

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Developmental Disabilities

Regulation/Package Title: Early Intervention

Rule Number(s): Rescind: 5123:2-10-01

New: 5123-10-01, 5123-10-02, 5123-10-03, 5123-10-04

Date: September 21, 2018 (revised October 31, 2018)

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☒ Rescinded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.

Early Intervention services are designed to meet the developmental needs of a child birth through age two and the needs of the child's family to assist appropriately in the child's development. Requirements for Early Intervention services are set forth in Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445 and 34 C.F.R. part 303. Ohio's Early Intervention system is funded with federal, state, and local dollars, most significantly through county boards of developmental disabilities. Early Intervention services are primarily delivered at the local level through the 88 county boards of developmental disabilities. In state fiscal year 2018, on average, 10,628 children were receiving Early Intervention services at any given point in time; a cumulative count of 22,057

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children received services over the course of the year.

House Bill 483 of the 131st General Assembly transferred responsibility for implementing the Early Intervention services program from the Ohio Department of Health to the Ohio Department of Developmental Disabilities and charged the Ohio Department of Developmental Disabilities with adopting rules necessary to implement the program. The first of new rules to be developed, 5123:2-10-01 (Early Intervention Services - System of Payments) went into effect in 2017. Department staff have continued to work with system stakeholders since that time to develop three additional new rules:

- Rule 5123-10-02 (Early Intervention Services - Procedural Safeguards) sets forth procedural safeguards in the Early Intervention system, including the provisions of parental consent and notice; retention, confidentiality, access to, and amendment of records; and dispute resolution.
- Rule 5123-10-03 (Early Intervention Services - Program) sets forth Early Intervention system requirements for eligibility, developmental screening, evaluation, assessment, individualized family service plan meetings and content, transition to preschool and other programs, service coordination, Early Intervention records, and exiting and transferring from the Early Intervention system.
- Rule 5123-10-04 (Early Intervention Services - Credentials for Early Intervention Service Coordinators and Early Intervention Service Coordination Supervisors) establishes minimum qualifications through credentialing standards for Early Intervention Service Coordinators and Early Intervention Service Coordination Supervisors. All persons working in these positions are required to hold the appropriate credential issued in accordance with the rule.

Additionally, the Department is proposing to rescind rule 5123:2-10-01 (Early Intervention Services - System of Payments) and adopt a new replacement rule of the same title numbered 5123-10-01. The rule establishes a system to pay for activities and expenses that are reasonable and necessary for implementing Ohio's Early Intervention system for eligible children and their families. The rule is being revised to change the rule number, align definitions and wording with that in the three new rules, clarify that "extraordinary medical expenses" does not include elective medical care, and eliminate the appendix to the rule (which will instead be Appendix C to new rule 5123-10-03). Although the Department is rescinding existing rule 5123:2-10-01 and adopting new replacement rule 5123-10-01, a version of 5123:2-10-01 identifying, via strikethrough and underline, 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.

5123.0421

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

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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 are required for Ohio to participate in the Early Intervention program in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445 and 34 C.F.R. part 303.

- 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 federal requirements.

- 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 rules are required for Ohio to participate in the Early Intervention program in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445 and 34 C.F.R. part 303.

- 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 the Early Intervention program in terms of the number of children receiving Early Intervention services, the degree to which services meet the developmental needs of the children and the needs of their families to assist appropriately in the children's development, and Ohio's compliance with Part C of the Individuals with Disabilities Education Act.

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.

