



## 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):**

Homemaker/Personal Care Training

**Rule Number(s):** 5123-9-30 and 5123-9-32

**Date of Submission for CSI Review:** May 12, 2021

**Public Comment Period End Date:** May 25, 2021

**Rule Type/Number of Rules:**

☐ New/\_\_\_ rules

☒ Amended/ 2 rules (FYR? No)

☐ No Change/\_\_\_ rules (FYR? \_\_\_)

☐ Rescinded/\_\_\_ rules (FYR? \_\_\_)

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.

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**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.*

The Individual Options, Level One, and Self-Empowered Life Funding 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 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.

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 enrolls in a specific waiver based on his or her needs. As of May 4, 2021, nearly 42,000 individuals were enrolled in HCBS waivers administered by the Department:

- Individual Options Waiver = 24,193
- Level One Waiver = 15,577
- Self-Empowered Life Funding Waiver = 2,118

Additional information about the waivers administered by the Department is available at: <https://dodd.ohio.gov/wps/portal/gov/dodd/waivers-and-services/welcome/>

The Department is amending rules 5123-9-30 and 5123-9-32 to align with two new rules governing provider certification which are going into effect September 1, 2021:

- 5123-2-08 (Provider Certification - Agency Providers)
- 5123-2-09 (Provider Certification - Independent Providers)

Rule 5123-9-30 (Home and Community-Based Services Waivers - Homemaker/Personal Care Under the Individual Options and Level One Waivers) defines Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the services. The rule is being

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amended to eliminate paragraphs (C)(5) and (C)(6) because the training described therein is addressed in new rules 5123-2-08 and 5123-2-09 which apply to providers of all services, including Homemaker/Personal Care. Additional amendments are being made to update citations to administrative rules.

Rule 5123-9-32 (Home and Community-Based Services Waivers - Participant-Directed Homemaker/Personal Care Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) defines Participant-Directed Homemaker/Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the services. Paragraph (C)(5) is being amended to align with training requirements in new rule 5123-2-09. Additional amendments are being made to update citations to administrative rules.

- 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.**

5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, and 5166.21

- 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.**

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

- 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 rules do not exceed the 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)?**

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

- 7. 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.

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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.

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

In 2019, the Department convened a workgroup to comprehensively review and make recommendations regarding requirements for provider certification. The workgroup met eight times in 2019 (March 27, April 24, May 29, June 26, July 31, August 28, September 25, and October 30) and once in 2020 (January 29) and included representatives of:

- The Arc of Ohio
- Association of People Supporting Employment First
- Autism Society of Ohio
- Cincinnati Children's Hospital Medical Center
- Coalition for Community Living
- Down Syndrome Association of Central Ohio
- Ohio Alliance of Direct Support Professionals
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Department of Medicaid
- Ohio Family to Family
- Ohio Health Care Association
- Ohio Provider Resource Association
- Ohio Superintendents of County Boards of Developmental Disabilities
- Ohio Self Determination Association
- Ohio Waiver Network
- People First of Ohio
- United Health Care Action Network of Ohio
- Values and Faith Alliance

During development of the new provider certification rules, the Department committed to removing redundant training requirements from the Homemaker/Personal Care rule.

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

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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 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 website during the clearance period for feedback from the general public:

<https://dodd.ohio.gov/wps/portal/gov/dodd/forms-and-rules/rules-under-development/2-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?**

Stakeholders asked the Department to remove redundant training requirements set forth in rule 5123-9-30 for providers of Homemaker/Personal Care rule. The Department is amending the rule as requested.

**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?**

None.

**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?**

None. The Department is amending the rules to remove redundant requirements and align wording with new rules governing provider certification.

**13. Did the Agency specifically consider a performance-based regulation? Please explain.**

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***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.

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

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. Department staff collaborate with staff of the Ohio Department of Medicaid when developing rules governing waivers.

**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.**

The Department will widely communicate information about the amendments through its publications. The final-filed rules will be posted at the Department's website and directly disseminated to providers of services, county boards of developmental disabilities, and the approximately 3,000 persons who subscribe to the Department's Rules Notification listserv.

**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.***

The amendments being made impact providers of two services (Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care) to individuals enrolled in Medicaid HCBS waivers administered by the Department. The services are provided by Agency Providers (an entity that 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).

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|                                                                                               | <u>Agency<br/>Providers</u> | <u>Independent<br/>Providers</u> |
|-----------------------------------------------------------------------------------------------|-----------------------------|----------------------------------|
| Certified to provide Homemaker/Personal Care                                                  | 1,578                       | 7,760                            |
| Certified to provide Participant-Directed Homemaker/Personal Care                             | 988                         | 6,126                            |
| Certified to provide Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care | 981                         | 5,930                            |

The rules require providers of the services to be certified by the Department and hold a Medicaid Provider Agreement from the Ohio Department of Medicaid. The rules require providers to submit information and maintain service documentation regarding the services provided. Providers are subject to sanctions if they fail to comply with the rules.

The amendments being made eliminate redundant training requirements are not expected to increase the adverse impact of the rules on providers of services.

**17. 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**

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

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

**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.

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

Staff members of the Department's Office of System Support and Standards are available to provide technical assistance if necessary.