



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 and Contact Information: Becky.Phillips@dodd.ohio.gov, 614-644-7393

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

Miscellaneous ICFIID

Rule Number(s):

Rescind: 5123-7-27

New: 5123-7-27

Amend: 5123-7-01, 5123-7-12, 5123-7-24, 5123-7-25, 5123-7-33, 5123-7-34

Date of Submission for CSI Review: February 2, 2024

Public Comment Period End Date: February 16, 2024

Rule Type/Number of Rules:

New/ 1 rule

Amended/ 6 rules (FYR? 4 yes)

No Change/ rules (FYR?)

Rescinded/ 1 rules (FYR?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.

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

CSIPublicComments@governor.ohio.gov

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) are residential facilities licensed by the Department that must meet federal Medicaid requirements to participate in the program. Approximately 4,300 Ohioans with developmental disabilities live at the 413 ICFIID, which provide all aspects of residents' care and support.

Five rules governing ICFIID are due for five-year review and are being amended based on a comprehensive review:

Rule 5123-7-01 (ICFIID - definitions) defines terms for the purposes of rules in Chapters 5123-7 and 5123:2-7 of the Administrative Code. The rule is being amended to:

- Eliminate the definition of "state survey agency" as the term is no longer used.
- Update citations to the Revised Code and the Administrative Code.
- Align wording with newer rules.

Rule 5123-7-24 (ICFIID - costs of ownership payment) sets forth conditions necessary for an ICFIID to receive a costs of ownership payment. The rule applies only to the capital rate calculation prescribed in Section 5124.171 of the Revised Code. The rule is being amended to:

- Update citations to the Revised Code.
- Align wording with newer rules.

Rule 5123-7-25 (ICFIID - nonextensive renovation) defines nonextensive renovation and sets forth the process for calculating the per-bed cost of a nonextensive renovation project at an ICFIID. The rule is being amended to:

- Update citations to the Administrative Code.
- Align wording with newer rules.

Rule 5123-7-27 (ICFIID - request for rate consideration) establishes a process for an ICFIID or a group or association of ICFIID providers to request reconsideration of an ICFIID's per diem payment rate pursuant to Section 5124.38 of the Revised Code. The rule is being rescinded and replaced by a new rule of the same number and title because intended amendments affect more than 50% of the rule. New rule 5123-7-27 reflects revisions to:

- Streamline structure and wording.
- Add new paragraph (B)(2)(b) which permits an ICFIID to request a rate consideration based on any situation where actual allowable costs are significantly higher than those recognized by the ICFIID's current per diem payment rate and the ability of the ICFIID to deliver necessary care and active treatment is severely jeopardized.
- Eliminate wording which specifies that an ICFIID may request a rate reconsideration upon direct admission of a resident from a Department-operated ICFIID on the basis of extreme hardship on the admitting ICFIID.
- Align wording with newer rules.

Although the Department is rescinding the existing rule and adopting a new rule because intended amendments affect more than 50% of the rule, an amended version is provided so stakeholders can easily see what is changing.

Rule 5123-7-33 (ICFIID - resident assessment classification system based on administration of the Ohio developmental disabilities profile) sets forth a method and process for determining the per resident/per day rate paid to an ICFIID for direct care costs using the Ohio Developmental Disabilities Profile pursuant to Sections 5124.19 to 5124.193 of the Revised Code. The rule is being amended to:

- Eliminate the definition of "individual assessment form" as the term is no longer used.
- Add "Peer group 6," created by House Bill 33 of the 135th General Assembly, to paragraph (B)(8).
- Eliminate paragraph (C) because it describes a process that was in effect for three years during 2019 to 2022.
- Update a citation to the Administrative Code.
- Align wording with newer rules.

Two additional rules are included in this package:

Rule 5123-7-12 (ICFIID - cost report and chart of accounts) sets forth standards and requirements for an ICFIID to submit cost reports to the Department and maintain supporting documents and records. The rule is being amended to:

- Clarify, in the Chart of Accounts located in the Appendix, the definitions for account 6216 (Active Treatment Off-Site Day Programming Services Provided by Operator of ICFIID) and account 6217 (Active Treatment Off-Site Day Programming Services Provided by Separate Entity).
- Align wording with newer rules.

Rule 5123-7-34 (ICFIID - quality indicators and the quality incentive program) sets forth a method and process for determining the quality incentive payment that may be paid to an

ICFIID for achieving quality indicators pursuant to section 5124.24 of the Revised Code. The rule is being amended to:

- Replace "individual plan" with "individual service plan."
- Update the list of essential elements of person-centered planning in paragraph (D)(2)(b) to align with [OhioISP](#).
- Permit Department staff to conduct a virtual review of an ICFIID's implementation of its written policy for a quality indicator.
- Update a citation 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.

