



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Opportunities for Ohioans with Disabilities (OOD)

Rule Contact Name and Contact Information:
Rick Schanz, rick.schanz@ood.ohio.gov, (614) 545-8964

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

Vocational Rehabilitation (VR) Fee Schedule; OOD is proposing changes to the vocational rehabilitation provider VR Fee Schedule. Proposed changes involve increasing rates for services, adding a new service and adding clarifying language to the VR Fee Schedule service descriptions.

Rule Number(s): OAC 3304-2-52 Appendix A

Date of Submission for CSI Review: 06-02-2022

Public Comment Period End Date: 11:59 p.m. on June 17, 2022

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/ X 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Rescinded/ rules (FYR?)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

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

CSIPublicComments@governor.ohio.gov

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.**

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.

OOD is proposing changes to 3304-2-52 (Least cost, use of comparable benefits, consumer contributions, and fees for services). OOD is proposing changes to the Vocational Rehabilitation (VR) Provider Fee Schedule, which is found in Appendix A of 3304-2-52. Proposed changes involve increasing rates for services and adding clarifying language to the VR Fee Schedule service descriptions. Additional services are also being proposed to meet the needs of individuals with disabilities. These proposed changes are explained further in the answer to question 10 and the attached VR Fee Schedule draft.

- 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.**

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

CSIPublicComments@governor.ohio.gov

R.C. 3304.15, 3304.16 & 3304.14(B)(2)

- 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.**

The federal government does not set fees for VR services. However, 34 C.F.R. 361.50 allows vocational rehabilitation agencies to establish fee schedules for services to individuals with disabilities.

- 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)?**

OOD is the State of Ohio agency that empowers Ohioans with disabilities through employment, disability determinations and independence. The Rehabilitation Act, 34 C.F.R. 361.50, allows OOD's vocational rehabilitation program to establish fee schedules for services to individuals with disabilities. OOD has established a defined VR Fee Schedule. The VR Fee Schedule establishes minimum standards for the quality of services being provided and billed. The VR Fee Schedule provides consistency in payments and the type of services being provided. Expenditures for these services totaled approximately \$63 million for Federal Fiscal Year 2021.

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

In place since October 1, 2012, the VR Fee Schedule defines the services provided to individuals with disabilities, sets standards for the delivery of a consistent quality of service statewide and establishes the rates for these services. This VR Fee Schedule has enabled OOD to set a baseline for provider performance and ensure that individuals with disabilities receive quality services regardless of their chosen VR provider. The Employer Cost Index (ECI) rates, which consider inflation and employer costs (such as employee healthcare), were used as a reference point in conjunction with the OOD budget allowances to determine the increased VR Fee Schedule rates. OOD closely monitors expenditures under the VR program, as well as program benchmarks and outcomes to ensure the effectiveness and efficiency of services provided to individuals with disabilities throughout the state.

- 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?**

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

CSIPublicComments@governor.ohio.gov

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.

OOD solicited and considered input from individuals with disabilities receiving VR Fee Schedule services, OOD staff, State of Ohio partners agencies (including the Department of Development Disabilities and the Department of Mental Health and Addiction Services), and providers of VR Fee Schedule services. All providers were invited to five regional virtual forums hosted by OOD to provide initial input. These forums were held online via Microsoft Teams between February 24 and March 2, 2022.

Subsequent to these forums on April 6, 2022, OOD's Director, along with several members of OOD's Executive and Senior Staff, met with OOD's Provider Stakeholder group, which includes representation from several associations such as the Ohio Association of Goodwill Industries, The Ohio Council, Ohio Provider Resource Association, and County Boards Associations, as well as other provider representative to share the feedback received and to vet OOD's proposed changes to the VR Fee Schedule. On April 7, 2022, OOD distributed information to all providers regarding proposed changes to the VR Fee Schedule, requesting feedback to be submitted by April 22, 2022.

OOD held two additional focus groups and invited providers from across the state to participate. The first focus meeting was held on April 28, 2022 to obtain feedback on transition services for students and youth with disabilities. A second round of meetings occurred on April 22, 2022 to obtain feedback on services for individuals who are blind or low vision. OOD also met with Self-Employment providers on April 5, 2022 to discuss these services moving into the VR Fee Schedule.

After conclusion of the second feedback period for providers, OOD drafted Administrative Rule language based upon the provider feedback received relative to the proposed VR Fee Schedule changes, including the rate recommendations. This draft language and a companion summary document were distributed to the providers on May 5, 2022 via the Provider News distribution list. Providers were again encouraged to provide feedback via the OOD's provider management email box by May 19, 2022.

OOD reviewed additional feedback from this period and made additional adjustments. On June 1, 2022, OOD sent out the final proposed VR Fee Schedule draft language with

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

CSIPublicComments@governor.ohio.gov

corresponding updates and a final Feedback and Response document responding to the feedback OOD received.

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

OOD gathered feedback through multiple notices, feedback periods, and virtual meetings with stakeholders. The feedback and corresponding changes were communicated through an initial Feedback and Response document, a Summary of Changes document (with the first draft update language of the VR Fee Schedule), and a final Feedback and Response document.

