5,325 limitation. Because the service limitations are called out in the rules for services subject to the limitations, this change affects multiple rules:

- Existing rule 5123:2-9-06 (Home and Community-Based Services Waivers - Documentation and Payment for Services Under the Individual Options and Level One

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Waivers) is being rescinded and replaced by a new rule of the same title numbered 5123-9-06. The rule establishes standards governing documentation and payment for services under the Individual Options and Level One waivers. Paragraph (D) of new rule 5123-9-06 reflects the adjustments made to the Level One Waiver service limitations.

- Existing rule 5123:2-9-20 (Home and Community-Based Services Waivers - Money Management Under the Individual Options and Level One Waivers) is being rescinded and replaced by a new rule of the same title numbered 5123-9-20. The rule defines Money Management and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of new rule 5123-9-20 reflects the adjustments made to the Level One Waiver service limitations.
- Existing rule 5123:2-9-21 (Home and Community-Based Services Waivers - Informal Respite Under the Level One Waiver) is being rescinded and replaced by a new rule of the same title numbered 5123-9-21. The rule defines Informal Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of new rule 5123-9-21 reflects the adjustments made to the Level One Waiver limitations.
- Existing rule 5123-9-22 (Home and Community-Based Services Waivers - Community Respite Under the Individual Options, Level One, and SELF Waivers) is being amended. The rule defines Community Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of the rule is being amended to reflect the adjustments made to the Level One Waiver service limitations.
- Existing rule 5123:2-9-23 (Home and Community-Based Services Waivers - Environmental Accessibility Adaptations Under the Individual Options and Level One Waivers) is being rescinded and replaced by a new rule of the same title numbered 5123-9-23. The rule defines Environmental Accessibility Adaptations and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of new rule 5123-9-23 reflects the adjustments made to the Level One Waiver service limitations.
- Existing rule 5123:2-9-24 (Home and Community-Based Services Waivers - Transportation Under the Individual Options, Level One, and SELF Waivers) is being rescinded and replaced by a new rule of the same title numbered 5123-9-24. The rule defines Transportation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of new rule 5123-9-24 reflects the adjustments made to the Level One Waiver service limitations.
- Existing rule 5123:2-9-29 (Home and Community-Based Services Waivers - Home-Delivered Meals Under the Individual Options Waiver) is being rescinded and replaced by a new rule of the same title numbered 5123-9-29. The rule defines Home-Delivered Meals and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of new

rule 5123-9-29 reflects the adjustments made to the Level One Waiver service limitations.

- Rule 5123-9-30 (Home and Community-Based Services Waivers - Homemaker/Personal Care Under the Individual Options and Level One Waivers) is being amended. The rule defines Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of the rule is being amended to reflect the adjustments made to the Level One Waiver service limitations.
- Rule 5123:2-9-32 (Home and Community-Based Services Waivers - Participant-Directed Homemaker/Personal Care Under the Individual Options, Level One, and SELF Waivers) is being rescinded and replaced by a new rule of the same title numbered 5123-9-32. The rule defines Participant-Directed Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of new rule 5123-9-32 reflects the adjustments made to the Level One Waiver service limitations. Additionally, the Appendix has been revised to clarify the payment rate for On-Site/On-Call Participant-Directed Homemaker/Personal Care provided by Common Law Employees.
- Rule 5123-9-34 (Home and Community-Based Services Waivers - Residential Respite Under the Individual Options, Level One, and SELF Waivers) is being amended. The rule defines Residential Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Paragraph (F) of the rule is being amended to reflect the adjustments made to the Level One Waiver service limitations.

Simplification of Homemaker/Personal Care Daily Billing Unit

- Existing rule 5123:2-9-31 (Home and Community-Based Services Waivers - Homemaker/Personal Care Daily Billing Unit for Sites Where Individuals Enrolled in the Individual Options Waiver Share Services) is being rescinded and replaced by a new rule of the same title numbered 5123-9-31. The rule establishes a daily billing unit for Homemaker/Personal Care when individuals share the services of the same provider at the same site. The new rule reflects changes made to simplify calculation of the daily rate paid to providers, thereby reducing the administrative costs associated with projecting and adjusting the cost of services to be apportioned to each individual who lives at a site.