Proposed revisions to rule 5123:2-10-01 and concepts for new rules 5123-10-02, 5123-10-03, and 5123-10-04, including updates on rule workgroup progress, were shared at meetings of the Early Intervention Advisory Council/Stakeholder Group on August 15, 2017, November 14, 2017, March 28, 2018, May 15, 2018, and August 7, 2018. This group is comprised of Early Intervention Advisory Council members and representatives of parents, providers, and state agencies including:

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- Valerie Alloy* Ohio Department of Mental Health and Addiction Services
- Melissa Arnold Ohio American Academy of Pediatricians
- Marcie Beers Ohio Coalition for the Education of Children with Disabilities
- Sheana Behringer* Head Start
- Carrie Beier Ohio Superintendents of County Boards of Developmental Disabilities
- Kimberly Bolin Clinton County Early Intervention Contract Manager
- Ronni Bowyer Parent
- Julie Brem Hamilton County Early Intervention Contract Manager
- Kellie Brown* Guernsey County Board of Developmental Disabilities
- Joyce Calland* Ohio Department of Mental Health and Addiction Services
- Tracey Chestnut* Ohio Department of Job and Family Services
- Kim Christensen Bowling Green State University
- Jessica Cray-Hayes* Provider
- Cindy Davis Washington County Family and Children First
- Icilda Dickerson* Ohio Department of Medicaid
- Christine Dobrovich Ohio Department of Job and Family Services
- Sandi Domoracki Provider
- Verline Dotson Cincinnati Community Action
- Jessica Dumas* (Co-Chair) Parent
- Denielle Ell-Rittinger Ohio Department of Job and Family Services
- Marilyn Espe-Scherwindt Provider
- Brenda George Ohio Occupational Therapy Association
- Earnestine Hargett Disability Rights Ohio
- Kim Hauck* Ohio Department of Developmental Disabilities
- Chad Hibbs Ohio Family and Children First Council
- Sophie Hubbell* Ohio Department of Education
- Susan Jones Ohio Association of County Boards Serving People with Developmental Disabilities
- Monica Juenger Office of Health Transformation
- Ben Kearney Provider
- Vicki Kelly* Provider
- Teresa Lampl Mental Health Provider Association
- Peggy Lehner* Ohio Senate
- Julie Litt Richmond County Board of Developmental Disabilities
- Laura Maddox Ohio Center for Autism and Low Incidence
- Lori Mago* (Co-Chair) Cuyahoga County Board of Developmental Disabilities

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- Marissa Mikalich* Parent
- Janet Miller Provider
- Leslie Minnich* Ohio Department of Insurance
- Karen Mintzer Cuyahoga County Early Intervention Contract Manager
- Nithya Narayan Family Information and Resource Specialist
- Bonnie Hubbard-Nicosia Ohio Department of Medicaid
- Jennifer Ottley* Ohio University
- Sandy Oxley Ohio Department of Health
- Stefanie Post Warren County Early Intervention Contract Manager
- Jessica Potts* Parent
- Jenni Remeis Provider
- Angel Rhodes Governor's Office, Early Childhood Advisory Council
- Erin Simmons Parent
- Pam Stephens Clinton County Board of Developmental Disabilities
- Kay Treanor Ohio Developmental Disabilities Council
- Susannah Wayland* Ohio Department of Education
- Lisa Welsh Childhood League
- Jane Whyde Family and Children First Council Association

* Appointed Advisory Council members

5123-10-02

A draft rule was discussed with the Early Intervention Advisory Council/Stakeholder Group on October 4, 2017. Department staff provided an overview of the minimal changes being made (i.e., primarily structure, organization, and closer alignment with federal requirements) from the former Ohio Department of Health rule. The Department solicited stakeholders statewide to identify persons interested in participating in a rule workgroup. Stakeholders self-selected for participation. The rule workgroup met in-person or via webinar on October 17, 2017 and December 19, 2017. The workgroup included:

- Carrie Beier Erie County Board of Developmental Disabilities
- Mary Ann Campbell Green County Board of Developmental Disabilities
- Brenda George Ohio Occupational Therapy Association
- Earnestine Hargett Disability Rights Ohio
- Karen Mintzer Cuyahoga County Early Intervention Contract Manager
- Kay Treanor Ohio Developmental Disabilities Council

Additionally, the rule was shared with the federal Office of Special Education Programs (OSEP) in April 2018. On April 26, OSEP verified that the rule contained all required components.

