

**MEMORANDUM**

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: April 19, 2018

RE: **CSI Review – Miscellaneous Home and Community-Based Services Waiver Rules (OAC 5123:2-9-22, 5123-9-22, 5123:2-9-30, 5123-9-30, 5123:2-9-34, and 5123-9-34)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of three rescinded rules and three new rules submitted by the Ohio Department of Developmental Disabilities. The three new rules are intended to replace the rules being rescinded. The rule package was submitted to the CSI Office on March 7, 2018 and the public comment period closed on March 20, 2018.

The Department would like to rescind Ohio Administrative Code (OAC) 5123:2-9-22, 5123:2-9-30 and 5123:2-9-34, and replace them with OAC 5123-9-22, 5123-9-30 and 5123-9-34 respectively. The rules deal with Home and Community-Based Services (HCBS) waivers for Community Respite, Homemaker and Personal Care, and Residential Respite. The Department outlines in their BIA that the purpose of the rules is to implement and administer Medicaid waivers as directed by the Centers for Medicare and Medicaid Services and state law. The new rules are being revised to reflect a payment rate increase for service providers. They also align definitions with those used in newer rules and correct references to administrative rules.

The Department worked closely with stakeholders to draft the proposed rules. Providers delivering respite services requested a payment rate increase for Community Respite and Residential Respite. Stakeholders also expressed broad support for a mechanism that would incentivize retention and training for direct care staff providing Homemaker and Personal Care. Several meetings were held with specially-convened workgroups consisting of representatives from relevant stakeholder groups to draft rules to address these concerns. Once the rules were drafted, a public notice and request for comment was distributed via email using multiple listservs and posted on the Department's website. The announcement was also posted on the website of each county board of developmental disabilities. The announcement included information about how to obtain a copy of a waiver, and a draft of the proposed amendments.

The Department received several comments from three different groups during the CSI comment period. The vast majority dealt with administrative and logistic concerns, such as how to cover administrative costs resulting from the rate increase, what to do when claims are denied, and whether resources will be available to assist providers in learning how to implement the changes. The Department answered all comments, noting that additional administrative costs were built into the rate increase, and that claim denial results in the rate increase being denied as well. DODD will also provide guidance materials on implementation well before the proposed rules would take effect. None of the comments received during the CSI review period necessitated any changes to the rules as drafted, and the Department provided thorough responses to all raised concerns.

The rules have an adverse impact on agency and independent providers of Homemaker and Personal Care, and agency providers of Community and Residential Respite to individuals enrolled in the individual options, level one, and SELF waivers. Providers of these services must be certified by the Department, hold a Medicaid Provider Agreement from the Ohio Department of Medicaid, and maintain service documentation regarding the services they provide. The Department notes that there will be additional administrative costs for providers seeking to receive staff competency rate modifications; these costs will vary based on the provider's operation. Providers are subject to sanctions for noncompliance. The Department justifies any adverse impact because the rules implement standards required by federal law and help ensure the health and safety of those who are enrolled in the waivers.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Developmental Disabilities should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

