



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

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

Miscellaneous ICFIID

Rule Number(s):

Rescind: 5123:2-7-11, 5123:2-7-15, 5123:2-7-29, 5123:2-7-31, 5123:2-7-32, 5123-7-20,
and 5123-7-30

New: 5123-7-11, 5123-7-15, 5123-7-29, and 5123-7-32

Amend: 5123-7-09 and 5123-7-12

Date of Submission for CSI Review: October 28, 2022

Public Comment Period End Date: November 11, 2022

Rule Type/Number of Rules:

☒ New/4 rules

☒ Amended/2 rules (FYR? no)

☐ No Change/____ rules (FYR? ____)

☒ Rescinded/7 rules (FYR? yes - 5 rules)

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

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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.

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) are residential facilities licensed by the Department that must meet federal Medicaid requirements to participate in the program. Approximately 4,900 Ohioans with developmental disabilities live at the 418 ICFIID, which provide all aspects of residents' care and support.

Five rules governing ICFIID are due for five-year review. Four of the rules are being rescinded and replaced by new rules. In accordance with the Department's established practice, the new rules are being renumbered to remove the division number. Although the Department is rescinding existing rules and adopting new rules, versions of the rules that track revisions are provided so stakeholders can readily see what is changing:

Rule 5123:2-7-11 (ICFIID - Relationship of Other Covered Medicaid Services) identifies covered services generally available to individuals who are eligible for Medicaid and describes the relationship of such services to those provided to residents of an ICFIID. The rule is being rescinded and replaced by new rule 5123-7-11 of the same title. New rule 5123-7-11 reflects revisions to align wording with newer rules and update a citation to the Administrative Code.

Rule 5123:2-7-15 (ICFIID - Claim Submission, Payment, and Adjustment Process) establishes procedures for an ICFIID to submit claims and be paid for services rendered. The rule is being rescinded and replaced by new rule 5123-7-15 of the same title. New rule 5123-7-15 reflects revisions to align wording with Ohio Department of Medicaid rule 5160-1-19 and update a citation to the Administrative Code.

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Rule 5123:2-7-29 (ICFIID - Ventilator Services) sets forth requirements for an ICFIID to provide and be reimbursed for providing services to residents who are dependent on invasive mechanical ventilators. The rule is being rescinded and replaced by new rule 5123-7-29 of the same title. New rule 5123-7-29 reflects revisions to change "individual plan" to "individual service plan," adjust wording regarding submission of information to the Department, align wording with newer rules, update citations to the Administrative Code, and eliminate paragraph (I) which addressed implementation of the rule in 2018.

Rule 5123:2-7-32 (ICFIID - Administration of the Ohio Developmental Disabilities Profile) sets forth a requirement and process for administration of the Ohio Developmental Disabilities Profile to residents of an ICFIID. The rule is being rescinded and replaced by new rule 5123-7-32 of the same title. New rule 5123-7-32 reflects revisions to align wording with newer rules and update a citation to the Administrative Code.

One of the five rules due for five-year review is being rescinded without replacement:

Rule 5123:2-7-31 (ICFIID - Recoupment of Downsizing Incentive) establishes a process for the recoupment of a downsizing incentive from an ICFIID when the ICFIID obtained Department approval to become a downsized ICFIID pursuant to Section 5124.39 of the Revised Code and did not become a downsized ICFIID on or before July 1, 2018. This process has run its course; the rule is no longer necessary and is being rescinded.

Two additional rules are being rescinded without replacement; the rules are no longer necessary because Sections 5124.195 to 5124.198 of the Revised Code have been rescinded:

Rule 5123-7-20 (ICFIID - Resident Assessment Classification System Based on Administration of the Individual Assessment Form) sets forth a method and process for determining the per resident/per day rate paid to an ICFIID for direct care costs using the Individual Assessment Form pursuant to Sections 5124.195 to 5124.198 of the Revised Code.

Rule 5123-7-30 (ICFIID - Exception Review Process for individual Assessment Form Data) sets forth a process by which the Department conducted exception reviews related to Individual Assessment Form data submitted by an ICFIID in accordance with rule 5123-7-20.

