



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: October 11, 2019

RE: **CSI Review – Direct Support Professionals Rate Increase (OAC 5123-9-06, 5123-9-30, 5123-9-32, and 5123-9-40)**

On behalf of Lt. Governor Jon Husted, 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 contains four amended rules submitted by the Ohio Department of Developmental Disabilities (Department). The rule package was submitted to the CSI Office on August 15, 2019 and the public comment period was held open through September 6, 2019. Three comments were received during that time, and the Department provided its response on September 20, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on August 15, 2019.

The rules establish standards for documentation, payment, provider qualifications and service delivery for various Home and Community-Based Services (HCBS) Waivers, define Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care, and implement the waivers. Amendments are being made to clean-up language and references, increase payment rates for Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care providers, increase the annual service limitation for a Level One Waiver and the benefit limitations of the Self-Empowered Life Funding Waiver to accommodate the increased payment rates, clarify on-site/on-

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call Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care requirements, and add a provision that provider rates may exceed what is in rule to comply with any minimum wage increases per the Ohio Constitution.

As part of early stakeholder outreach, the Department held four meetings which included representatives from Advocacy and Protective Services, Inc., The Arc of Ohio, the Ohio Association of County Boards Serving People with Developmental Disabilities (OACB), the Ohio Department of Medicaid, the Ohio Developmental Disabilities Council, the Ohio Health Care Association (OHCA)/Ohio Centers of Intellectual Disabilities, the Ohio Provider Resource Association (OPRA), the Ohio Self Determination Association, the Ohio Superintendents of County Boards of Developmental Disabilities, the Ohio Waiver Network, and the Values and Faith Alliance. The Department then solicited feedback from those groups, as well as the Autism Society of Central Ohio, the Councils of Governments, Disability Rights Ohio, the Down Syndrome Association of Central Ohio, the Family Advisory Council, The League, the Ohio Council for Home Care and Hospice, Ohio Special Initiatives by Brothers and Sisters, and People First of Ohio, and posted the rules on their website. Stakeholders asked the Department to clarify concepts regarding on-site/on-call services, which the Department incorporated into these draft rules. The funding increase for these programs was made by the legislature in House Bill 166 (133rd General Assembly), which was supported by many stakeholders.

Three comments were received during the CSI public comment period, one from the OACB which strongly supported the modifications made in the draft rules. The OHCA encouraged the Department to look into training requirements for direct support staff in OAC 5123-9-30(C)(6) in comparison to the reimbursement for the cost of those requirements, as they believe there is a discrepancy between the two. The Department responded to assure them that it is looking at ways to streamline training requirements and make it free. Additionally, OHCA requested the Department remove a provision in rules OAC 5123-9-30 and 5123-9-32 providing instruction on how a provider is to be paid during an on-site/on-call period when an individual receives supervision or supports. The Department stated that the amendments to that section are intended to add clarity, and that the expectation is that an individual will be asleep for a continuous period of five hours, and if they are not expected to be, then on-site/on-call is not appropriate and the Individual Service Plan should be modified. Additionally, if services are needed during on-site/on-call, the provider will be paid the appropriate rate for the time they are awake and providing direct care. Lastly, OHCA suggested clarifying OAC 5123-9-30(D)(8) by removing the word “routine” and to better reflect the Electronic Visit Verification requirements, adding that homemaker/personal care excludes on-site/on-call. In response, the Department made an additional amendment to the rule to clarify.

The OPRA submitted commentary generally praising the Department's work, and one request for clarification in the definition of on-site/on-call that direct support professionals are allowed to sleep for five uninterrupted and continuous hours. The Department noted that the language reflects lengthy discussions of its on-site/on-call workgroup, and that on-site/on-call is only appropriate when the individual is expected to be asleep for a continuous period of at least five hours.

The rules impact both independent and agency providers of Homemaker/Personal Care and Participant-Directed Homemaker/Personal Care. Providers are required to be certified by the Department, hold a Medicaid Provider Agreement from the Ohio Department of Medicaid, and submit information and maintain service documentation regarding the services provided. There are sanctions for providers that fail to comply with the rules; however, the Department works to waive penalties for first-time or isolated paperwork violations or procedural regulatory noncompliance when appropriate.

The Department asserted that the rules ensure services provided are compliant with federal requirements and protect the health and safety of individuals with developmental disabilities that are in the waiver programs. The Department also noted that the changes increase the rates paid to providers, and the amendments are not expected to create any additional adverse impacts on providers.

Recommendations

For the reasons described above, the CSI Office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI Office recommends that the Ohio Department of Developmental Disabilities should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.