Based on all of the feedback gathered from the providers, OOD made several changes to the proposed updates to the VR Fee Schedule. Changes include but are not limited to, increased rates to consider inflation and associated employer costs and to promote services for transition youth, added additional support services, created an ongoing ability to provide services remotely with no reduction in rates, and added services to support self-employment. Provider input also influenced OOD expanding the shift differential to include federal holidays, adjusted our language on report sharing, expanded the cancellation window from 4 to 24 hours for interpreting, and added a second level of Summer Youth Work Experience services. A full list of the changes is attached.

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?

The base rates of the VR Fee Schedule were developed in 2016 based upon detailed service utilization and staffing data submitted by providers along with two federal fiscal years of payments for vocational services from OOD's case management system. This data was used to develop rate increases for the services on the OOD's Vocational Rehabilitation Fee Schedule. The rates use the actual costs incurred and staff utilization information to develop rates that cover the costs to provide these services.

The base rates were increased in the 2019 VR Fee Schedule update using the Employer Cost Index (ECI) as a reference for an "across the board" increase, with a larger increase for Job Development services.

The increases proposed for this VR Fee Schedule are again using the Employer Cost Index (ECI) rates as a reference point based on provider request. OOD is including a 2.37% overall rate increase, an 8% rate increase for Pre-Employment Transition Services, and a 37% increase for Work Incentives Planning, in addition to other updates previously noted. Based on feedback, providers generally preferred using an established ECI rate increase over the cost reporting process. This ECI reference point is used in conjunction with OOD's overall

budget allowances. This would be an estimated additional \$3.43 million in service investment per year when considering all rate increases and additional services.

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?

OOD considered determining VR Fee Schedule rate changes based on cost reporting. OOD surveyed its providers throughout various feedback sessions and while not a complete consensus, providers overwhelmingly preferred that OOD review Employer Cost Index (ECI) rather than cost reporting. Providers noted that cost reporting can be time intensive and that the process is not preferable for this VR Fee Schedule update.

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.*

OOD currently utilizes performance-based job development rates in the VR Fee Schedule. Individuals served by OOD who were provided Performance Based Job Development Services had a median length of service of 132 days while the hourly based Job Development Services had a median of 167 days. Those individuals served under the performance-based fee structure found employment 35 days quicker than the hourly fee structure. OOD provides guidance on specific elements as part of the service definition; however, providers are able to establish their own process to deliver the service.

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

These rules are specific to the OOD VR program and individuals with disabilities who are eligible for services within that program. Since OOD is the sole designated agency within Ohio to administer the VR program there is no duplication between these rules and other rules in the Ohio Administrative Code.

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.

OOD has established a billing and payment system with checks and balances and OOD will implement this VR Fee Schedule update within that same system. OOD will conduct training on the proposed VR Fee Schedule changes with providers and OOD staff. There will be ongoing meetings conducted by OOD staff at the local level to ensure consistency in the application of the VR Fee Schedule. OOD's goal is to ensure a smooth transition that will improve service delivery and quality of services provided to individuals with disabilities.

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

CSIPublicComments@governor.ohio.gov

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.

- a) The impacted business community consists of the providers of VR services to individuals with disabilities who are eligible for OOD services.
- b) The adverse impact includes the continued requirement that the VR providers must complete services and reports as defined in 3304-2-52 Appendix A in order to be paid by OOD. The Fee Schedule sets a minimum level of requirements to ensure consistency and quality services to individuals with disabilities.
- c) The time for the vocational rehabilitation provider to complete a report of service will vary with the nature and extent of the VR services provided to the eligible individual with a disability, but it is a routine office procedure that VR providers are experienced in performing for many insurance payers or other state agencies. Additionally, since the last major VR Fee Schedule update, OOD has implemented an electronic bill payment portal (The AWARE Vendor Portal) which makes it easier for providers to submit, track, and resubmit payments. OOD has also worked with providers to streamline reporting requirements to reduce administrative time and maximize services to individuals with disabilities. The adverse impact of completing this paperwork is offset by the fact that the VR provider will receive payment from OOD for the services. Built into each rate is a portion of the cost allocated to report writing and bill submission.

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

First, the providers’ participation in the OOD VR program and for reimbursement of services is voluntary. Second, OOD has determined through its comprehensive analysis that it offers a fair, cost-informed reimbursement to providers for their services to eligible individuals with

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

CSIPublicComments@governor.ohio.gov

disabilities. Third, the impact of the paperwork costs is a justified expectation of the provider to receive payment for services. Finally, the minimal regulatory impact upon the provider is balanced by the benefit the provider enjoys in payment for services.

Regulatory Flexibility

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

The providers affected by these rules include: small and large businesses, for profit and non-profit, and counties boards of developmental disabilities.

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?

There are no fines or penalties for paperwork violations under these rules.

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

OOD has conducted training with providers whenever there are updates to the VR Fee Schedule. OOD will also conduct additional training to providers on these proposed VR Fee Schedule changes. OOD posts information about the VR Fee Schedule on the OOD website at ood.ohio.gov. Also, providers can contact OOD for technical assistance to make sure that they are meeting requirements. OOD staff also host local meetings quarterly with the providers to discuss services and provide any needed technical assistance.