



# Common Sense Initiative

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## Business Impact Analysis

Agency, Board, or Commission Name: Opportunities for Ohioans with Disabilities

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Regulation/Package Title (a general description of the rules' substantive content): Vocational Rehabilitation (VR) Fee Schedule; OOD is proposing changes to the vocational rehabilitation provider VR Fee Schedule. Proposed changes involve increasing rates for services, adding expanding services and simplifying language to the VR Fee Schedule. Least cost, use of comparable benefits, participant contribution, and fee for services

Rule Number(s): OAC 3304-2-52 Appendix A; OAC 3304-2-52 Appendix B

Date of Submission for CSI Review: June 5, 2024

Public Comment Period End Date: June 12, 2024

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_)

Amended/ X rules (FYR? 2025)

Rescinded/\_\_\_ rules (FYR? \_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **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.*

Appendix A

OOD is proposing changes to 3304-2-52 (Least cost, use of comparable benefits, consumer contributions, and fees for services). OOD is proposing changes to the Vocational Rehabilitation (VR) Fee Schedule, which is found in Appendix A of 3304-2-52. Proposed changes involve increasing rates for services, expanding services and simplifying language in the VR Fee Schedule service descriptions. Additional services are also being proposed to meet the needs of individuals with disabilities. These proposed changes are explained further in question 10 and the attached VR Fee Schedule draft.

Appendix B

The drafted updates allow the executive director to create a medical, psychological, and dental fee schedule for various medical, psychological, and dental services. Services included in the medical, psychological, dental fee schedule will allow OOD to provide increased support for providers offering services to individuals with disabilities who are eligible for

vocational rehabilitation services. Services not included in the medical, psychological, dental fee schedule will continue to be reimbursed at the Medicaid rate.

- 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.**

Appendix A- O.R.C. 3304.15, 3304.16 & 3304.14(B)(2)

Appendix B- O.R.C 3304.15(C)(1), 3304.16(D).

- 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.**

Appendix A- No.

Appendix B- No.

- 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.**

Appendix A

The federal government does not set fees for VR services. However, 34 C.F.R. 361.50 allows vocational rehabilitation agencies to establish fee schedules for services to individuals with disabilities.

Appendix B

The federal government allows for medical, psychological, and dental services to be provided, however, the policies and procedures around the implementation and reimbursement rates of such services are up to the individual States. The change to this rule provides OOD the opportunity to adjust reimbursement rates for various medical, psychological, and dental services which will increase the number of providers offering services to individuals with disabilities who are eligible for services to prepare for, secure, retain, advance in or regain employment.

- 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)?**

Appendix A

OOD is the State of Ohio agency that empowers Ohioans with disabilities through employment, disability determinations and independence. The Rehabilitation Act and 34 C.F.R. 361.50, allows OOD's vocational rehabilitation program to establish fee schedules for services to individuals with disabilities. OOD has established a defined VR Fee Schedule. The VR Fee Schedule establishes minimum standards for the quality of services being provided and billed. The VR Fee Schedule provides consistency in payments and the type of services being provided. Expenditures for these services totaled approximately \$81 million for Federal Fiscal Year 2023.

#### Appendix B

The updated rule will allow the Executive Director to create a medical, psychological, dental fee schedule which will provide OOD an opportunity to develop competitive reimbursement rates for providers offering medical, psychological, and dental services for individuals eligible for vocational rehabilitation services. The ability to create rates for services will increase the number of providers offering services, especially in critical need areas of the state.

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

#### Appendix A

In place since October 1, 2012, the VR Fee Schedule defines the services provided to individuals with disabilities, sets standards for the delivery of a consistent quality of service statewide and establishes the rates for these services. This VR Fee Schedule has enabled OOD to set a baseline for provider performance and ensure that individuals with disabilities receive quality services regardless of their chosen VR provider.

OOD has taken into consideration concerns from providers such as a changing labor market, administrative costs and indirect costs. These were used as reference points in conjunction with the OOD budget allowances to determine the increased VR Fee Schedule rates. While OOD is investing 5.5% in general rate increases, OOD is making significant investments in Summer Youth Work Experience and Pre-Employment Transition Services (Pre-ETS) as well as adding Summer Youth Career Exploration to address the federally required spending for Pre-ETS.

