



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Becky Phillips, Department of Developmental Disabilities

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: August 30, 2019

RE: CSI Review – ICFIID (5123:2-7-02, 5123:2-7-03, 5123:2-7-04, 5123:2-7-05; 5123:2-7-07, 5123:2-7-09, 5123:2-7-13, 5123:2-7-14, 5123:2-7-17, 5123:2-7-18, 5123:2-7-21, 5123:2-7-22, 5123:2-7-23, 5123-7-02, 5123-7-04, 5123-7-05, 5123-7-09, 5123-7-14, 5123-7-18, 5123-7-21, 5123-7-22, 5123-7-23, 5123-7-12, and 5123-7-33)

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This Ohio Department of Developmental Disabilities (Department) rule package consists of five rescinded, eight rescind/new, and two amended rules. Thirteen of the rules, all from section 5123:2-7, are being submitted as a five-year review as required by statute. This rule package was submitted to the CSI Office on June 28, 2019 with the public comment period held open through July 12, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on June 28, 2019.

The draft rules are intended to ensure that the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) program operates uniformly and is reimbursed in accordance with federal and state regulations. The new rules include any necessary provisions from the rescinded rules and updated references such as "Ohio Office of Medical Assistance" to "Ohio Department of Medicaid." Amendments to rules include updates to the appendices regarding cost reports and chart of accounts, and resident assessment classification references.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

During the period of early stakeholder outreach, the Department shared the draft rules with numerous groups representing service providers, local government, state government, health groups, non-profit groups, and more. Due to input from stakeholders, the Department added language to allow for an ICFIID to utilize a salvage value less than ten percent, as well as language serving to clarify rules 5123-7-02, 5123-7-08, and 5123-7-09. During the CSI public comment period, the Department received comments from the Ohio Provider Resource Association regarding rules on ICFIID essential requirements, and ICFIID capital assets and depreciation. These comments led to clarification, as well as the addition of references to the appendix in OAC 5123-7-18.

Impacted communities include the approximately 440 ICFIIDs subject to the rules. Potential impacts include fines, termination of a Medicaid provider agreement resulting from noncompliance, a reduction in payment rate in accordance with 5124.106, and administrative costs associated with compliance. The Department asserts that the package is necessary to establish uniform requirements for Ohio's ICFIID's and cites ORC 5124.03 as requiring the rules.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.