



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, 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):

HCBS Payment Rate Increases

Rule Number(s):

Amend: 5123-9-06, 5123-9-13, 5123-9-14, 5123-9-15, 5123-9-16, 5123-9-17, 5123-9-18, 5123-9-19, 5123-9-20, 5123-9-21, 5123-9-22, 5123-9-24, 5123-9-26, 5123-9-29, 5123-9-35, 5123-9-37, 5123-9-39, 5123-9-40

Rescind: 5123-9-05

Date of Submission for CSI Review: August 25, 2023

Public Comment Period End Date: September 11, 2023

Rule Type/Number of Rules:

☐ New/ ____ rules ☐ No Change/ ____ rules (FYR? ____)
☒ Amended/ 18 rules (FYR? yes 8 rules: 5123-9-06, 5123-9-13, 5123-9-20, 5123-9-21, 5123-9-22, 5123-9-24, 5123-9-35, 5123-9-40) ☒ Rescinded/ 1 rule (FYR? no)

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

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

CSIPublicComments@governor.ohio.gov

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.***

The Individual Options, Level One, and Self-Empowered Life Funding waivers are Medicaid-funded 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 programs as well as the support families and communities provide. An individual with developmental disabilities enrolls in a specific waiver based on his or her needs. As of August 2, 2023, more than 43,000 individuals were enrolled in HCBS waivers administered by the Department:

<u>Waiver</u>	<u>Enrollment</u>
Individual Options	24,810
Level One	16,586
Self-Empowered Life Funding	1,940

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

CSIPublicComments@governor.ohio.gov

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

The State's two-year budget for fiscal years 2024-2025 (i.e., House Bill 33 of the 135th General Assembly) increased the Department's appropriations by approximately \$352 million in fiscal year 2024 and \$860 million in fiscal year 2025 to fund increases in payment rates for most services provided to persons enrolled in Department-administered HCBS waivers. The budget reflects the largest investment in the history of Ohio's developmental disabilities service delivery system. To implement these historic payment rate increases, the Department is amending 18 rules and rescinding one rule.

- Rule 5123-9-06 (Home and community-based services waivers - administration of the individual options and level one waivers) establishes standards governing administration of the Individual Options and Level One waivers, components of the Medicaid HCBS program the Department administers pursuant to section 5166.21 of the Revised Code. The rule is being amended to increase funding ranges for individuals enrolled in the Individual Options Waiver and benefit limitations for individuals enrolled in the Level One Waiver. Additional amendments are being made to update a citation to the Administrative Code and align wording with newer rules.
- Rule 5123-9-13 (Home and community-based services waivers - career planning under the individual options, level one, and self-empowered life funding waivers) defines Career Planning and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-14 (Home and community-based services waivers - vocational habilitation under the individual options, level one, and self-empowered life funding waivers) defines Vocational Habilitation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-15 (Home and community-based services waivers - individual employment support under the individual options, level one, and self-empowered life funding waiver) defines Individual Employment Support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-16 (Home and community-based services waivers - group employment support under the individual options, level one, and self-empowered life funding waivers) defines Group Employment Support and sets forth provider qualifications, requirements

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

CSIPublicComments@governor.ohio.gov

for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.

- Rule 5123-9-17 (Home and community-based services waivers - adult day support under the individual options, level one, and self-empowered life funding waivers) defines Adult Day Support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-18 (Home and community-based services waivers - non-medical transportation under the individual options, level one, and self-empowered life funding waivers) defines Non-Medical Transportation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates.
- Rule 5123-9-19 (Home and community-based services waivers - general requirements for adult day support, career planning, group employment support, individual employment support, non-medical transportation, and vocational habilitation) establishes general requirements governing provision of and payment for Adult Day Support, Career Planning, Group Employment Support, Individual Employment Support, Non-Medical Transportation, and Vocational Habilitation provided to individuals enrolled in HCBS waivers administered by the Department. The rule is being amended to increase budget limitations on the above-mentioned services that apply to individuals enrolled in the Individual Options Waiver. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-20 (Home and community-based services waivers - money management under the individual options and level one waivers) defines Money Management and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to eliminate training requirements that are addressed in the overarching rules for provider certification (i.e., 5123-2-08 and 5123-2-09), update citations to the Administrative Code, and align wording with newer rules.
- Rule 5123-9-21 (Home and community-based services waivers - informal respite under the level one waiver) defines Informal Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to align wording with newer rules.
- Rule 5123-9-22 (Home and community-based services waivers - community respite under the individual options, level one, and self-empowered life funding waivers) defines

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

CSIPublicComments@governor.ohio.gov

Community Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.

