



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):

Licensed Residential Facilities - Person-Centered Planning

Rule Number(s): 5123-3-03

Date of Submission for CSI Review: November 18, 2022

Public Comment Period End Date: December 5, 2022

Rule Type/Number of Rules:

☐ New/____ rules

☒ Amended/ 1 rule (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☐ Rescinded/ ____ rules (FYR?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.

Rule 5123-3-03 (Licensed Residential Facilities - Person-Centered Planning) sets forth requirements to ensure that services for individuals living in residential facilities licensed by the Department are delivered pursuant to an individual service plan that is developed through person-centered planning. The Department licenses two types of residential facilities:

- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) certified by the Ohio Department of Health in accordance with federal regulations, and
- Non-ICFIID residential facilities that provide services primarily to individuals enrolled in Medicaid Home and Community-Based Services (HCBS) waivers.

Since 2019, Department staff have worked with a diverse group of stakeholders to develop and implement Ohio Individual Service Plan (OhioISP), a web-based information technology platform to facilitate standard assessment and service planning. OhioISP will be used statewide for all individuals served no matter how their services are funded or where they live. When fully implemented, OhioISP will house the service plan of each person receiving services in a standard, comprehensive format while describing the individualized and unique services designed for that person's specific needs.

Paragraph (F) of rule 5123-3-03 includes timelines for ICFIID to transition to OhioISP. Based on stakeholder feedback, paragraph (F) is being amended to extend the timeline for ICFIID to implement OhioISP. Additional amendments are being made to the rule to align wording with newer 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, 5123.19, 5124.03

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

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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.

Medicaid-funded services are subject to federal regulations. Provisions of the rule support person-centered planning as required by federal regulations.

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

Implementing a statewide system to ensure all Ohioans with developmental disabilities benefit from comprehensive assessment and planning is the reason for creating OhioISP. A service plan created in OhioISP follows an individual when he or she moves from one setting to another (e.g., from one ICFIID to another) which ensures continuity of services for the individual and is more efficient for providers of services.

- 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 ensure Ohio is compliant with the Revised Code and federal regulations governing Medicaid-funded services provided to individuals who reside in ICFIID and those who are enrolled in Department-administered HCBS waivers.

- 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-funded services 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 and the approved HCBS waivers.

- 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 committed to implementing a standard assessment and planning

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process and template to be used to support all people who receive services in Ohio's developmental disabilities system regardless of where they live or how their services are funded. To begin this work, the Department collected feedback from people throughout Ohio who develop and use service plans. The Department hosted a series of regional Feedback Forums for people who receive services, family members, service providers, and service plan authors to discuss the pros and cons of current service plans and share their experience and knowledge. Six Feedback Forums were conducted in 2019:

May 22 - Central Ohio (Lewis Center)
May 30 - Northwest Ohio (Bowling Green)
June 3 - Northeast Ohio (Akron)
June 5 - Southern Ohio (Chillicothe)
June 5 - Southwest Ohio (Dayton)
June 14 - Eastern Ohio (Cambridge)

In July 2019, the Department convened the OhioISP Workgroup to develop the standard assessment and planning process and template. The Workgroup was comprised of diverse stakeholders including people who receive services, family members, service providers, staff of county boards of developmental disabilities (responsible for assessment and planning for individuals who live in the community), and staff of ICFIID (responsible for assessment and planning for residents of ICFIID). Workgroup members included:

- Anita Allen, Vice President, Ohio Provider Resource Association
- Holly Brugh, Director of Service and Support Administration, Summit County Board of Developmental Disabilities
- Carrie Bush, Director of Service and Support Administration, Ashland and Wayne County Boards of Developmental Disabilities
- Amber Cross, Director of Service and Support Administration, BHN (Belmont/Harrison/Noble) Alliance
- Dawn Freudenberg, Director of Planning Innovation and Quality, Hamilton County Board of Developmental Disabilities
- Amber Gibbs, Director of Community and Medicaid Services, Cuyahoga County Board of Developmental Disabilities
- Michele Giess, Superintendent, Richland County Board of Developmental Disabilities
- Christopher Haldeman, Qualified Intellectual Disability Professional and Former Service and Support Administrator
- Melissa Hart, Frontline Supervisor, SHC/The Arc of Medina County
- Nicole Kaczynski, Family Member, Direct Support Professional, SHC/The Arc of Medina County
- Amanda Kiser, Qualified Intellectual Disability Professional, Echoing Hills Village, Inc.
- Debbie Jenkins, Policy Director, Ohio Health Care Association
- Karin Lopper-Orr, Executive Director, Blick Center
- Justin Madison, Service and Support Administrator and Behavioral Supports, Stark County Board of Developmental Disabilities
- Bryston McKnight, Service and Support Administrator, Pickaway County Board of Developmental Disabilities