OOD closely monitors expenditures under the VR program, as well as program benchmarks and outcomes to ensure the effectiveness and efficiency of services provided to individuals with disabilities throughout the state. With this investment, there will be more students receiving services, a greater scope of participants will be receiving supported employment

services, and there will be more availability for participants to have access to American Sign Language and international language interpreting.

#### Appendix B

OOD will continue to monitor spending on the medical, psychological, and dental services included in the fee schedule along with updating the agency's own policy and procedure to ensure compliance and consistency for what is provided for in the rule.

- 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.*

Appendix A- No.

Appendix B- 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.*

#### Appendix A

OOD took into consideration the Comprehensive Statewide Needs Assessment in regard to individuals with disabilities receiving VR Fee Schedule services, OOD staff, State of Ohio partner agencies (including the Department of Development Disabilities and the Department of Mental Health and Addiction Services), and providers of VR Fee Schedule services. All providers were invited to five regional virtual forums hosted by OOD to provide initial input. These forums were held online via Microsoft Teams between December 5, 2023, and December 20, 2023.

OOD then held two additional focus groups and invited providers from across the state to participate on January 30, 2024. The first focus group was to obtain feedback on transition services for students and youth with disabilities. The second focus group was to obtain feedback on services for individuals who are blind or low vision and deaf or hard of hearing.

OOD reviewed all feedback from these listening sessions and focus groups. On April 12, 2024, OOD distributed the VR Fee Schedule Update 2024: Feedback & Response document via the Provider News (Granicus) summarizing this feedback along with OOD's responses to each concern including proposed changes to the VR Fee Schedule. OOD also requested feedback via the OOD's provider management email to be submitted by April 26, 2024 (2-week window).

On April 18, 2024, OOD's Director, along with several members of OOD's Executive and Senior Staff, met with OOD's Provider Stakeholder group, which includes representation from several associations such as the Ohio Association of Goodwill Industries, The Ohio Council, Ohio Provider Resource Association, and County Boards Associations, as well as other provider representatives to discuss the feedback received through the listening sessions and focus groups, and to vet OOD's proposed changes to the VR Fee Schedule.

After the conclusion of the first feedback period for providers, OOD drafted Administrative Rule language based upon the provider feedback received relative to the proposed VR Fee Schedule changes, including the rate recommendations. This draft language and a companion summary document were distributed to the providers on May 13, 2024, via the Provider News (Granicus). Providers were again encouraged to submit feedback via OOD's provider management email by May 24, 2024.

OOD reviewed additional feedback from this period and made additional adjustments. OOD made additional adjustments after that feedback window, including expanding the timeframe for On-the-job Supports shift differential and adjusting the required number of meetings for Supported Employment Job Development, per providers' request.

On June 5, 2024, OOD sent a Provider News message to share these final adjustments, a final copy of Appendix A and Appendix B with tracked changes, a final Feedback and Response document, and the Business Impact Analysis. OOD also indicated that it would be moving forward with submitting materials to the Common Sense Initiative.

#### Appendix B

OOD staff met virtually three times with the Ohio Speech and Hearing Governmental Affairs Coalition (OSHGAC) and the Healthcare Alliance and engaged in a collaborative dialogue. The purpose was to learn about the challenges hearing health providers encounter when providing services to OOD participants and obtain feedback on potential solutions to the problems.

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

#### Appendix A

OOD gathered feedback through multiple notices, feedback periods, and virtual meetings with stakeholders. The feedback and corresponding changes were communicated through an initial Feedback and Response document, a second Feedback and Response document (with the first draft update language of the VR Fee Schedule), and a final copy of the VR Fee Schedule updated language.

Based on all of the feedback gathered from the providers, OOD made several changes to the proposed updates to the VR Fee Schedule. Changes include but are not limited to a general rate increase of 5.5% to compensate providers in areas they report seeing an increase in costs, such as a changing labor market, administrative and indirect costs. We are making a substantial investment of 11% increase for Summer Youth Work Experience for student compensating for the extensive coordination providers carry out to make this service successful to invest further in services for transition youth. We are increasing the Service Area Modifier (SAM) rates as well and adding two additional SAM rate levels to compensate for providers' travel costs between 71-90 miles and 91+ miles. Provider input also influenced OOD in developing a benchmark approach to Pre-Employment Transition Services, expanding the definition of School-Based Job Readiness Training, expanding Supported Employment to provide additional support for Traumatic Brain Injuries, Deaf and Deafblind participants, and simplification of the VR Fee Schedule. OOD also expanded the use of intakes for most VR Fee Schedule Services, excluding Pre-ETS and Transportation. A full list of the changes is attached.