- Rule 5123-9-24 (Home and community-based services waivers - transportation under the individual options, level one, and self-empowered life funding waivers) defines Transportation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to align wording with newer rules.
- Rule 5123-9-26 (Home and community-based services waivers - self-directed transportation under the individual options, level one, and self-empowered life funding waivers) defines Self-Directed Transportation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to align wording with newer rules.
- Rule 5123-9-29 (Home and community-based services waivers - home-delivered meals under the individual options, level one, and self-empowered life funding waivers) defines Home-Delivered Meals and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates.
- Rule 5123-9-35 (Home and community-based services waivers - remote support under the individual options, level one, and self-empowered life funding waivers) defines Remote Support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-37 (Home and community-based services waivers - waiver nursing delegation under the individual options, level one, and self-empowered life funding waivers) defines Waiver Nursing Delegation and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update citations to the Administrative Code and align wording with newer rules.
- Rule 5123-9-39 (Home and community-based services waivers - waiver nursing services under the individual options waiver) defines Waiver Nursing Services and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to increase payment rates. Additional amendments are being made to update a citation to the Administrative Code and align wording with newer rules.

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

CSIPublicComments@governor.ohio.gov

- Rule 5123-9-40 (Home and community-based services waivers - administration of the self-empowered life funding waiver) implements the Self-Empowered Life Funding Waiver, a component of the Medicaid HCBS program administered by the Department pursuant to section 5166.21 of the Revised Code. The rule is being amended to increase benefit limitations for individuals enrolled in the Waiver. Additional amendments are being made to update a citation to the Administrative Code and align wording with newer rules.
- Rule 5123-9-05 (Home and community-based services waivers - retention payments for direct support professionals) establishes requirements and processes for retention payments to benefit Direct Support Professionals providing specific services to individuals enrolled in HCBS waivers administered by the Department. The rule is being rescinded. In accordance with Section 261.160 of House Bill 33 of the 135th General Assembly, the program concludes December 31, 2023. Payment rates for providers of the services subject to retention payments in accordance with rule 5123-9-05 are being substantially increased through amendments to the rules described above.

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.

Rule	Authorize	Amplify
5123-9-05	5123.04, 5123.19	5123.04, 5123.19, 5166.21
5123-9-06	5123.04, 5123.049	5123.04, 5123.049, 5166.21
5123-9-13	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-14	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-15	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-16	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-17	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-18	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-19	5123.04, 5123.049	5123.04, 5123.049, 5166.21
5123-9-20	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-21	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-22	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-24	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-26	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21

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

CSIPublicComments@governor.ohio.gov

Rule	Authorize	Amplify
5123-9-29	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-35	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-37	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-39	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-40	5123.04, 5123.049	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 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 services available to individuals enrolled in HCBS waivers administered by the Department. States must request a Medicaid Section 1915(c) HCBS waiver. Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain specific Medicaid statutory requirements so that a state may voluntarily offer HCBS to a state-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid state plan.

- 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.**

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)?**

Rules are necessary to implement the Department's federally-approved 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 the rules in terms of the number of individuals enrolled in HCBS waivers, the extent to which the services provided meet the needs of individuals enrolled in the waivers, and Ohio's compliance with federal regulations and the federally-approved 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

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

CSIPublicComments@governor.ohio.gov

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.

Diverse stakeholders, including individuals and families served, advocates, providers of services, and county boards of developmental disabilities, were the driving force behind the Department receiving appropriations through House Bill 33 of the 135th General Assembly to fund payment rate increases for Direct Support Professionals. Direct Support Professionals are the frontline staff who provide a wide variety of support such as helping a person bathe and dress, prepare a meal, participate in community activities, or find and maintain a job. Stakeholders rallied together to deliver a clear message: Direct Support Professionals must be paid higher wages.

Information about House Bill 33 and the payment rate increases for providers of HCBS was presented and discussed at various venues, highlighted through the Department's publications, and is posted at the Department's website:

- Ohio Department of Developmental Disabilities Budget Webinar (February 2, 2023)
- Developmental Disabilities Awareness and Advocacy Day (March 1, 2023)
- Superintendents of County Boards of Developmental Disabilities Executive Committee (February 2 and March 10, 2023)
- Breaking Silences Advocacy Committee (March 14, 2023)
- Family Advisory Council (March 15, 2023)
- The Arc of Ohio Spring Conference (March 28, 2023)
- Franklin County Board of Developmental Disabilities Legislative Advocacy Day (March 31, 2023)
- Ohio Health Care Association Convention (May 23, 2023)
- Ohio Department of Developmental Disabilities Workforce Crisis Task Force Meeting (July 12, 2023)
- Ohio Departments of Medicaid, Aging, Developmental Disabilities, and Mental Health and Addiction Services Budget Webinar (July 14, 2023)