Two additional rules are being amended:

Rule 5123-7-09 (ICFIID - Personal Needs Allowance Accounts) establishes requirements and procedures regarding personal needs allowance accounts for residents of an ICFIID. The rule is being amended to restore paragraph (J)--which was eliminated in 2019--to address disposition of a resident's personal needs allowance account funds in the event of the resident's death. Requirements regarding disposition of a resident's personal needs

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allowance account funds formerly resided in rule 5123:2-2-07 (Personal Funds of the Individual). The requirements were removed from rule 5123:2-2-07, as personal needs allowance accounts pertain only to residents of ICFIID and are governed by rule 5123-7-09.

Rule 5123-7-12 (ICFIID - Cost Report and Chart of Accounts) sets forth standards and requirements for an ICFIID, other than a Department-operated ICFIID, to submit cost reports to the Department and maintain supporting documents and records. The rule is being amended to add guidance for reporting expenses related to assistive technology. Additional amendments are being made to align wording with newer rules, update citations to the Administrative Code, and improve formatting of the rule's appendix.

- 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, 5124.03, 5124.15, 5124.152, 5124.25, 5124.39, and 5162.021

- 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; rules are necessary for Ohio to participate in the Medicaid ICFIID program.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 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)?**

Section 5124.03 of the Revised Code requires the Department to adopt rules to implement the ICFIID program described in Chapter 5124. of the Revised Code. The Department's rules ensure that ICFIID operate and are reimbursed in a uniform manner in accordance with federal and state regulations.

- 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 ICFIID in terms of the number of individuals receiving services, the health and welfare of individuals receiving services, individuals' satisfaction with the services they receive, and Ohio's compliance with the federal Medicaid program.

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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.

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:

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 of 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/forms-and-rules/rules-under-development/proposed+rules+for+review>

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 a reference to Ohio Department of Medicaid

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form 09405 (Personal Needs Allowance Account Remittance Notice) from proposed new rule 5123-2-07 (Personal Funds of the Individual) because the form applies only to ICFIID and rule 5123-2-07 applies broadly across the entire developmental disabilities service delivery system. The Department is relocating the reference to form 09405 to rule 5123-7-09, which specifically governs personal needs allowance accounts of residents of ICFIID.

Operators of ICFIID, technology vendors, and staff of the Ohio Department of Medicaid asked the Department to clarify how costs associated with acquisition of assistive technology for residents of ICFIID was to be reimbursed. Rule 5123-7-12 is being amended to add clarifying language.

Staff of the Ohio Department of Medicaid asked the Department to align rule 5123-7-15 with amendments being made to rule 5160-1-19.

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?

Department staff considered various ways to address reimbursement for assistive technology in rule 5123-7-12 and its appendix. After consulting with staff of the Ohio Department of Medicaid, the Department ultimately determined to add new paragraph (C)(1)(i) to the body of the rule.

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. The Department is required to adopt rules to implement standards, requirements, and procedures to govern the ICFIID program. The federal Centers for Medicare and Medicaid Services requires Ohio to implement Medicaid-funded programs in a uniform, statewide manner. The rules establish federally-compliant standards of accountability for Ohio's ICFIID.

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

The Department is charged with rulemaking for programs it administers, including the Medicaid-funded ICFIID program. Department staff collaborate with staff of the Ohio Department of Medicaid to develop rules.

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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.

Information regarding the revisions being made to the rules will be provided through resources posted at the Department's website and via listservs, publications, and webinars. The final-filed rules will be posted at the Department's website and directly disseminated to the approximately 3,000 persons who subscribe to the Department's rules notification listserv. Staff of the Department's Division of Residential Resources are available to provide technical assistance should any be needed.

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

The rules impact 418 ICFIID operating in Ohio.

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

Rule 5123-7-09 requires an ICFIID to make notifications, report information, and transfer a resident's personal needs allowance account funds in the event of the resident's death.

Rule 5123:2-7-11/5123-7-11 describes the mechanism by which services provided to residents of an ICFIID are reimbursed and does not have an adverse impact.

Rule 5123-7-12 requires an ICFIID to submit a cost report and related information and documentation. Paragraph (H)(2) sets forth that failure to retain required records to the extent that filed cost reports are unauditable renders an ICFIID liable for monetary damages. Paragraph (H)(4) sets forth that refusing the Department or the Ohio Department of Medicaid access to records may result in a penalty.

Rule 5123:2-7-15/5123-7-15 requires an ICFIID to report information to the county department of job and family services and the Ohio Department of Medicaid and to submit claims using nationally standardized formats and code sets. The rule also imposes timelines for submitting claims and sets forth that an untimely claim may be denied.