New Community Transition Service

- New rule 5123-9-48 (Home and Community-Based Services Waivers - Community Transition Under the Individual Options Waiver) is being adopted to implement the new Community Transition service. The rule defines Community Transition and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

Although the Department is rescinding existing rules for Documentation and Payment for

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Services (5123:2-9-06), Career Planning (5123:2-9-13), Money Management (5123:2-9-20), Informal Respite (5123:2-9-21), Environmental Accessibility Adaptations (5123:2-9-23), Transportation (5123:2-9-24), Home-Delivered Meals (5123:2-9-29), Homemaker/Personal Care Daily Billing Unit (5123:2-9-31), and Remote Monitoring/Remote Monitoring Equipment (5123:2-9-35) and adopting new replacement rules 5123-9-06, 5123-9-13, 5123-9-20, 5123-9-21, 5123-9-23, 5123-9-24, 5123-9-29, 5123-9-31, and 5123-9-35 respectively, versions of the rules identifying, via underline and strikethrough, the revisions being made are being provided so stakeholders can readily see what is changing.

In addition to changes described above, the new replacement rules and the amended rules reflect "clean-up" revisions to align wording and definitions with those used in newer rules and to correct references to the Administrative Code.

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

5166.21 (In accordance with Section 5166.21 of the Revised Code and an Interagency Agreement with the Ohio Department of Medicaid, the Ohio Department of Developmental Disabilities is responsible for promulgating rules regarding Medicaid HCBS waivers it administers.)

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.

Yes; the rules implement Medicaid HCBS waivers. Rules codify requirements of the federally-approved waivers.

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 rules do not exceed the 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)?

Rules are required to implement Medicaid HCBS waivers approved by the federal Centers for Medicare and Medicaid Services.

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

The Department measures the success of rules governing Medicaid HCBS waivers in terms

of the number of individuals enrolled in and receiving services through the waivers, the health and welfare of individuals enrolled in the waivers, individuals' satisfaction with the services they receive, and Ohio's compliance with the federal Medicaid HCBS program and the approved waivers.

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.

Amendments to the Individual Options, Level One, and SELF waivers are required to effect the changes reflected in the new and amended rules. The Department follows an established protocol to advance-publish information about amendments being made to a waiver to inform individuals and families who receive services, county boards of developmental disabilities, providers of services, advocates, and the general public. A Public Notice and Request for Comment announcement is distributed via email using multiple listservs and is posted at the Department's website and the website of each county board of developmental disabilities. The announcement includes information about how to obtain a copy of a waiver and the proposed amendments. Through this protocol, the public has an opportunity to provide input prior to Ohio's submission of a waiver amendment to the federal Centers for Medicare and Medicaid Services. There are five methods (email, U.S. mail, phone, courier or in-person, and fax) for the public to provide input on a proposed waiver amendment and/or request a non-electronic copy. The formal public comment period for the waiver amendments reflected in the rules was June 18 through July 18, 2018.

The rule actions were discussed at meetings of the Department's Waiver Workgroup on January 29, 2018, April 23, 2018, and July 30, 2018. The Waiver Workgroup includes representatives of:

- Advocacy and Protective Services, Inc.
- The Arc of Ohio
- 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
- Ohio Self Determination Association
- Ohio Superintendents of County Boards of Developmental Disabilities
- Ohio Waiver Network
- Values and Faith Alliance

The rule actions governing technology services were discussed by the University Support in

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Technology Evaluation and Development Project (or Technology Project for short), a collaborative enterprise between the Department and The Ohio State University Nisonger Center. The aim of the Technology Project was to take an in-depth look at the role technology, including Remote Support, plays in the lives of people with developmental disabilities and their families, create a vision for how the use of technology may be improved and expanded upon, and identify technological advances that might benefit people with developmental disabilities by increasing their independence. The Technology Project Council met on July 6, 2017, September 7, 2017, January 5, 2018, and April 5, 2018 and included:

- David Braddock, Ph.D., Executive Director, Coleman Institute and Senior Associate Vice President, University of Colorado
- Kyle Corbin, Technology Project Leader, Ohio Department of Developmental Disabilities
- Kimberly Crishbaum, Electronic Design Specialist, Ohio Developmental Disabilities Council
- Dan Davies, Founder and President, AbleLink Technologies
- Suzy Davis, Director of Development and Advancement, Boundless
- George Demiris, Ph.D., FACMI, Vice Chair for Informatics University of Washington
- Shawn Henry, Executive Director, Ohio Center for Autism and Low Incident
- Matthew Hobbs, Chief, Division for Community Living, Ohio Department of Aging
- Jarrod Hunt, Chief Executive Officer, Wynn-Reeth
- Tim Janssen, Operations Director, Sengistix, LLC
- Natalie Lupi, Executive Director, Mid-East Ohio Regional Council
- Ali Rahimi, President and Chief Architect, Medforall
- Jason Ray, Vice President of Business Development, SimplyHome
- Nancy Richards, Executive Director, Clearwater Council of Governments
- Ilka K. Riddle, Ph.D., Director, University Center for Excellence in Developmental Disabilities, University of Cincinnati,
- Laurel Steedman, Waiver Administrator, Ohio Department of Developmental Disabilities
- Christopher Steiner, Support Analyst, Nisonger Center, University Center for Excellence in Developmental Disabilities, The Ohio State University
- Marci Straughter, Chairperson of Ohio Developmental Disabilities Council Assistive Technology Subcommittee
- Shea Tanis, Ph.D., Associate Director, Coleman Institute, University of Colorado
- Marc J. Tassé, Ph.D., Director, Nisonger Center, University Center for Excellence in Developmental Disabilities, The Ohio State University
- Gary Tonks, Chief Executive Officer, The Arc of Ohio
- Jordan B. Wagner, Coordinator, Technology Project, Nisonger Center, University Center for Excellence in Developmental Disabilities, The Ohio State University
- Julia Wolff, Assistive Technologies Specialist, Cuyahoga County Board of Developmental Disabilities
- Dustin Wright, Executive Director, Rest Assured