Director's Corner (July 7, 2023)

<https://dodd.ohio.gov/communication/Newsletters/newsletter-directors-corner-july-7-2023>

Pipeline (July 11, 2023)

<https://dodd.ohio.gov/about-us/communication/Newsletters/newsletter-dodd-pipeline-july-11-2023>

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

CSIPublicComments@governor.ohio.gov

Family Connection (July 12, 2023)

<https://dodd.ohio.gov/about-us/communication/Newsletters/newsletter-family-connection-july-12-2023>

Memo Monday (July 17, 2023)

<https://dodd.ohio.gov/about-us/communication/Newsletters/newsletter-memo-monday-july-17-2023>

DSP Connection (July 19, 2023)

<https://dodd.ohio.gov/about-us/communication/Newsletters/newsletter-dsp-connection-july-19-2023>

Disability Connection (July 27, 2023)

<https://dodd.ohio.gov/about-us/communication/Newsletters/newsletter-disability-connection-july-2023>

Budget Webpage:

<https://dodd.ohio.gov/about-us/Budget/Budget>

The Department maintains an electronic mailbox for feedback regarding the HCBS waivers it administers (waiverfeedback@dodd.ohio.gov). Feedback submitted during the past six months included 55 emails regarding payment rates, funding ranges, and/or budgets; at least 10 emails specifically stated that payment rates should be higher.

The increases being made to the payment rates, funding ranges, budget limitations, and benefit limitations were discussed at a meeting of the Waiver Workgroup on August 21, 2023. The Waiver Workgroup includes representatives of:

Advocacy and Protective Services, Inc.

The Arc of Ohio

Ohio Association of County Boards of 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 Superintendents of County Boards of Developmental Disabilities

Ohio Waiver Network

Values and Faith Alliance

The amendments being made to the rules reflect amendments being made to the Department's HCBS waivers. As part of the waiver amendment process, the public has an opportunity to comment on the proposed amendments. The 30-day public comment period is slated to begin by September 1, 2023. Comments may be submitted by email, United States mail, telephone, courier, or in-person.

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

CSIPublicComments@governor.ohio.gov

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 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 Statewide Independent Living Council
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 throughout Ohio's developmental disabilities service delivery system lobbied elected officials to fund payment rate increases to ensure sufficient Direct Support Professionals are available to meet the need for services provided to individuals enrolled in HCBS waivers. As a result of their successful efforts, the State's two-year budget reflects the largest investment in the history of Ohio's developmental disabilities service delivery system.

Members of the Waiver Workgroup suggested that descriptive definitions of terms are more helpful to individuals served and families than defining a term to have the same meaning as in another administrative rule. Where practical, definitions of terms were amended based on this input.

Additional feedback provided by stakeholders during the rules clearance period will be considered before the rules are filed.

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

CSIPublicComments@governor.ohio.gov

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?

Department staff analyzed service utilization data from 2021 and 2022 to determine how much to increase funding ranges and budget limitations for individuals enrolled in the Individual Options Waiver and benefit limitations applicable to the Level One and Self-Empowered Life Funding waivers. This analysis informed the amounts included in the amended rules:

- 5123-9-06 (F): Level One Waiver benefit limitations
- 5123-9-06 Appendix A: Individual Options Waiver funding ranges
- 5123-9-19 Appendix B: Individual Options Waiver budget limitations for adult day services and Non-Medical Transportation
- 5123-9-40 (H): Self-Empowered Life Funding Waiver benefit limitations

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.

The primary reason for amending the rules is to increase payment rates for providers of HCBS waiver services. Additional amendments were considered as needed to implement technical corrections (e.g., updating citations to the Administrative Code) and align wording with newer rules (e.g., eliminating regulatory restrictions).

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

Through an interagency agreement with the Ohio Department of Medicaid, the Department is charged with adopting rules governing the HCBS waivers administered by the Department. Department staff work with staff of the Ohio Department of Medicaid to ensure the Department's rules align with the federally-approved HCBS waivers.

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 about the payment rate increases through its various communications. The final-filed rules will be posted at the Department's website and directly disseminated to county boards of developmental disabilities and the approximately 4,200 persons who subscribe to the Department's Rules Notification listserv.

Staff of the Department's Division of Medicaid Administration, Provider Certification unit, and Office of Compliance are available to answer questions and provide technical assistance as needed.