	Authorize	Amplify
5123-7-01	5123.04, 5124.03	5123.04, 5124.01, 5124.03
5123-7-12	5123.04, 5124.03	5123.04, 5124.03, 5124.10 to 5124.109, 5124.522
5123-7-24	5123.04, 5124.03	5123.04, 5124.03, 5124.171
5123-7-25	5123.04, 5124.03	5123.04, 5124.03, 5124.171
5123-7-27	5123.04, 5124.03	5123.04, 5124.03, 5124.38
5123-7-33	5123.04, 5124.03, 5124.192, 5124.193	5123.04, 5124.03, 5124.19 to 5124.193
5123-7-34	5123.04, 5124.03, 5124.24	5123.04, 5124.03, 5124.24

4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

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

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)?

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

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

The Department measures the success of rules governing ICFIID in terms of the number of individuals receiving services, the health and welfare of individuals receiving services, individuals' satisfaction with the services they receive, and Ohio's compliance with the federal Medicaid program.

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.

On January 9, 2024, the rules with proposed amendments were shared with the ICFIID Reimbursement Workgroup for review and feedback. The Workgroup is comprised of representatives of:

The Academy of Senior Health Sciences, Inc.
Advocacy and Protective Services, Inc.
Ohio Association of County Boards of Developmental Disabilities
Ohio Developmental Disabilities Council
Ohio Health Care Association/Ohio Centers for Intellectual Disabilities
Ohio Provider Resource Association
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?

A member of the ICFIID Reimbursement Workgroup asked how the Department would define "significantly higher" when determining if an ICFIID would qualify for a rate reconsideration under paragraph (B)(2)(b) of rule 5123-7-27. The Department responded that the paragraph describes a two-part test:

- The first is showing the increased costs.
 - The second is the costs result in jeopardizing the ability of the ICFIID to deliver services.
- This would be something the ICFIID would have to demonstrate and the Department would evaluate on a case-by-case basis.

A member of the ICFIID Reimbursement Workgroup asked how many providers are currently receiving the add-on for direct admission of a resident from a Department-operated ICFIID described in paragraph (B)(1)(b) of currently effective rule 5123-7-27 (which is being eliminated). The Department responded that there are not currently any providers receiving the add-on and none has requested the add-on in several years.

Any feedback provided by stakeholders during the clearance process will be considered for incorporation 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?

5123-7-33: A time study was conducted to statistically validate the scoring of the Ohio Developmental Disabilities Profile questions included in the Appendix to the rule which are used for placing residents in acuity groups.

5123-7-34: For quality indicators where cost report data exist, Department staff calculated current amounts as a standard for future measurement.

- 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 required outcome, but do not dictate the process the regulated stakeholders must use to comply.

Department staff considered whether adjustments should be made to the quality indicators defined in rule 5123-7-34 but determined that it is too soon as 2023 is the first year ICFIID are actually accountable for implementing their written policies.

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

The Department is charged with regulating the ICFIID program and consults with the Ohio Department of Medicaid with regard to rules governing the program.

- 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 final-filed rules will be posted at the Department's website and directly disseminated to ICFIID, county boards of developmental disabilities, and the approximately 4,700 persons who subscribe to the Department's Rules Notification listserv.

The amendments being made are not expected to have a substantive effect on ICFIID operations, but program staff are available to provide technical assistance if 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.

The rules impact 413 ICFIID operating in Ohio.

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

Non-compliance with rule 5123-7-24, 5123-7-25, 5123-7-27, or 5123-7-34 may result in a lost opportunity to receive an enhanced payment. The impact will vary based on the specific circumstances.

- 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*).**

No.

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

Section 5124.03 of the Revised Code requires the Department to promulgate rules regarding operation of ICFIID. Standards are necessary to ensure Ohio implements the Medicaid-funded ICFIID program in a uniform, statewide manner that is compliant with federal regulations.

Regulatory Flexibility

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

No. The Department is required to adopt rules to implement standards, requirements, and procedures to govern the ICFIID program. The federal Centers for Medicare and Medicaid Services requires Ohio to implement Medicaid-funded programs in a uniform, statewide manner. The rules establish federally-compliant standards of accountability for Ohio's ICFIID.

- 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?

ICFIID program staff are available to answer questions and provide technical assistance:

Ashley McKinney

(614) 644-7596

Ashley.McKinney@dodd.ohio.gov

Kirstin Stewart

(614) 728-5312

Kirstin.Stewart@dodd.ohio.gov