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5123-10-03

On November 14, 2017, the Early Intervention Advisory Council/Stakeholder Group held small group and large group discussions about the Early Intervention evaluation and assessment process, the role of the Early Intervention Service Coordinator, and the requirements for the provision of prior written notice before Early Intervention services specified in an individualized family service plan commence. Most of the recommendations generated by the discussion were later referred to the stakeholders working on related forms for incorporation to the forms. The Department solicited stakeholders statewide to identify persons interested in participating in a rule workgroup. Stakeholders self-selected for participation. The rule workgroup met in-person or via webinar on November 14, 2017, December 7, 2017, January 16, 2018, February 12, 2018, March 8, 2018, and May 30, 2018. The workgroup included:

- Julie Brem Hamilton County Family and Children First/Early Intervention Contract Manager
- Jennifer Cain Athens County Service Coordinator
- Tracey Chestnut Ohio Department of Job and Family Services
- Ann Denman Wyandot County Family and Children First/Early Intervention Contract Manager
- Shannon Ferrell Franklin County Service Coordinator
- Jody Fisher Ohio Center for Autism and Low Incidence
- Connie Galey Miami County Board of Developmental Disabilities
- Tristana Hernandez Parent
- Chad Hibbs Ohio Family and Children First Council
- Kristie Humbert Fulton County Service Coordination Supervisor
- Susan Jones Ohio Association of County Boards Serving People with Developmental Disabilities
- Jennifer Kinney Erie County Service Coordination Supervisor
- Melissa Leighton Provider
- Becky Love Franklin County Board of Developmental Disabilities
- Lori Mago Cuyahoga County Board of Developmental Disabilities
- Denise Majewski Lucas County Service Coordination Supervisor
- Sharon May Pickaway County Board of Developmental Disabilities
- Katie Parker Cuyahoga County Service Coordination Supervisor
- Beth Popich Parent and Family Member
- Erin Simmons Parent
- Kristen Staton Lucas County Service Coordinator
- Holly Weatherson Ohio Association for Services for Children (Early Intervention Committee)

5123-10-04

An initial draft of the rule was reviewed with the Early Intervention Advisory Council/Stakeholder Group on August 15, 2017. Following that, the Ohio Association for Services for Children (Early Intervention Committee) reviewed the rule and provided written comments. The Department solicited stakeholders statewide to identify persons interested in participating in a rule workgroup. Stakeholders self-selected for participation. The rule workgroup met in-person or via webinar on November 7, 2017, December 19, 2017, and January 23, 2018. A final follow-up review was conducted via email. The workgroup included:

- Carrie Beier Erie County Board of Developmental Disabilities
- Tracey Chestnut Ohio Department of Job and Family Services
- Cindy Davis Washington County Family and Children First
Coordinator/Early Intervention Contract Manager
- Pam Hamer Green County Early Intervention Program Manager
- Susan Jones Ohio Association of County Boards Serving People with
Developmental Disabilities
- Cindy Nava Greene County Board of Developmental Disabilities
- Kelly Smith Ohio Child Care Resource and Referral Agency
- Lori Watkins Clermont County Early Intervention Contract Manager
and Board of Developmental Disabilities

Through the Department's rules clearance process, the rules 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 Council on 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

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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 rules 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 for review and comment by the general public.

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

5123-10-02

Most language in the rule is specifically required by Part C of the Individuals with Disabilities Education Act and the rule must be approved by the federal Office of Special Education Programs. Therefore, the emphasis of rule development was making the rule easier for stakeholders, including providers of services, to understand and follow. Stakeholder comments were considered by the rule workgroup and incorporated through several additional drafts of the rule. Most of the questions raised during rule workgroup meetings resulted in recommendations for training and guidance (particularly related to prior written notice and Early Intervention records) rather than rule language changes. In response to stakeholder feedback, the Department made significant organizational changes to paragraph (I) to provide greater clarity. Sections related to confidentiality and retention of records were separated at stakeholder request. Suggestions to include language for additional records requirements were considered but were not ultimately implemented to avoid exceeding federal requirements.