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

CSIPublicComments@governor.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:

- a. Identify the scope of the impacted business community, and**
- b. 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 rules govern services provided to individuals enrolled in HCBS waivers and the persons and entities that provide the services. There are two types of providers: agency providers (entities that employs persons to provide the services) and independent providers (self-employed persons who do not engage any other persons to provide the services).

In total, there are nearly 14,000 providers:

- 11,645 independent providers
- 2,083 agency providers

Fifteen rules pertain to a specific service. Each service-specific rule sets forth what type of provider/s may provide the service (i.e., an agency provider, an independent provider, or both). The number of providers for each service is listed below. Many providers provide more than one service.

Service	Agency Providers	Independent Providers
Adult Day Support	811	[not applicable]
Career Planning	217	46
Community Respite	369	[not applicable]
Group Employment Support	287	[not applicable]
Home-Delivered Meals	14	24
Individual Employment Support	383	121
Informal Respite	[not applicable]	5,626
Money Management	241	293
Non-Medical Transportation	1,391	4,397
Remote Support	394	[not applicable]
Transportation	1,776	7,334
Vocational Habilitation	503	[not applicable]

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

CSIPublicComments@governor.ohio.gov

Service	Agency Providers	Independent Providers
Waiver Nursing Delegation	399	192
Waiver Nursing Services	396	271

Persons and entities that provide Self-Directed Transportation in accordance with rule 5123-9-26 are authorized to do so by a Financial Management Services entity engaged by the Department. There are approximately 84 authorized providers. The majority of providers (approximately 57%) are a friend, family member, or coworker of the person receiving the service; the remaining providers are commercial providers of transportation.

Three rules (5123-9-06, 5123-9-19, and 5123-9-40) address services generally and include funding ranges or benefit limitations. The amount of funding ranges and benefit limitations are being increased to accommodate the payment rate increases.

Rule 5123-9-05 is being rescinded. The rule established the Direct Support Professional Retention Payment Program. Through the program, the Department distributed payments to each independent provider that provided one or more of the specified services and to each agency provider that provided one or more of the specified services and opted to participate in the program. Since inception of the program in early 2023, payments have been made to 7,705 independent providers and 1,482 agency providers that opted into the program for at least one quarter. In accordance with Section 261.160 of House Bill 33 of the 135th General Assembly, the program concludes December 31, 2023. The dollar amount committed to the program is being rolled into permanent payment rate increases.

The adverse impact of the rules as they currently exist includes:

- Having to be certified by the Department (or authorized by the Financial Management Services entity) to provide services;
- Submitting an application and supporting information and documents to obtain and maintain certification or authorization to provide services;
- Obtaining and maintaining a Medicaid provider agreement;
- Reporting information and maintaining documentation about services provided;
- Being subject to denial, suspension, or revocation of certification or authorization for failure to comply with rules; and
- Staff time required to comply with requirements of the rules.

The actual adverse impact varies widely among providers based on factors such as whether the provider is an agency provider or an independent provider, the nature and number of individuals served, the number of specific services provided, the volume of services provided, and for agency providers, the number of staff employed and the wages/benefits paid.

The primary reason for amending the rules is to increase rates paid to providers of services. The proposed amendments are not expected to increase requirements or adverse impact to providers of services. Increasing payment rates will increase provider revenue.

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

CSIPublicComments@governor.ohio.gov

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 rules are being amended to increase payment rates to providers of HCBS.

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

The Ohio Revised Code and the federal Centers for Medicare and Medicaid Services require the Department to promulgate rules governing the Medicaid HCBS waivers it administers. The amendments being made at this time are increasing payment rates to providers of HCBS.

Regulatory Flexibility

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

No; the federal Centers for Medicare and Medicaid Services requires Ohio to implement Medicaid-funded programs in a uniform, statewide manner.

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 waiving 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?

The Department will disseminate information about the payment rate increases through its various publications and make information available at the Department's website:
<https://dodd.ohio.gov/waivers-and-services>.

The rules will be posted at the Department's website throughout the rule promulgation process:
<https://dodd.ohio.gov/forms-and-rules/rules-under-development/rules-under-development>

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

CSIPublicComments@governor.ohio.gov

Staff of the Department's Division of Medicaid Administration, Provider Certification unit, and Office of Compliance are available to answer questions and provide technical assistance as needed. Questions and requests for assistance may be submitted at any time to:

Division of Medicaid Administration
waiverpolicyta@dodd.ohio.gov

Provider Certification
(800) 617-6733, Option 5
provider.certification@dodd.ohio.gov

Office of Compliance
(800) 617-6733, Option 6
compliance@dodd.ohio.gov

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

CSIPublicComments@governor.ohio.gov