Ohio | Common Sense Initiative

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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):

Post-Pandemic Flexibility

Rule Number(s):
Amend: 5123-2-08, 5123-2-09, 5123-8-01, 5123-9-30, 5123-9-31, 5123-9-32, 5123-9-33
Rescind: 5123-9-34
Adopt: 5123-9-34

Date of Submission for CSI Review: May 26, 2023

Public Comment Period End Date: June 12, 2023

Rule Type/Number of Rules:

- ✓ **New/ 1 rule**
- ✓ **Amended/ 7 rules (FYR? yes 4 rules: 5123-8-01, 5123-9-30, 5123-9-31, 5123-9-32)**
- ☐ **No Change/____ rules (FYR? ____)**
- ✓ **Rescinded/ 1 rule (FYR? yes)**

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.**

   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 Department is modifying rules to adjust and extend flexibility for delivery of services to Ohioans with developmental disabilities in the wake of the COVID-19 pandemic. Also, as part of this package, the Department is removing provisions of rules that refer to the COVID-19 state of emergency.

   Rule 5123-2-08 (Provider Certification - Agency Providers) establishes procedures and standards for certification of agency providers of supported living services, including Medicaid-funded Home and Community-Based Services (HCBS) provided in accordance with Section 5123.045 of the Revised Code. An agency provider is an entity that directly employs at least one person in addition to a Director of Operations for the purpose of providing supported living services. "Supported living" is defined in Section 5126.01 of the Revised Code and means services provided to an individual with a developmental disability through any public or private resources that enhance the individual's community life and advance the individual's quality of life by providing the support necessary to enable the individual to live in a residence of the individual's choice. Rule 5123-2-08 is being amended to:

   - Clarify throughout the rule, how applicants for and holders of provider certification submit applications, information, and documents.
   - Offer an agency provider an alternative to having a line of credit as required in paragraphs (C)(4) and (M)(1)(b).
   - Permit, in paragraphs (G)(9)(a) and (G)(9)(b), some direct support professionals to provide services to a minor child or spouse in accordance with Ohio Department of Medicaid proposed rule 5160-44-32 (Medicaid Waiver, Home Health, and Private Duty Nursing Program Provider and Direct Service Worker Relationships).

- Add paragraphs (G)(9)(c) and (G)(9)(d) to clarify that a direct support professional may not provide services to the minor child or spouse of the agency provider's owner.
- Add paragraph (H)(5) to clarify that a person who is the parent of a minor child served by the agency provider or the spouse of an individual served by the agency provider may not serve as Director of Operations for the agency provider.
- Adjust training requirements in appendices for clarity.
- Correct citations to the Administrative Code and Revised Code.
- Align wording with newer rules.

Rule 5123-2-09 (Provider Certification - Independent Providers) establishes procedures and standards for certification of independent providers of supported living services, including Medicaid-funded HCBS provided in accordance with Section 5123.045 of the Revised Code. An independent provider is a self-employed person who provides supported living services and does not employ, either directly or through contract, anyone else to provide the services. The rule is being amended to:

- Clarify throughout the rule, how applicants for and holders of provider certification submit applications, information, and documents.
- Adjust training requirements in appendices for clarity.
- Correct citations to the Administrative Code and the Revised Code.
- Align wording with newer rules.

Rule 5123-8-01 (Developmental Disabilities Level of Care) sets forth the criteria and process used to determine whether an individual requires the level of care necessary to receive Medicaid-funded services from an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICFIID) or through enrollment in an HCBS waiver administered by the Department. The rule is being amended to:

- Eliminate paragraph (E) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Correct citations to the Revised Code.
- Align wording with newer rules.

