



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### MEMORANDUM

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

**FROM:** Ethan Wittkorn, Regulatory Policy Advocate

**DATE:** August 27, 2020

**RE:** CSI Review – Emergency Rules Follow-Up (OAC 5123-2-04, 5123-8-01, 5123-9-06, 5123-9-31, 5123-9-34, 5123-10-01, 5123-10-02, 5123-10-03, 5123-14-01, 5123-17-02, 5123:2-2-06, 5123:2-3-10, 512:2-6-07, 5123:2-9-14, 5123:2-9-17, 5123:2-9-33, 5123:2-9-39, 5123-2-06, 5123-3-10, 5123-6-07, 5123-9-14, 5123-9-17, 5123-9-33, and 5123-9-39)

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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of Developmental Disabilities (Department) rule package consists of seven new rules, ten amended rules, and seven rescinded rules. This rule package was submitted to the CSI Office on August 3, 2020, and the public comment period was open through August 14, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 3, 2020.

This package covers rules that were originally filed as emergency rules to provide relief in response to the COVID-19 pandemic and now are intended to be made permanent. Ten rules are being amended and seven are being rescinded and replaced with new rules to align with the Department's updated numbering formats. Changes are proposed to the rules to include additional exceptions during the COVID-19 state of emergency for routine reviews, assessments, suspension of the prior authorization process, modifications of requirements for the use of cost projection tools, suspended

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adjustments to payment rates under certain circumstances, modifications to limitations to Residential Respite days, waiving requirements for the use of early intervention forms and program services, and the extension of timelines. The new rules differ from the rescinded rules that they are replacing by loosening requirements of a written request, the suspension of quality assessment reviews, providing virtual services, billing updates for shared living, and allowing visits to be done remotely during the pandemic.

During the period of early stakeholder outreach, the Department shared plans for the proposed rules with the Waiver Workgroup, which is comprised of advocacy groups, state agencies, provider groups, and health associations. The rules were also shared with other stakeholders through the Department's clearance process. The Department states that stakeholder requests for relief during the COVID-19 pandemic were the impetus for the development of the rules. No comments were received during the CSI public comment period.

Impacted communities include Home and Community-Based Service providers, which includes over 11,000 Ohio providers in four categories. Adverse impacts identified by the Department include prior approval to provide services, administrative costs associated with the submission of applications and necessary documents, administrative costs necessary to comply with the rules, and potential administrative discipline for a failure to comply with the rules. The Department states that the proposed rules are necessary to reduce adverse effects of the COVID-19 pandemic on the developmental disability service delivery system.

### **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.