Appendix B- Not Applicable

**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?**

Appendix A

The base rates of the VR Fee Schedule were developed in 2016 based upon detailed service utilization and staffing data submitted by providers along with two federal fiscal years of payments for vocational services from OOD's case management system. This data was used to develop rate increases for the services on the OOD's Vocational Rehabilitation Fee Schedule. The rates use the actual costs incurred and staff utilization information to develop rates that cover the costs of providing these services.

OOD utilizes a rate formula developed by an external consulting firm that takes into account an hourly based rate for services, fringe benefits for employers, report writing costs, paid time off for provider staff, non-service hour fees, supervision costs, indirect administrative costs, and mileage. Providers widely reported that cost reporting was time prohibitive, an administrative burden, and that they could not consistently produce information in ways that easily allowed OOD to compare information (e.g. staff productivity rates). Instead, to calculate new rate increases, OOD has updated the VR Fee Schedule rates by utilizing the rate calculation methodology to consider allowable, reasonable, and justifiable rate changes to establish the recommended rates. OOD is including a 5.5% overall rate increase, with proposed additional increases for extended travel to deliver services (Service Area Modifier



rates), Summer Youth Work Experience, and Pre-Employment Transition Services subcategories as well as creating Justice-involved incentives and Non-Credentialed Supported Employment Job Development. This would be an estimated additional \$13 million in service investment per year when considering all rate increases and additional services.

## Appendix B

OOD compared current Medicaid rates for various medical, psychological, and dental rates to rates offered by other entities. Through this exercise, it was determined that the reimbursement rates offered by OOD were on the lower end when compared to other sources. No scientific data was utilized. The rules follow statutory provision in O.R.C. Chapter 3304 and the CFR. OOD has been establishing rules since 1978 and such rules have undergone revisions and additions as appropriate.

- 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.*

## Appendix A

OOD considered determining VR Fee Schedule rate changes based on cost reporting. OOD surveyed its providers throughout various feedback sessions and while not a complete consensus, providers overwhelmingly preferred that OOD review the rate calculation methodology using industry standards to establish the recommended rates rather than cost reporting. Providers noted that cost reporting can be time intensive and that the process is not preferable for this VR Fee Schedule update.

OOD currently utilizes performance-based job development rates in the VR Fee Schedule. OOD has previously evaluated that individuals served by OOD who were provided Performance Based Job Development Services had a median length of service of 132 days while the hourly based Job Development Services had a median of 167 days. Those individuals served under the performance-based fee structure found employment 35 days quicker than the hourly fee structure. OOD provides guidance on specific elements as part of the service definition; however, providers are able to establish their own process to deliver the service.

OOD is proposing to move Pre-Employment Transition Services away from the Units of Services model to a benchmark approach that would include 3 payments based on service



outcomes. This approach will better support providers that have reported challenges related to limited student availability during the school year and frequent no-shows.

#### Appendix B

No other regulations were considered as these fall under OOD's statutory authority and suit the administrative needs of the agency.

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

#### Appendix A

These rules are specific to the OOD VR program and individuals with disabilities who are eligible for services within that program. Since OOD is the sole designated agency within Ohio to administer the VR program there is no duplication between these rules and other rules in the Ohio Administrative Code.

#### Appendix B

OOD is the only Ohio agency administering Ohio's vocational rehabilitation program. All statutes and rules governing OOD were reviewed and addressed to ensure there are no duplications.

### **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.**

#### Appendix A

OOD has established a billing and payment system with checks and balances and OOD will implement this VR Fee Schedule update within that same system. OOD will conduct training on the proposed VR Fee Schedule changes with providers and OOD staff. There will be ongoing meetings conducted by OOD staff at the local level to ensure consistency in the application of the VR Fee Schedule. OOD's goal is to ensure a smooth transition that will improve service delivery and quality of services provided to individuals with disabilities.

