



**Common Sense
Initiative**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Developmental Disabilities

Rule Contact Name/Contact Information: Becky.Phillips@dodd.ohio.gov, 614-644-7393

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

Abuser Registry

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

Date of Submission for CSI Review: February 11, 2020

Public Comment Period End Date: February 26, 2020

Rule Type/Number of Rules:

☒ New/ 1 rule

☐ No Change/ ____ rules (FYR? ____)

☐ Amended/ ____ rules (FYR? No)

☒ Rescinded/ 1 rule (FYR? Yes)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?
The rule(s):**

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☒ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☒ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

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 (i.e., a "DD Employee") should be placed on the Abuser Registry and standards for determining whether such person has been rehabilitated and may have his or her name removed from the Abuser Registry. The following are considered DD 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 Ohio Department of Developmental Disabilities.

In 2018, as a result of the required five-year review, the Department proposed several technical corrections to rule 5123:2-17-03. Several days before the public hearing, information mischaracterizing the changes being made was widely disseminated. Consequently, the Department withdrew the filing.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

The rule is overdue for review. The Department is proposing to rescind rule 5123:2-17-03 and adopt new replacement rule 5123-17-03. New rule 5123-17-03 contains, verbatim, the content of rule 5123:2-17-03. The only change being made at this time is to the rule number itself, which, in accordance with the Department's established course, is being changed to eliminate the division number. No changes are being made to the content of the rule.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

5123.54

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
If yes, please briefly explain the source and substance of the federal requirement.

No.

- 5. 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.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The 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.

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

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.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Based on stakeholder concerns raised in 2018, no changes are being made to the content of the rule.

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 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

During the clearance period, the rule and related Business Impact Analysis will be posted at the Department's *Rules Under Development* webpage for feedback from the general public: <https://dodd.ohio.gov/wps/portal/gov/dodd/forms-and-rules/rules-under-development/proposed-rules-for-review-and-comment>

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

Based on stakeholder concerns raised in 2018, no changes are being made to the content of the rule.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Data regarding incidents of abuse, neglect, and misappropriation perpetrated against individuals with developmental disabilities informed Senate Bill 171 of the 123rd General

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Assembly which created the Abuser Registry. Data continue to support the need for the Abuser 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.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

In 2018, the Department attempted to make technical corrections to the rule which were met with opposition.

13. 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 a very serious matter that must be carried out by the Department in a methodical manner to ensure a consistent and fair process.

14. 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.

15. 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.

No changes are being made to the content of the rule. The Department administers the rule and will continue to do so in a consistent and predictable manner. Department staff are available to answer questions and provide technical assistance.

Adverse Impact to Business

16. 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; and
- b. Identify the nature of all adverse impact (e.g., 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

The rule applies to DD 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);
- 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
- 1,100 residential facilities licensed by the Department.

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 DD 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 DD Employee who is being placed on the Abuser Registry to notify the Department of the DD Employee's employment status.

Paragraph (E)(7) sets forth that the Department shall notify the entity responsible for regulating the DD 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 DD 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.

The requirement for employers of DD 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Having one's name placed on the Abuser Registry would cause the DD 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 DD Employee.

17. 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

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

Yes; 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.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

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.

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

Department staff are available to answer questions and provide technical assistance as necessary.