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In August 2018, proposed new rule 5123-9-31 (Homemaker/Personal Care Daily Billing Unit) was shared with several agency providers as well as the Department's Waiver Workgroup, for review and feedback in advance of broader dissemination through the Department's rules clearance process.

Through the Department's rules clearance process, the rules and the Business Impact Analysis form 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
Family Advisory Council
The League
Ohio Association of County Boards Serving People with Developmental Disabilities
Ohio Council for Home Care and Hospice
Ohio Department of Medicaid
Ohio Developmental Disabilities Council
Ohio Health Care Association/Ohio Centers for Intellectual Disabilities
Ohio Provider Resource Association
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 rules and the Business Impact Analysis form are 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?

The proposed rule actions are in direct response to input from stakeholders.

- Stakeholders requested development of a comprehensive Assistive Technology service to be available under all three waivers administered by the Department.
- Stakeholders requested changes being implemented to the Remote Monitoring service, including renaming the service "Remote Support." Suggestions from stakeholders to

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further clarify roles of Remote Support providers and Remote Support vendors were incorporated.

- County boards of developmental disabilities and providers of services requested that operationalization of the Homemaker/Personal Care Daily Billing Unit be simplified.
- Providers of Homemaker/Personal Care at the Daily Billing Unit indicated that 15 days (proposed by the Department) was not sufficient time for providers to enter the actual direct service hours rendered into the Medicaid Services System. The rule was revised to give providers 30 days to enter the information.
- Stakeholders suggested that only Agency Providers (including county boards of developmental disabilities and councils of governments) be permitted to provide the new Community Transition service.

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?

Technology Services

The University Support in Technology Evaluation and Development Project (or Technology Project) convened focus groups and conducted interviews regarding Remote Support; conducted a national review of technologies that currently enable people with developmental disabilities to live and participate in their communities; and identified areas of future technology development that might benefit people with developmental disabilities. Please visit <http://nisonger.osu.edu/adult/resources/technology-project/> for more details.

Simplification of Homemaker/Personal Care Daily Billing Unit

A 2011 pilot project and the results from a 2018 stakeholder workgroup analysis of the Homemaker/Personal Care Daily Billing Unit support changes being made to simplify operationalization of this service. The 2011 pilot project served as a feasibility study and showed that administrative efficiencies are achieved when providers of services and county boards of developmental disabilities improve communication regarding adjustments to service plans of individuals served. Administrative functions associated with the Homemaker/ Personal Care Daily Billing Unit were mapped and assigned costs; the pilot project indicated the proposed changes will reduce providers' administrative work by approximately 17,000 hours per year across the state. The pilot project also demonstrated that some adjustments commonly thought to have a significant impact on service costs were actually cost neutral. The 2018 analysis of five years of service planning and utilization data for individuals served by providers that bill the Homemaker/Personal Care Daily Billing Unit supported the pilot project observation that overall, service plan deviations of less than 3% are cost neutral. A dataset was used to test the impact of specific changes suggested by stakeholders during development of the proposed rule provisions.

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?

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Department staff considered and presented to stakeholders a variety of definitions for the new Assistive Technology service. The service definition and provider qualifications set forth in new rule 5123-9-12 were agreed upon by stakeholders.

The Department considered including the cost of internet connectivity in the limit on recurring monthly fees reimbursed as Assistive Technology, but based on feedback from stakeholders, ultimately excluded internet connectivity from the limit.

Department staff considered alternative points at which deviation from projected service needs might indicate recalculation of the Homemaker/Personal Care Daily Billing Unit but determined that overall, deviations of less than 3% are cost neutral.

System stakeholders discussed the merits of including Remote Support under each of the Level One Waiver service limitations and determined that the service should be included under the \$5,325 limitation because Remote Support is selected in lieu of Homemaker/Personal Care or Participant-Directed Homemaker/Personal Care, which are subject to the \$5,325 limitation.