#### Appendix B

OOD will provide training for OOD staff implementing the policy to ensure consistent

implementation statewide by OOD staff. The purpose of this rules is to provide transparency for the administration of the vocational rehabilitation program and to provide quality services to individuals participating in the program.

### **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.*

#### **Appendix A**

- a) The impacted business community consists of the providers of VR services to individuals with disabilities who are eligible for OOD services. There is no expected adverse impact, as all service rates are increasing, and many requests from providers are being implemented.
- b) Some providers may consider an adverse impact including the continued requirement that the VR providers must complete services and reports as defined in 3304-2-52 Appendix A in order to be compensated by OOD. The VR Fee Schedule sets a minimum level of requirements to ensure consistency and quality services to individuals with disabilities. These reports are also required as part of federal requirements.

The time for the vocational rehabilitation provider to complete a report of service will vary with the nature and extent of the VR services provided to the eligible individual with a disability, but it is a routine office procedure that VR providers are experienced in performing for many insurance payers or other state agencies. Additionally, OOD continues to use an electronic bill payment portal (The Aware Vendor Portal) which makes it easier for providers to submit, track, and resubmit payments. Any perceived adverse impact of completing invoice reports is offset by the fact that the VR provider will receive compensation from OOD for the services. Built into each rate is a portion of the cost allocated to report writing and invoice submission.

#### **Appendix B**

No adverse impacts are expected in the area of the medical, psychological, and dental fee schedule, as all rates will be increasing from previous rates OOD had paid.

**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*).**

Appendix A

OOD is proposing rule changes that will reduce regulatory burden on the providers. The addition of Non-Credentialed Supported Employment Job Development will allow providers to be compensated for a more intense job development service based on a participant's Most Significant Disability status and eligibility for Supported Employment Job Development without the requirement for provider staff to hold the Certified Employment Support Professional (CESP) credential. This new service would also expand participant eligibility beyond mental health and individuals connected with a local board of Developmental Disabilities. It will now include participants with Traumatic Brain Injuries (TBIs) as well as participants that are Deaf and Deafblind. This is in response to our Deaf and Deafblind providers explaining the intense nature of services given communication barriers, and job development services frequently taking longer than the standard Performance Based Job Development model.

The fee structure for Pre-Employment Transition Services has been streamlined to a benchmark approach, allowing providers to receive payment when meeting benchmarks within the service. This benchmark approach would include 3 payments based on service outcomes. Language has been added to allow for an intake for most VR Fee Schedule Services, excluding Pre-Employment Transition Services and Transportation. The VR Fee Schedule includes simplification in language and streamlined definitions where possible. Due to the consolidations and streamlining, the VR Fee Schedule overall went from 73 to 47 pages; a 35% reduction.

Appendix B- Not Applicable

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

Appendix A

The providers' participation in the OOD VR program and receiving compensation for providing services is voluntary. OOD has determined through its comprehensive analysis

that it offers a fair, cost-informed reimbursement to providers for their services to eligible individuals with disabilities. The impact of completing invoice reports is a requirement and justified expectation of the provider to receive payment for services. The minimal regulatory impact upon the provider is balanced by the benefit the provider enjoys in compensation for services.

Appendix B

There are no known adverse impacts to the regulated business community.

### **Regulatory Flexibility**

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

Appendix A

The providers affected by these rules include small and large businesses, for profit and non-profit, and counties boards of developmental disabilities.

Appendix B- Not Applicable

#### **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?**

Appendix A

There are no fines or penalties for paperwork violations under these rules.

Appendix B- Not Applicable

#### **20. What resources are available to assist small businesses with compliance of the regulation?**

Appendix A

OOD conducts training with providers whenever there are updates to the VR Fee Schedule. OOD will also conduct additional training to providers on these proposed VR Fee Schedule changes. OOD posts information about the VR Fee Schedule on the OOD website at [ood.ohio.gov](http://ood.ohio.gov). Also, providers can contact OOD for technical assistance to make sure that they are meeting requirements. OOD staff also host local meetings quarterly with the providers to discuss services and provide any needed technical assistance.

Appendix B- Not Applicable