

**MEMORANDUM**

**TO:** Becky Phillips, Ohio Department of Developmental Disabilities

**FROM:** Danielle Dillard, Regulatory Policy Advocate

**DATE:** October 11, 2018

**RE:** **CSI Review – January 2019 HCBS (5123:2-9-06, 5123:2-9-13, 5123:2-9-20, 5123:2-9-21, 5123:2-9-23, 5123:2-9-24, 5123:2-9-26, 5123:2-9-29, 5123:2-9-31, 5123:2-9-32, 5123:2-9-35, 5123-9-06, 5123-9-12, 5123-9-13, 5123-9-20, 5123-9-21, 5123-9-23, 5123-9-24, 5123-9-29, 5123-9-31, 5123-9-32, 5123-9-35, 5123-9-48, 5123-9-22, 5123-9-25, 5123-9-30, and 5123-9-34)**

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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This rule package consists of eleven rescinded rules, twelve new rules, and four amended rules submitted by the Ohio Department of Developmental Disabilities (DODD). The rule package was submitted to the CSI Office on August 31, 2018 and the public comment period closed on September 14, 2018. Eighteen comments were received during this time and the Department provided its responses to those comments on September 20, 2018.

The Department would like to rescind Ohio Administrative Code (OAC) 5123:2-9-06, 5123:2-9-13, 5123:2-9-20, 5123:2-9-21, 5123:2-9-23, 5123:2-9-24, 5123:2-9-29, 5123:2-9-31, 5123:2-9-32, and 5123:2-9-35, and replace them with 5123-9-06, 5123-9-13, 5123-9-20, 5123-9-21, 5123-9-23, 5123-9-24, 5123-9-29, 5123-9-31, 5123-9-32, and 5123-9-35. The rules deal with Medicaid Home and Community-Based Services waivers, specifically, technology services, service

limitations, and simplification of the homemaker and personal care daily billing unit. The replacement rules reflect new rule numbering, and revised language that aligns wording and definitions with newer rules. References to other code sections have also been corrected. The four amended rules also clean up language and provide additional clarity.

One rule is being rescinded with no replacement. OAC 5123:2-9-26 defines Personal Emergency Response Systems, and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Personal Emergency Response Systems service is being eliminated because it will be covered under the new Assistive Technology service described in proposed rule 5123-9-12. The two new rules, OAC 5123-9-12 and 5123-9-48 detail the Department's new Assistive Technology service and Community Transition service.

The Assistive Technology service will replace Personal Emergency Response Systems, Remote Monitoring Equipment, and the Assistive Technology Assessment component of the Career Planning service. OAC 5123-9-12 defines Assistive Technology and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. OAC 5123-9-48 defines Community Transition and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The Department does not note the Community Transition service as being a replacement for any currently or previously existing services.

The Department worked closely with stakeholders to develop the new rules. It discussed the rules in its Waiver Workgroup meetings, which is a group comprised of representatives from eleven different groups representing providers, county boards serving individuals with developmental disabilities, healthcare associations, disability rights advocates, and families. The rules governing technology services were discussed by the Technology Project, a collaborative enterprise between the Department and The Ohio State University Nisonger Center. The aim of the Technology Project was to take an in-depth look at the role technology, including Remote Support, plays in the lives of people with developmental disabilities and their families, create a vision for how the use of technology may be improved and expanded upon, and identify technological advances that might benefit people with developmental disabilities by increasing their independence. Because the Department worked in tandem with these workgroups to develop the rules, the rule package as submitted to CSI reflects all stakeholder feedback during the early outreach period.

Eighteen comments were received during the CSI public comment period. Half of the comments dealt with clarification and interpretation of the revised and new rules. The Department was able to refer commenters to the appropriate rule clauses addressing their concerns, and noted that there would be training and webinars available for stakeholders to become familiar with the new rules. Three of the comments were enthusiastic about many of the revisions, and three comments suggested minor language changes for clarity, which the Department incorporated into the rules.

Two comments were more substantive. The Ohio Provider Resource Association encouraged the Department to consistently monitor the viability of the daily billing unit for the diverse set of provider sizes represented in the DODD service system. The Department agreed to monitor and share observations and proposed modifications with the Waiver Workgroup for consideration. The other substantive comment came from Living Arrangements for the Developmentally Disabled, and asked that the Department consider expanding the settings in which Remote Support can be provided under the new Assistive Technology service. The group noted that the individual receiving the service, and his or her support team, should have the latitude to consider the range of locations for which Remote Support may be viable. The Department stated that it did consider expanding the availability of Remote Support to non-residential settings, however ultimately decided to delay seeking approval from the federal Centers for Medicare and Medicaid Services at this time. It noted that additional operational details need to be refined prior to requesting approval to make Remote Support available outside of the home, and that for the present, an individual will be able to access the Assistive Technology service as a means of using technology to address some needs that arise outside of his or her residence.

The rules impact providers of Medicaid Home and Community-Based Services to individuals enrolled in the waivers administered by the Department. Providers of these services must be certified by the Department and hold a Medicaid Provider Agreement from the Ohio Department of Medicaid. They must also maintain service documentation and submit information to the Department regarding the services provided. Noncompliance may result in sanctions. Agency providers that intend to provide the new Community Transition service will be required to submit an application and pay an application fee to become certified to provide the service. Department staff estimates that submitting an application to add the service will take approximately one hour of staff time. The application fee is \$75 for an agency provider serving fifty or fewer individuals, and \$150 for an agency provider serving fifty-one or more individuals.

Changes to the rules for technology services are not expected to increase the adverse impact, as providers of the Assistive Technology Assessment component of the Career Planning service, Personal Emergency Response Systems and Remote Monitoring Equipment, and Remote Monitoring will be deemed eligible to provide those same services under new categories within the new Assistive Technology service. Simplification of the Homemaker and Personal Care Daily Billing Unit is expected to benefit providers of the service by reducing administrative costs associated with the current processes for revising service projections and reconciling actual services with projected services. Department analysis indicates that across the state, providers spend approximately 17,000 hours per year on activities that will be unnecessary once new rule 5123-9-31 goes into effect. The Department justifies any adverse impact by noting that the rules are intended to ensure that services provided to individuals enrolled in the waivers are compliant with federal requirements, and to ensure the health and safety of individuals with developmental disabilities 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.