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- Michele Myerholtz, Assistant Superintendent, Lucas County Board of Developmental Disabilities
- Chelsea Pozderac, Program Director, Transitional Living Centers, Inc.
- Arrelle Robinson, Program Manager, New Leaf Residential Services, Inc.
- Robert Shuemak, Advocacy Support Advisor, Hamilton County Board of Developmental Disabilities
- Melissa Skaggs, Chief Innovation Officer, Arc Industries, Inc.
- Jo Spargo, Executive Director, REM Ohio, Inc.
- Marci Straughter, Advocate
- Loretta Stroud, Family Member
- Jeanne Stuntz, President, Dynamic Pathways, Inc.
- Abbey Summers, CFO/Administrator, New Leaf Residential Services, Inc.
- Mary Thompson-Hufford, Chief Executive Officer, The Fuse Network
- Bethany Toledo, Executive Director, Ohio Alliance of Direct Support Professionals
- Sharon Travis, Executive Director, Southwest Ohio Council of Governments
- Chris Waldron, Service and Support Administrator, Union County Board of Developmental Disabilities
- Dustin Watkins, Executive Director, Bittersweet Farms
- Whitlee Wayland, Service and Support Administrator, Ross County Board of Developmental Disabilities
- Bradley Wyner, Behavior Support Specialist Supervisor, Rose-Mary Center

The OhioISP Workgroup reviewed information gathered at the Feedback Forums, developed the assessment and planning process and template, and determined the course for piloting, training, and implementation of OhioISP. The Workgroup met six times in 2019 (July 17, August 21, September 18, October 16, November 20, and December 18), seven times in 2020 (January 15, February 19, May 20, June 17, July 15, August 19, and October 21), and six times in 2021 (February 17, March 3, April 21, May 19, June 16, and July 21). Information about [Workgroup meetings](#) is available at the Department's website.

Pilot-testing of OhioISP was conducted from January through October 2020. Data collected from the testing teams informed adjustments to the process and template and development of related training. Training began in late 2020 and is ongoing. Rollout commenced in 2021 with implementation for individuals residing in ICFIID or enrolled in HCBS waivers projected for 2024.

Information about OhioISP is posted at the [Department's website](#) and has been widely disseminated via the [Department's communications](#), including *Director's Corner*, *Family Connection*, *Memo Monday*, and *Pipeline*.

Throughout development of OhioISP, Department staff shared information at stakeholder meetings and events attended by members/representatives of:

- Family Advisory Council
- Family Live Chat

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- Ohio Alliance of Direct Support Professionals
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Provider Resource Association
- Ohio Self Determination Association
- Project STIR (Steps Toward Independence and Responsibility)
- Service and Support Administration Directors

Also, throughout development of OhioISP, any person has been able to:

- [Sign up](#) to receive updates about the work.
- Submit feedback and questions via OhioISP@dodd.ohio.gov.
- Participate in webinars and live chats to receive updates and ask questions.

The Department produced training to support implementation of OhioISP. The training has three parts:

- 6,186 persons completed Parts 1 and 2
- 4,686 persons who completed Parts 1 and 2 also completed Part 3

Webinars and live chats were conducted in 2020, 2021, and 2022. [Regional support gatherings](#) will be scheduled for 2023.

Through the Department's rules clearance process, the rule 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 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 rule 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>

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

Stakeholders expressed concern that transition to OhioISP is taking more time than initially anticipated. The Department is amending paragraph (F) of the rule to address this concern.

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?

Development of OhioISP was driven by data regarding citations issued by the Department to regulated entities which demonstrated inconsistent practices and noncompliance with assessment and service planning requirements.

Data collected from pilot-testing of OhioISP informed adjustments to the process and template and development of related training.

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? *Alternative regulations may include performance-based regulations, which define the requirement outcome, but do not dictate the process the regulated stakeholders must use to comply.*

Implementing a statewide system to ensure all Ohioans with developmental disabilities benefit from comprehensive assessment and planning is the reason for creating OhioISP. The federal Centers for Medicare and Medicaid Services requires Ohio to implement Medicaid-funded programs in a uniform, statewide manner. The Department has engaged stakeholders throughout development of OhioISP. At this time, the Department is extending the timeline for implementation of OhioISP based on feedback from stakeholders.