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

- Add new paragraph (D)(7) to permit Homemaker/Personal Care to be provided to an individual in an acute care hospital.
- Increase payment rates effective January 1, 2024. (Please note that 2024 payment rates are not yet available but will be provided to stakeholders as soon as possible.)
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-31 (HCBS Waivers - Homemaker/Personal Care Daily Billing Unit for Sites Where Individuals Enrolled in the Individual Options Waiver Share Services) establishes a daily billing unit for Homemaker/Personal Care when individuals share the services of the same agency provider at the same site as part of the Individual Options Waiver. The daily

billing unit for individuals/sites that qualify is used by agency providers instead of the fifteen-minute billing unit established in rule 5123-9-30 of the Administrative Code. Rule 5123-9-31 is being amended to:

- Eliminate paragraph (H) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-32 (HCBS Waivers - Participant-Directed Homemaker/Personal Care Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) defines Participant-Directed Homemaker/ Personal Care and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to:

- Add new paragraph (D)(8) to permit Participant-Directed Homemaker/Personal Care to be provided to an individual in an acute care hospital.
- Increase payment rates effective January 1, 2024. (Please note that 2024 payment rates are not yet available but will be provided to stakeholders as soon as possible.)
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-33 (HCBS Waivers - Shared Living Under the Individual Options Waiver) defines Shared Living and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Shared Living service provides personal care and support necessary to meet the day-to-day needs of an adult enrolled in the Individual Options Waiver, by an adult caregiver who resides in the same home as the individual receiving the services. The rule is being amended to:

- Add new paragraph (D)(9) to permit Residential Respite to be provided on the same day as Shared Living.
- Eliminate existing paragraph (D)(10) which permitted Homemaker/Personal Care to be provided on the same day as Shared Living during the COVID-19 state of emergency.
- Add new paragraph (D)(10) to permit Shared Living to be provided to an individual in an acute care hospital.
- Amend paragraph (G) to create additional exemptions that permit individuals who live with their caregivers (generally regarded as Shared Living) to receive the Homemaker/Personal Care service instead of Shared Living.
- Increase payment rates effective January 1, 2024. (Please note that 2024 payment rates are not yet available but will be provided to stakeholders as soon as possible.)
- Correct citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-9-34 (HCBS Waivers - Residential Respite Under the Individual Options, Level One, and Self-Empowered Life Funding Waivers) defines Residential Respite and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Residential Respite service provides personal care and support furnished on a short-term basis because of the absence or need for relief of those persons routinely providing care. Due to the volume of necessary amendments, the existing

rule is being rescinded and replaced by a new rule of the same number and title. Although the existing rule will be rescinded and replaced by a new rule, a version showing the revisions being made, via underline and strikethrough, is provided so stakeholders can readily see what is changing. New rule 5123-9-34 reflects revisions to:

- Add new paragraph (B)(6) and revise the Appendix to create a fifteen-minute billing unit for Residential Respite.
- Add new paragraph (B)(13) to define "residential facility," which includes an ICFIID, so that cumbersome phrasing throughout the rule may be eliminated.
- Add new paragraph (D)(6) to clarify that individuals receiving Shared Living may receive Residential Respite.
- Add new paragraph (D)(7) to permit an individual residing in a Shared Living setting to receive Residential Respite at the fifteen-minute billing unit on the same day Shared Living is provided.
- Increase payment rates in 2023 when new rule goes into effect (projected to be November 11, 2023).
- Increase payment rates effective January 1, 2024. (Please note that 2024 payment rates are not yet available but will be provided to stakeholders as soon as possible.)
- Correct citations to the Administrative Code.
- 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.

5123-2-08 and 5123-2-09:
Authorize: 5123.04, 5123.1611
Amplify: 5123.04, 5123.045, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.165, 5123.166, 5123.168, 5123.169, 5123.1610, 5123.1611

5123-8-01:
Authorize: 5123.04, 5124.03
Amplify: 5123.04, 5124.03

5123-9-30, 5123-9-31, 5123-9-32, 5123-9-33, and 5123-9-34:
Authorize: 5123.04, 5123.049, 5123.1611
Amplify: 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. Rules 5123-2-08 and 5123-2-09 establish procedures and general standards for certification of providers of Medicaid-funded HCBS. Rule 5123-8-01 sets forth criteria to determine whether an individual requires the level of care necessary to receive Medicaid-funded services from an ICFIID or through enrollment in an HCBS waiver. Rules 5123-9-30, 5123-9-31, 5123-9-32, 5123-9-33, and 5123-9-34 implement specific services available

to individuals enrolled in HCBS waivers administered by the Department.