5123-10-03

All recommendations for adding definitions to paragraph (B) were discussed and considered by the rule workgroup. Some were accepted and some not. The definitions and processes for "assessment," "evaluation," and "multidisciplinary" were re-worked multiple times for clarity, function, and meeting the needs of stakeholders as well as federal requirements. The terms "as soon as possible" and "repeated" were not defined after considering reasons for and against including them. The definition for "qualified personnel" became so lengthy that it was moved to Appendix B. The order of paragraphs was reworked multiple times based on stakeholder feedback. Based on discussion and feedback, paragraph (C)(1)(d) requires children moving from another state to have Ohio eligibility established. Stakeholders wanted clarity and made suggestions related to Early Intervention service coordination

responsibilities set forth in paragraph (N). Paragraph (P), regarding exiting and transferring from the Early Intervention system, was re-worked considerably as stakeholders, including the Early Intervention Advisory Council, wanted statewide uniformity but requested some flexibility regarding exiting a child. Documentation requirements for Early Intervention service providers were added to paragraph (O). The rule workgroup, as well as physicians, provided feedback regarding the list of physical and mental conditions in Appendix C. The "chromosomal conditions" category was broadened by not specifying specific conditions and "neonatal abstinence syndrome" and "sickle cell anemia" were added to the list of diagnosed conditions.

5123-10-04

The Early Intervention Advisory Council/Stakeholder Group recommended not credentialing county board Early Intervention contract managers, sought clarity regarding supervision requirements, and requested more specificity of required coursework. The workgroup discussed levels/duration of credentials at length and considered one-year, two-year, and five-year credentials. A representative of higher education asked that the Department consider having required coursework coordinated with colleges and universities. The Ohio Association of Services for Children (Early Intervention Committee) submitted several recommendations:

- Do not require Early Intervention contract managers to hold credential;
- Keep required education areas of study as broad as possible; and
- Have only two levels of credential (one-year and five-year).

The rule workgroup refined the rule to incorporate these recommendations. Throughout rule workgroup meetings, definitions were added and/or clarified, professional developmental requirements were aligned with those of the larger Ohio Early Childhood Coordinating Council, educational requirements were refined, the administrative review process was coordinated with the Ohio Child Care Resource and Referral Agency, and processes for transitioning from previously-issued Ohio Department of Health credentials were developed. It was determined that the existing web-based courses would form the basis of the professional development requirement and that alignment with higher education institutions would be considered at a later date.

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?

5123-10-01

County boards of developmental disabilities have historically provided many of the needed Early Intervention services. The most recent data indicate there are approximately 200 families each year for whom needed Early Intervention services cannot be provided by local county boards of developmental disabilities. When Early Intervention services are unavailable through county boards of developmental disabilities and other public funds, the

Department assumes responsibility for paying for those services. The rule establishes a method to ensure all children needing Early Intervention services receive the first 55 units at no cost, thereby ensuring a more equitable system.

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 federal Office of Special Education Programs (OSEP) requires a state's lead agency for the Early Intervention program to adopt rules or policies governing the services, the system of payment for services, and procedural safeguards. OSEP requires specific elements be included in the rules or policies.

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 Office of Special Education Programs requires states to implement Early Intervention services in a uniform, equitable, and statewide manner.

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

The Department is the designated lead agency for Ohio's Early Intervention program. Section 751.10 of House Bill 483 of the 131st General Assembly includes language regarding transition of lead agency status from the Ohio Department of Health to the Ohio Department of Developmental Disabilities. As the lead agency, the Department has sole responsibility for promulgating rules and policies governing the State's Early Intervention system.

