



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Joseph Baker, Regulatory Policy Advocate

DATE: July 30, 2021

RE: **CSI Review – HCBS Regulatory Relief (OAC 5123-9-06, 5123-9-14, 5123-9-17, and 5123-9-33)**

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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of four amended rules proposed by the Ohio Department of Developmental Disabilities (Department). This rule package was submitted to the CSI Office on July 2, 2021, and the public comment period was held open through July 12, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 2, 2021.

The rules in this package set forth provider qualifications, requirements for service delivery, documentation of services, payment standards and other requirements related to services rendered under the Individual Options or Level One Waivers, as well as Vocational Habilitation, Adult Day Support, and Shared Living services.

OAC 5123-9-06 establishes requirements for documentation and payment for Home and Community-Based Services (HCBS) under the Individual Options Waiver and Level One waiver, including requiring that individuals enrolled in the Individual Options Waiver shall be assigned a funding range based on factors specific to the individual that considers both individual needs and family or community supports. The Department states that the rule is amended to remove language that establishes special payment limitations under the Level One waiver to ensure that individuals whose service situations have changed during the pandemic are able to continue receiving necessary services. The rule is also modified to eliminate special pandemic

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powers granted to the Director of the Department during the COVID-19 state of emergency and to make other corrective, technical changes.

OAC 5123-9-14 defines Vocational Habilitation and establishes requirements related to the service delivery process. Vocational Habilitation is defined under the rule as the advancement of an individual on the path to community employment in a job that fits the individual's abilities and interests. The rule requires that Vocational Habilitation providers apply to the Department and that providers ensure that direct support professionals complete training or a mentorship program, depending on the experience level of the professional. The rule is amended to ensure that service recipients can continue to receive virtual support and to specify conditions for such services, to remove training requirements deemed redundant by the Department, to replace the Community Integration Rate Modification with a new payment enhancement structure, to update citations, and to eliminate special pandemic powers granted to the Director during the COVID-19 state of emergency related to Vocational Habilitation.

OAC 5123-9-17 defines Adult Day Support and establishes requirements related to the payment and delivery of such services. The rule is amended to enable the continued delivery of certain services virtually and to specify conditions for such services, to replace the Community Integration Rate Modification with a new payment enhancement structure, to remove training requirements that are duplicated elsewhere in rule, update citations, and to eliminate special pandemic powers granted to the Director during the COVID-19 state of emergency related to Adult Day Support.

Lastly, OAC 5123-9-33 defines Shared Living and establishes requirements related to the payment and delivery of such services. The rule is amended to permit Shared Living and Homemaker/Personal Care services to be provided on the same day if such services are not provided at the same time or by the same person. Concurrently, the rule removes special powers granted to the Director to permit Shared Living and Homemaker/Personal Care services to be provided under the same conditions during the COVID-19 state of emergency. The rule also makes minor, technical changes for clarification purposes and updates various citations.

During early stakeholder outreach, the Department sent the proposed rules to representatives of the Ohio Association of County Boards Serving People with Developmental Disabilities, Advocacy and Protective Services, Inc., Ohio Health Care Association, Ohio Provider Resource Association, Ohio Waiver Network, Autism Society of Central Ohio, Disability Rights Ohio, Ohio Self-Determination Association, and other various interested parties. In response to stakeholder feedback, the Department eliminated payment limitations specific to the Level One waiver after hearing concerns that such limitations could prevent access to necessary services. The Department also updated the Community Integration Rate Modification payment model and alter the definition of virtual services in response to stakeholder feedback. Two comments were received during the CSI public comment period. The Ohio Provider Resource Association (OPRA) and Ohio Health Care Association (OHCA) suggested that the implementation of the rules should be delayed to allow for more discussion, with a particular focus on the suggested change in group sizes for community-based integration and connection services from five to four individuals per group. In response to these comments, the Department convened a meeting to

discuss the concerns with both stakeholders, as well as the Ohio Association of County Boards of Developmental Disabilities. After discussion, the Department determined to delay implementing the reduction in group size suggested in the original draft of the rule until January of 2022, at which point the rule will be revisited to reduce the group size to four. Both OPRA and OHCA were satisfied with this resolution and informed CSI that their concerns were sufficiently addressed.

According to the BIA, the business community affected by these rules includes 559 agency providers of Vocational Habilitation, 815 Adult Day Support agency providers, and 1001 agency providers of Shared Living services, as well as 5,300 independent providers of Shared Living services. The adverse impacts to business identified by the Department include administrative effort and costs associated with providers applying to become certified prior to delivering services, documenting and submitting information related to services rendered, potential suspension or other disciplinary actions associated with failure to comply with the rules, and staff time necessary to read and understand various requirements. The Department notes that the proposed amendments to the rules related to the delivery of virtual services are intended to increase flexibility on the part of providers, and that the adverse impact to business is necessary to provide high-quality services that assist Medicaid beneficiaries to live in the community, to promote their health and welfare of service recipients, and to comply with federal requirements.

Recommendations

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

Conclusion

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