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 federal ICFIID program and 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 rules 5123-2-08 and 5123-2-09 in terms of the health and welfare of individuals who receive supported living services delivered by certified providers and individuals' satisfaction with the services they receive.

   The Department measures the success of rule 5123-8-01 in terms of the number of individuals appropriately determined eligible to receive services in an ICFIID or through enrollment in an HCBS waiver.

   The Department measures the success of rules 5123-9-30, 5123-9-31, 5123-9-32, 5123-9-33, and 5123-9-34 in terms of the number of individuals receiving the services, the extent to which the services meet the needs of individuals enrolled in HCBS 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 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.

   Throughout the COVID-19 pandemic, Department staff worked with individuals and families who receive services, advocates, providers of services, county boards of developmental disabilities, and state agency partners, to adjust service delivery and provide flexibility

wherever possible to meet emerging needs. In the aftermath of the pandemic, collaboration continues to identify ways to extend and expand flexibility going forward. To that end, stakeholder feedback was collected in multiple venues.

The Department maintains an electronic mailbox for feedback regarding its HCBS waivers (waiverfeedback@dodd.ohio.gov). Feedback submitted by approximately 150 persons was reviewed and considered in development of the amendments being made to the rules.

In 2023, the Ohio Department of Medicaid conducted multiple webinars to gather feedback about waiver policy changes related to resumption of routine operations and post-pandemic flexibility, including several that specifically addressed the developmental disabilities service delivery system:

- March 22 for service and support administrators and county boards of developmental disabilities
- March 24 for individuals who receive services and stakeholder advocacy groups
- March 24 for providers of services and provider advocacy groups
- April 12 for individuals who receive services and stakeholder advocacy groups

Stakeholders can find information and stay up-to-date on progress and opportunities to provide feedback by regularly visiting the Ohio Department of Medicaid's Resuming Routine Medicaid Eligibility Operations webpage.

The amendments being made to the rules reflect amendments being made to the Department's HCBS waivers (i.e., Individual Options, Level One, and Self-Empowered Life Funding). As part of the waiver amendment process, the public has an opportunity to comment on the proposed amendments. The public comment period is projected to begin by early July. Comments may be submitted by email, United States mail, telephone, or courier/in-person.

Throughout the pandemic and more recently on July 25, 2022, September 26, 2022, January 30, 2023, and April 24, 2023, the Department's plans to revise rules were discussed at meetings of the Waiver Workgroup. 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

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?

Rules Generally:
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.

5123-2-08:
- (C)(4) and (M)(1)(b) - In response to feedback from applicants for and holders of certification, an alternative option for an agency provider to establish financial solvency was added.
- (G)(9) - In response to families who receive services, the flexibility afforded during the pandemic to permit the parent of a minor child or a spouse to provide services is being extended in concert with parameters established in Ohio Department of Medicaid rule 5160-44-32.

5123-9-30:
- (D)(7) - In response to feedback from those who receive services and providers of

services, the flexibility afforded during the pandemic to permit a provider of Homemaker/Personal Care to provide services while an individual is in an acute care hospital is being extended.

- Appendix B - Based on effective lobbying by stakeholders and responsiveness of legislators, payment rates for Homemaker/Personal Care are being increased effective January 1, 2024.

5123-9-32:

- (D)(8) - In response to feedback from those who receive services and providers of services, the flexibility afforded during the pandemic to permit a provider of Participant-Directed Homemaker/Personal Care to provide services while an individual is in an acute care hospital is being extended.
- Appendix B - Based on effective lobbying by stakeholders and responsiveness of legislators, payment rates for Participant-Directed Homemaker/Personal Care are being increased effective January 1, 2024.

