

**MEMORANDUM**

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: April 23, 2018

RE: **CSI Review – ICFIID (5123:2-7-10, 5123:2-7-12, 5123:2-7-20, 5123:2-7-24, 5123:2-7-25, 5123:2-7-26, 5123:2-7-27, 5123:2-7-28, 5123:2-7-30, 5123-7-12, 5123-7-20, 5123-7-24, 5123-7-25, 5123-7-27, 5123-7-30, and 5123-7-33)**

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This rule package consists of nine rescinded rules and seven new rules submitted by the Ohio Department of Developmental Disabilities (DODD) as part of the statutorily required five-year review. The seven new rules are intended to replace the rules being rescinded. The rule package was submitted to the CSI Office on March 26, 2018 and the public comment period closed on April 1, 2018. Twelve comments were received during this time.

The Department would like to rescind Ohio Administrative Code (OAC) 5123:2-7-10, 5123:2-7-12, 5123:2-7-20, 5123:2-7-24, 5123:2-7-25, 5123:2-7-26, 5123:2-7-27, 5123:2-7-28, and 5123:2-7-30, and replace them with 5123-7-12, 5123-7-20, 5123-7-24, 5123-7-25, 5123-7-27, 5123-7-30, and 5123-7-33. The rules deal with Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID). The Department is revising the rules governing the ICFIID program due to statutory changes effected by House Bill 24 of the 132nd General Assembly.

Two rules are being rescinded with no replacement. OAC 5123:2-7-10 is no longer necessary as ICFIID no longer provides the behavioral redirection and medical monitoring services addressed therein. OAC 5123:2-7-26 is also no longer necessary, and does not need a replacement because the requirements addressed in the rule are discussed in other Department rules. The six replacement rules make changes for clarity. They better explain provisions like reimbursement rates, reimbursement rate periods, and approval for renovations. OAC 5123-7-33 is the only completely new rule. The proposed rule sets forth a method and process for determining the per resident and per day rate paid to an ICFIID for direct care costs.

The Department worked closely with stakeholders to develop the new rules. It convened the ICFIID Reimbursement Workgroup, comprised of representatives from ten different groups. The stakeholders represented in the workgroup included providers, healthcare associations, disability rights advocates, and families. The group met monthly for twenty-two months. Input provided by members of the ICFIID Reimbursement Workgroup was incorporated to redesign the ICFIID rate model in a manner that maximizes payment for currently unreimbursed costs, incentivizes efficient delivery of high-quality services, and minimizes the incidence of an ICFIID receiving a lower rate. Throughout 2017, the Department held four regional public forums to discuss the rule changes, published an article regarding the changes in its weekly newsletter, and held a live chat with individuals and families who receive ICFIID services.

Twelve comments were received during the CSI public comment period. All comments dealt with concerns about the language used in the proposed rules, and requested clearer definitions and revised labels for various titles to assist with clarity. DODD adopted nearly all suggestions, eliminating unnecessary language and expanding definitions where intent was unclear. The Department responded to all comments and was able to assuage many of the concerns by directing the commenter to specific subsections in the rules. The Department declined to incorporate suggested changes in instances where specific language was chosen to mirror the state statute language, and noted that they will be making further revisions to some of the proposed rules later in the year and will revisit some of the comments that were made at that time.

The rules have an adverse impact on the 440 ICFIID programs which are subject to the proposed rules. Providers of these services must submit cost reports, and maintain certain financial, statistical, and medical records in the event that filed cost reports are unauditable. Most ICFIID engage accounting firms to submit cost reports on their behalf, so the proposed rule changes are not expected to increase the current adverse impact. Providers are subject to fines, reduction in payment rate, or termination of their Medicaid provider agreement for non-compliance. If a cost report is rendered unauditable, an ICFIID is liable for the greater of \$1,000 per audit or 25% of the amount by which undocumented costs increased Medicaid payments to the ICFIID. The Department typically waives penalties for first-time or isolated paperwork issues when appropriate, and providers have the opportunity to revise cost reports and provide additional information when necessary. The Department justifies any adverse impact because the rules implement standards required by state law and establish uniform requirements for all ICFIID

programs in Ohio.

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.