Rule 5123-7-20 is being rescinded without replacement. Rescission of the rule does not have an adverse impact

Rule 5123:2-7-29/5123-7-29 requires an ICFIID to submit information and documentation to the Department and secure prior authorization to provide and receive payment for providing ventilator services.

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Rule 5123-7-30 is being rescinded without replacement. Rescission of the rule does not have an adverse impact.

Rule 5123:2-7-31 is being rescinded without replacement. Rescission of the rule does not have an adverse impact.

Rule 5123:2-7-32/5123-7-32 requires an ICFIID to complete and submit the Ohio Developmental Disabilities Profile (ODDP) for its residents. The ODDP is completed on a quarterly basis, but only when there has been a change in a resident's support needs. If a resident's support needs have not changed, the ICFIID must simply attest to that fact.

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.

Generally: The adverse impact of the rules includes reporting information, providing documentation, and staff time required to comply with the requirements. The cost of staff time to comply with the requirements of the rules will vary among ICFIID based on multiple factors such as the nature and number of individuals served, the number of staff involved, and wages paid to staff.

Rule 5123:2-7-15/5123-7-15: The adverse impact of the rule is staff time required to submit claims for payment and potential denial of an untimely claim. Through its cost report, an ICFIID may be reimbursed for the cost associated with submitting claims. The impact of denial of the claim will vary based on the amount of the claim.

Rule 5123:2-7-32/5123-7-32: The adverse impact of the rule is staff time required to complete the Ohio Developmental Disabilities Profile (ODDP) for residents, submit the ODDP data to the Department, attest that a resident's support needs have not changed, and complete training in administration of the ODDP. Department staff estimate that completing the ODDP for a resident takes approximately two staff hours. Attesting that a resident's support needs have not changed takes a few minutes. The total amount of staff time required to complete and submit the ODDP data or attestations will vary depending on the number of residents at an ICFIID and the individual characteristics of the residents served. Each ICFIID must have at least one staff member trained to administer the ODDP. The Department provides the training at no cost via an online independent training module so that ICFIID staff can complete the training at any time. The training takes approximately two hours to complete. The total amount of staff time expended to complete the training will vary depending on the number of staff trained and staff turnover.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to

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the regulated business community?

Standards are necessary to ensure Ohio implements the Medicaid-funded ICFIID program in a uniform, statewide manner that is compliant with federal regulations.

Regulatory Flexibility

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

Currently effective rule 5123-3-10 (Licensed Residential Facilities - Procedures to Waive Rule Requirements) provides general authority for the Director of the Department to waive a condition or specific requirement of a rule adopted by the Department to license or regulate the operation of residential facilities, including the rules in this package.

More specifically, regarding the rules in this package:

- Paragraph (B)(2) of rule 5123-7-12 permits an ICFIID to request an extension for filing its cost report.
- Paragraph (F)(3) of rule 5123-7-12 permits an ICFIID to revise its cost report.
- Paragraph (F)(5) of rule 5123-7-12 permits an ICFIID to request a rate reconsideration.
- Paragraph (G)(1) of rule 5123-7-12 permits an ICFIID to amend its cost report in some circumstances.
- Paragraph (C)(5)(b) of rule 5123-7-15 allows an ICFIID to resubmit a denied claim.
- Paragraph (F)(8) of rule 5123-7-29 permits ventilator services to be extended beyond the previously approved length of stay.
- Paragraph (C)(5) of rule 5123-7-32 sets forth a process for an ICFIID to dispute the results of an Ohio Developmental Disabilities Profile administered by the Department.
- Paragraph (E)(3) of rule 5123-7-32 allows an ICFIID to correct errors or omissions in its Ohio Developmental Disabilities Profile data identified by the Department or the ICFIID.

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

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regulation?

ICFIID resources are posted at the Department's website:

Information about ICFIID cost reports described in rule 5123-7-12 is available at:

<https://dodd.ohio.gov/providers/icf-resources/icf-cost-reporting>

Information about submitting claims for payment addressed in rule 5123-7-15 is available at: <https://dodd.ohio.gov/providers/icf-resources/ICF+Billing>

Information about ICFIID ventilator services described in rule 5123-7-29 is available at:

<https://dodd.ohio.gov/providers/icf-resources/icf-ventilator-services-outlier-program>

Department staff are available to provide technical assistance. A list of staff available to assist is available at: <https://dodd.ohio.gov/providers/icf-resources/icf+contact+list>