5123-9-33:

- (B)(12) - A definition for "primary legal residence" is being added based on requests for clarification from county boards of developmental disabilities and providers of Shared Living.
- (D)(9) - Discussions with stakeholders resulted in addition of this provision which permits Residential Respite to be provided on the same day as Shared Living.
- Former (D)(10) - Discussions with stakeholders resulted in removal of this provision which permitted Homemaker/Personal Care to be provided on the same day as Shared Living during the COVID-19 state of emergency.
- (D)(10) - In response to feedback from those who receive services and providers of services, the flexibility afforded during the pandemic to permit a provider of Shared Living to provide services while an individual is in an acute care hospital is being extended.
- (G)(2) - Based on feedback from families receiving services and county boards of developmental disabilities, additional situations were exempted from Shared Living so that individuals in those situations may instead receive Homemaker/Personal Care, which better meets their needs.
- Appendix B - Based on effective lobbying by stakeholders and responsiveness of legislators, payment rates for Shared Living are being increased effective January 1, 2024.

5123-9-34:

- (B)(6), (D)(7), and Appendix - A fifteen-minute billing unit is being added to permit Residential Respite to be provided on the same day as Shared Living.
- Appendix A - Based on feedback from stakeholders, payment rates for Residential Respite are being increased in 2023.
- Appendix B - Based on effective lobbying by stakeholders and responsiveness of legislators, payment rates for Residential Respite are being increased effective January 1, 2024.

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

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 to define parameters for permitting a person residing in a Shared Living setting to receive Residential Respite on the same day. The data suggested that permitting 12 hours of Residential Respite per week would accommodate the needs of most participants. Additional analyses informed the decision to exempt more situations from Shared Living as set forth in paragraph (G)(2) of rule 5123-9-33.

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.***

    Department staff collaborated with staff of the Ohio Department of Medicaid to consider stakeholder feedback and various criteria for permitting a parent of a minor child or a spouse to be a paid provider of services and ultimately determined the parent or spouse would be employed by an agency provider and subject to criteria in Ohio Department of Medicaid rule 5160-44-32.

    Department staff considered stakeholder feedback regarding provision of Residential Respite to individuals residing in Shared Living settings. Ultimately, based on analysis of data, staff determined that up to 12 hours per week would be permitted.

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 operation of ICFIID and 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 federal ICFIID program and 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 changes being made through its various communications. Department staff are developing resources and materials to aid system stakeholders with implementation of the changes. These materials

will be posted at the Department's website, so applicants are aware of what is changing and how to comply with requirements. The final-filed rules will be posted at the Department's website and directly disseminated to county boards of developmental disabilities and the approximately 4,000 persons who subscribe to the Department's Rules Notification listserv.

Department staff will continue to work with individuals and families who receive services, providers of services, and county boards of developmental disabilities to ensure they understand what is changing and the implications for service delivery. Staff of the Department's Division of Medicaid Development and Administration, Provider Certification unit, and Office of Compliance are available to answer questions and provide technical assistance as needed.

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.

5123-2-08:

Rule 5123-2-08 applies to applicants for and holders of agency provider certification issued by the Department. There are approximately 2,090 agency providers. The rule as it already exists requires agency providers to:

- Submit an application for certification with supporting documentation and hold a Medicaid provider agreement. Department staff estimate that applying for initial agency provider certification takes an applicant two to four hours to scan and upload documents and complete the application process. Submitting an application for renewal certification is expected to take less time as applicants are familiar with the process. The adverse impact includes the time it takes an applicant to gather and submit information and documents and complete the application process. The costs associated with these requirements vary based on factors such as the wages and benefits paid to staff who complete these tasks and are unknown to the Department.
- Pay application fees. The application fees for certification vary by type of provider. The application fee for a small agency provider (i.e., one that serves 50 or fewer individuals) seeking initial certification or renewal certification is $800. The application fee for a large agency provider (i.e., one that services 51 or more individuals) seeking initial certification or renewal certification is $1,600. The application fee for adding a service to an existing certification is $75 for a small agency provider and $150 for a large agency provider. The fees are not changing.