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.

In collaboration with stakeholders, the Department will develop training and guidance materials prior to implementation of the rules. Training will be available statewide and in multiple formats (in-person training, web-based training, training to explain the rules, and training focused on applying the rules). Department staff will provide technical assistance and ongoing support to Early Intervention Service Coordinators, providers of services, and county boards of developmental disabilities. Information about the rules will be widely disseminated via the Department's publications and listservs.

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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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 rules impact providers of Early Intervention services. The rules do not require any person to be a provider of Early Intervention services. Persons wanting to become providers of Early Intervention services do so by entering into a contractual relationship with the Department and affirmatively choosing to provide services to a specific child or family. Currently, 45 such providers are under contract with the Department to provide Early Intervention services.

5123-10-01

The rule impacts providers of Early Intervention services who will need to maintain the professional certification or license required for the specific services they provide (e.g., Audiology, Occupational Therapy, or Physical Therapy) and enter into a contractual relationship with the Department for provision of Early Intervention services. Department staff estimate that the process of entering into a contractual relationship with the Department (e.g., submitting information and documents and securing an Ohio Administrative Knowledge System vendor number) takes approximately 3.5 hours and that completing a web-based overview about providing Early Intervention services takes approximately 3 hours. Persons who want to provide Early Intervention services must pay fees to maintain their professional certification or license and invest time required to submit information and documents and complete training.

5123-10-02

The rule impacts providers of Early Intervention services who will need to:

- Obtain a parent's consent prior to providing services to a child, birth through age two, or the child's family;
- Provide the parent with prior written notice for a variety of reasons;
- Maintain and ensure confidentiality of a child's Early Intervention records; and
- Cooperate, participate, and provide information in complaint resolution, mediation, and due process procedures.

The amount of time a provider will spend on these activities will vary based on the number and nature of children/families served and is unknown by the Department.

5123-10-03

The rule impacts providers of Early Intervention services and Early Intervention Service Coordinators who will need to:

- Obtain a parent's consent prior to providing services to a child, birth through age two, or the child's family;
- Provide the parent with prior written notice for a variety of reasons;
- Maintain and ensure confidentiality of a child's Early Intervention records; and
- Participate in development of Individualized Family Service Plans.

The amount of time spent on these activities will vary based on the number and nature of children/families served and is unknown by the Department.

5123-10-04

In order to work as an Early Intervention Service Coordinator or a supervisor of Early Intervention Service Coordinators, a person must obtain and maintain a credential in accordance with the rule. There is no fee for the credential, however obtaining and maintaining a credential requires successful completion of training and professional development activities. Although required training and professional development is available free-of-charge, completing the requirements takes time. For new Service Coordinators obtaining an initial credential, training requirements will be approximately 40 hours over a period of up to two years. After the award of the initial credential, Service Coordinators must obtain 50 hours of professional development training over five years. For new Service Coordination Supervisors obtaining an initial credential, training requirements will be approximately six hours. After the award of the initial credential, Service Coordination Supervisors must obtain approximately 37 hours of professional development trainings over five years. A full-time Service Coordinator must receive at least two hours per month of reflective supervision from a credentialed Service Coordination Supervisor. There are also costs associated with the time needed to document these activities. Costs will vary based on the salaries of persons obtaining the credentials as well as the number of trainings completed prior to hire and are unknown to the Department. Persons wanting to assume these roles do so freely and must invest the time required to submit information and documents and complete required training and professional development.

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

Federal regulations require a state's lead agency for the Early Intervention services program

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to adopt rules or policies governing the services, the system of payment for services, and procedural safeguards.

Regulatory Flexibility

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

No; federal regulations do not allow for alternative means of compliance; the rules, however, do not require any persons or providers of services to participate in the program.

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?

The Department is developing and will disseminate and publish at its website, training and guidance materials. Department staff are available to provide information and technical assistance.