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; the federal Centers for Medicare and Medicaid Services requires Ohio to implement Medicaid HCBS waivers in a uniform, statewide manner.

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

The rules apply to services available to individuals enrolled in the Individual Options, Level One, and SELF waivers administered by the Department; Department staff collaborate with staff of the Ohio Department of Medicaid when developing rules governing Medicaid programs.

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 Department will implement the new rules to coincide with federal approval for the requested amendments to the Individual Options, Level One, and SELF waivers. Information about the waiver amendments will be widely disseminated and was posted for public comment from June 18 through July 18, 2018. The Department will disseminate information regarding the changes through its *Memo Monday* and *Pipeline* publications,

webinars, and live chats. The final-filed rules will be posted at the Department's website and directly disseminated to county boards of developmental disabilities and the approximately 2,900 persons who subscribe to the Department's Rules Notification listserv. The Department's provider certification system, regulatory tools, and interpretive/guidance materials will be updated to reflect the new rules. Staff of the Department's Division of Medicaid Development and Administration are available to provide technical assistance as necessary.

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 rules apply to providers of Medicaid HCBS to individuals enrolled in the waivers administered by the Department. Services may be provided by Agency Providers (an entity which employs staff to provide services) and Independent Providers (a self-employed person who provides services and does not employ anyone else to provide the services). Informal Respite is provided exclusively by Independent Providers. Community Respite, Personal Emergency Response Systems, Remote Monitoring, and Residential Respite are provided exclusively by Agency Providers. Existing providers governed by the rules include:

Service	Agency Providers*	Independent Providers*
Assistive Technology Assessment component of Career Planning	7	0
Community Respite	362	[not applicable]
Environmental Accessibility Adaptations	151	26
Home-Delivered Meals	12	1
Homemaker/Personal Care	1,486	7,179
Informal Respite	[not applicable]	3,848
Money Management	63	61
Participant-Directed Homemaker/Personal Care	899	6,840
Personal Emergency Response Systems	106	[not applicable]
Remote Monitoring	183	[not applicable]

Service	Agency Providers*	Independent Providers*
Remote Monitoring Equipment	105	38
Residential Respite	393	[not applicable]
Specialized Medical Equipment and Supplies	176	31
Transportation	1,353	4,946

* Certified providers as of August 1, 2018.

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

The rules require a provider of services to be certified by the Department and hold a Medicaid Provider Agreement from the Ohio Department of Medicaid. The rules require a provider to maintain service documentation and submit information to the Department regarding the services provided. A provider of services is subject to sanctions for failing to comply with the rules.

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.

Agency providers that intend to provide the new Community Transition service will be required to submit an application and pay an application fee to become certified to provide the service. Department staff estimate that submitting an application to add the service will take approximately one hour of staff time. The application fee set forth in rule 5123:2-2-01 (*Provider Certification*, which is not part of this package) is \$75 for a small agency provider (i.e., one that serves 50 or fewer individuals) and \$150 for a large agency provider (i.e., one that services 51 or more individuals).

Changes to the rules for technology services (Assistive Technology, the Assistive Technology Assessment component of Career Planning, Specialized Medical Equipment and Supplies, Personal Emergency Response Systems, Remote Monitoring/Remote Monitoring Equipment, and Remote Support) are not expected to change or increase the adverse impact of the rules on providers of services:

- Providers of the Assistive Technology Assessment component of the Career Planning service will be deemed eligible to provide the Consultation component of the new Assistive Technology service.
- Providers of Personal Emergency Response Systems and Remote Monitoring Equipment will be deemed eligible to provide the Equipment component of the

- new Assistive Technology service.
- Providers of Remote Monitoring will be deemed eligible to provide Remote Support.

Simplification of the Homemaker/Personal Care Daily Billing Unit is expected to benefit providers of the service by reducing administrative costs associated with the current processes for revising service projections and reconciling actual services with projected services. Department analysis indicated that across the state, providers spend approximately 17,000 hours per year on activities that will be unnecessary once new rule 5123-9-31 goes into effect.

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

The rules are intended to ensure services provided to individuals enrolled in Medicaid HCBS waivers are compliant with federal requirements and to ensure the health and safety of individuals with developmental disabilities who are enrolled in the waivers.

Regulatory Flexibility

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

No; providers of the services must meet requirements in the federally-approved Medicaid HCBS waivers.

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 when:

1. Failure to comply does not result in the misuse of state or federal funds;
2. The regulation being violated, or the penalty being implemented, is not a regulation or penalty required by state or federal law; and
3. 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?

The Department's provider certification system, regulatory tools, and interpretive/guidance materials will be updated to reflect the new services. Staff of the Department's Division of

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Medicaid Development and Administration are available to provide technical assistance as necessary.