Paragraph (S)(2) sets forth that the Department may deny, suspend, or revoke an agency provider's certification for good cause pursuant to Section 5123.166 of the Revised Code.

The impact of such an action varies based on multiple factors which are unique to each situation.

5123-2-09:
Rule 5123-2-09 applies to applicants for and holders of independent provider certification issued by the Department. There are approximately 11,493 independent providers. The rule as it already exists requires independent providers to:

- Submit an application for certification with supporting documentation and hold a Medicaid provider agreement. Department staff estimate that applying for initial independent provider certification takes an applicant one to two hours to scan and upload documents and complete the application process. Submitting an application for renewal certification is expected to take less time as applicants are familiar with the process. The adverse impact includes the time it takes an applicant to gather and submit information and documents and complete the application process. The costs associated with these requirements vary based on applicant-specific factors and are unknown to the Department.
- Pay application fees. The application fee for an independent provider seeking initial certification or renewal certification is $125. The application fee for adding a service to an existing certification is $25. The fees are not changing.

Paragraph (M)(2) sets forth that the Department may deny, suspend, or revoke an independent provider's certification for good cause pursuant to Section 5123.166 of the Revised Code. The impact of such an action varies based on multiple factors that are unique to each situation.

5123-8-01:
Rule 5123-8-01 affects approximately 420 ICFIID. The primary reason for amending the rule is to eliminate paragraph (E), which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency. The rule as it already exists requires an ICFIID to complete an initial level-of-care review for individuals seeking admission to the facility and an annual redetermination review for each resident of the facility. Level-of-care reviews are completed and submitted to the Department via an automated electronic process. It takes approximately 45 minutes to complete the form. Employees of ICFIID who coordinate or perform the reviews must complete Department-approved training. The Department provides the training via a web-based curriculum at no cost. It takes approximately 1.5 hours to complete the training. The proposed amendments are not expected to increase requirements or adverse impact to ICFIID.

5123-9-30:
Rule 5123-9-30 governs the provision of Homemaker/Personal Care. Homemaker/Personal Care is provided by approximately 1,786 agency providers and 9,744 independent providers. The primary reason for amending the rule is to add paragraph (D)(7), which permits Homemaker/Personal Care to be provided to an individual in an acute care hospital. Paragraph (C) requires a person or agency seeking to provide Homemaker/Personal Care to submit an application for certification and hold a Medicaid provider agreement. Paragraph (C) also sets forth that failure to comply with rules may result in denial, suspension, or revocation of the provider's certification or license. Paragraph (E) requires a provider to

maintain service documentation. The proposed amendments are not expected to increase requirements or adverse impact to providers of services.

5123-9-31:
Rule 5123-9-31 governs the provision of Homemaker/Personal Care at the daily billing unit by approximately 1,787 agency providers. The primary reason for amending the rule is to eliminate paragraph (H), which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency. Paragraph (D)(7) requires an agency provider to enter information and documentation in the Medicaid Services System. Paragraph (E) requires an agency provider to maintain service documentation. The proposed amendments are not expected to increase requirements or adverse impact to ICFIID.

5123-9-32:
Rule 5123-9-32 governs the provision of Participant-Directed Homemaker/Personal Care. Participant-Directed Homemaker/Personal Care is provided by approximately 1,193 agency providers and 6,296 common law employees. The primary reason for amending the rule is to add paragraph (D)(8), which permits Participant-Directed Homemaker/Personal Care to be provided to an individual in an acute care hospital. Paragraph (C) requires a person or agency seeking to provide Participant-Directed Homemaker/Personal Care to submit an application for certification and hold a Medicaid provider agreement. Paragraph (C) also sets forth that failure to comply with rules may result in denial, suspension, or revocation of the provider's certification. Paragraph (E) requires a provider to maintain service documentation. The proposed amendments are not expected to increase requirements or adverse impact to providers of services.