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

In accordance with Section 5123.19 of the of the Revised Code, the Department is responsible for promulgating rules regarding residential facilities licensed by the Department. Section 5124.03 of the Revised Code requires the Department to adopt rules to implement Chapter 5124. which governs ICFIID. Department staff collaborate with staff of the Ohio Department of Medicaid when developing rules governing Medicaid-funded services.

14. 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 continue to disseminate information regarding OhioISP through its various publications, training, webinars, and live chats. The final-filed rule will be posted at

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the Department's website and directly disseminated to ICFIID, county boards of developmental disabilities, and the approximately 3,000 persons who subscribe to the Department's Rules Notification listserv. The Department's information technology applications, regulatory tools, and resource materials will be updated to reflect the extended timeline for implementation. Department staff are available during [regional support gatherings](#) to share information, answer questions, and provide technical assistance. Questions or comments may be submitted at any time to OhioISP@dodd.ohio.gov.

Adverse Impact to Business

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**
- Identify the scope of the impacted business community, and**
 - Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**
- 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 rule applies to residential facilities licensed by the Department. There are two types of licensed residential facilities:

Licensed Residential Facilities - ICFIID	N = 427
Licensed Residential Facilities - Non-ICFIID	N = 640

The rule as it already exists requires licensed residential facilities to:

- ensure individuals with developmental disabilities participate in decisions that affect their lives and services;
- ensure person-centered planning is the foundation for development of service plans;
- develop service plans in accordance with rule 5123-4-02 for individuals who live in licensed residential facilities that are not ICFIID and in accordance with provisions set forth in paragraph (E) of the rule for individuals who live at ICFIID;
- describe, annually and upon request, to each resident of an ICFIID the supports and services available to persons enrolled in HCBS waivers;
- contact the county board of developmental disabilities when a resident of an ICFIID requests assistance to move from the ICFIID to a community setting;
- document performance of tasks described in paragraph (E)(3) of the rule;
- present alternative services or activities to a resident of an ICFIID when informed consent is refused or revoked; and
- provide the service plan for a resident of an ICFIID to the resident, the resident's guardian or representative, parties responsible for implementation of the service plan, and authorized regulatory agents.

The costs associated with performing these duties vary based on factors such as the number and nature of individuals served, the number of staff employed, and staff wages and benefits and are unknown to the Department.

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Implementation of OhioISP requires Qualified Intellectual Disability Professionals (QIDP) employed by ICFIID to complete [OhioISP Training](#): Part 1, Part 2, and Part 3. ICFIID may conduct training on their own or access resources provided by the Department free-of-charge. The training is available in a web-based format so that QIDP may complete the training when it is convenient to do so and without travel time and associated expense. The training to be completed by each QIDP is approximately 6.5 hours.

Part 1: 20 minutes

Part 2: 30 minutes

Part 3: 5.5 hours

The costs associated with staff time required to complete the training will vary among ICFIID based on factors such as the number of staff to be trained and the wages paid to staff who complete the training.

The information technology platform for OhioISP is available at no cost. The Department anticipates that implementation of OhioISP will ultimately yield system efficiencies as an ICFIID will have access to standard information about an individual moving into the ICFIID.

At this time, in response to stakeholder feedback, the rule is being amended to extend the timeline for ICFIID to fully implement OhioISP.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The amendments being made to paragraph (F) of the rule afford ICFIID an additional ten months to fully implement OhioISP.

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

The rule is intended to ensure services provided to individuals living in residential facilities licensed by the Department are:

- compliant with requirements set forth in the Revised Code and federal regulations and
- developed and delivered in a person-centered manner.

The OhioISP process and template will ensure individuals and their families are driving assessment and planning and that these critical functions are carried out in a standard comprehensive manner throughout the State.

Regulatory Flexibility

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

No; licensed residential facilities must provide services pursuant to a service plan that is developed through person-centered planning.

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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?

- A [video introduction](#) to OhioISP was developed for families, advocates, and guardians.
- OhioISP onboarding guides for [ICFIID](#) and [county boards](#) provide best practices for a smooth transition.
- Department staff are available during [regional support gatherings](#) to share information, answer questions, and provide technical assistance.
- Specialized online or in-person training may be arranged by contacting a regional team member at [Ohio Individual Service SSA/QIDP Support](#).
- Questions or comments may be submitted to OhioISP@dodd.ohio.gov.