5123-9-33:
Rule 5123-9-33 governs the provision of Shared Living. Shared Living is provided by approximately 1,110 agency providers and 5,949 independent providers. The primary reason for amending the rule is to extend flexibility by permitting individuals residing in Shared Living settings to receive Residential Respite on the same day Shared Living is provided. Paragraph (C) requires a person or agency seeking to provide Shared Living to submit an application for certification and hold a Medicaid provider agreement. Paragraph (C) also sets forth that failure to comply with rules may result in denial, suspension, or revocation of the provider's certification or license. Paragraph (E) requires a provider to maintain service documentation. The proposed amendments are not expected to increase requirements or adverse impact to providers of services.

5123-9-34:
Rule 5123-9-34 governs the provision of Residential Respite. Residential respite is currently provided by approximately 223 ICFIID residential facilities, 503 non-ICFIID residential facilities, and 643 agency providers. The primary reason for amending the rule is to extend flexibility by:

- Permitting individuals residing in Shared Living settings to receive Residential Respite on the same day Shared Living is provided,
- Permitting independent providers to provide the service, and
- Increasing payment rates to ensure the service is viable.

Paragraph (C) requires a person or entity seeking to provide Residential Respite to submit an application for certification and hold a Medicaid provider agreement. Paragraph (C) also sets forth that failure to comply with rules may result in denial, suspension, or revocation of the provider's certification or license. Paragraph (E) requires a provider to maintain service documentation. The revisions being made to the rule are not expected to increase requirements or adverse impact to providers of services. Increasing the payment rates will increase provider revenue.

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).**

    5123-2-08: An alternative option for an agency provider to establish financial solvency is being added.

    5123-2-08 and 5123-2-09: The rules are being amended and simplified to reflect the streamlined, centralized provider portal that agency providers and independent providers now use to submit applications, information, and documents related to obtaining and maintaining certification.

    5123-9-33: Paragraph (G)(2) expands situations being exempted from Shared Living so that individuals in those situations may instead receive the Homemaker/Personal Care service, which reimburses a provider of services at a higher rate.

    5123-9-34: Paragraph (C)(1)(b) is being revised to permit an independent provider to provide Residential Respite.

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

    The amendments are intended to extend flexibility for Ohioans with developmental disabilities receiving services and providers of those services.

Regulatory Flexibility

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

    5123-2-08 (C)(4) and (M)(1)(b): An alternative option for an agency provider to establish financial solvency is being added.

    5123-2-08 (G)(9): The flexibility afforded during the pandemic to permit some legally responsible persons (i.e., the parent of a minor child or a spouse) to be paid providers of services is being extended in concert with parameters established in Ohio Department of Medicaid rule 5160-44-32.

5123-2-08 (T): Authorizes the Department to waive a provision of the rule for good cause.

5123:2-09 (N): Authorizes the Department to waive a provision of the rule for good cause.

5123-9-31 (C)(6): Sets forth that the Director of the Department may allow an agency provider of Homemaker/Personal Care to use the fifteen-minute billing approach established in rule 5123-9-30 in unique and/or extenuating circumstances.

5123-9-33 (G)(2): Additional situations are being exempted from Shared Living so that individuals in those situations may instead receive the Homemaker/Personal Care service, which reimburses a provider of services at a higher rate.

5123-9-34 (B)(2) and (C)(1)(b): Independent providers are being permitted to provide Residential Respite.

5123-9-34 (B)(6), (D)(7), and Appendix: A fifteen-minute billing unit is being added so that an individual may receive and a provider may be reimbursed for providing Residential Respite on the same day the individual receives Shared Living.

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?

The Department is developing informational materials that will be disseminated through its various publications and available at the Department's website: https://dodd.ohio.gov/waivers-and-services. Department staff will conduct webinars to address training needs or concerns that arise. Staff of the Department's Division of Medicaid Development and 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 Development and Administration
waiverpolicyta@dodd.ohio.gov

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

Office of Compliance
(614) 466-6670
compliance@dodd.ohio.gov