



## 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, Business Advocate

**DATE:** October 15, 2021

**RE:** **CSI Review – HCBS Rate Increases (OAC 5123-9-06, 5123-9-13, 5123-9-14, 5123-9-17, 5123-9-18, 5123-9-19, 5123-9-21, 5123-9-22, 5123-9-24, 5123-9-30, 5123-9-32, 5123-9-33, 5123-9-34, 5123-9-39, 5123:2-9-15 (rescind), 5123:2-9-16 (rescind), 5123-9-15 (new), and 5123-9-16 (new))**

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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 Department as provided for in ORC 107.54.

### Analysis

This rule package consists of 2 new rules, 2 rescinded rules, and 14 amended rules proposed by the Ohio Department of Developmental Disabilities (Department). This rule package was submitted to the CSI Office on September 1, 2021, and the public comment period was held open through September 15, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 1, 2021.

The rules in this package set forth standards regarding documentation and payment for home and community based (HCBS) services through Medicaid waivers. The Department states in the BIA that the payment model changes recommended in the rules implement recent legislation (Am. Sub. H.B. 110, 134<sup>th</sup> General Assembly) providing funding for rate increases for HCBS services.

OAC 5123-9-06 sets forth standards governing documentation and payment for home and community-based services under either the Medicaid individual options or level one waivers. The rule is amended to update citations and modify the payment model to allow for rate increases. OAC 5123-9-13 establishes provider qualifications, service delivery requirements, service documentary responsibilities, and payment standards for career planning services provided through HCBS waivers. The rule is amended to update citations, align training

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requirements with other rules, streamline language, and adopt the revised payment model allowing for rate increases for providers. OAC 5123-9-14 sets forth provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for vocational habilitation services provided through HCBS waivers. The rule is amended to adjust maximum group sizes for vocational habilitation provided in a community setting from five to four, to address payment for virtual provision of vocational habilitation services, to streamline language and update citations, and to adopt the new payment model allowing for rate increases for providers.

OAC 5123-9-17 describes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for adult day support services provided through HCBS waivers. The rule is amended to adjust maximum group sizes for services provided in a community setting from five to four, to update citations and streamline language, to address payment for virtual provision of adult day support services, and to adopt the new payment model allowing for rate increases for providers. OAC 5123-9-18 establishes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for non-medical transportation services provided through HCBS waivers. The rule is amended to update citations, streamline language, and adopt the new payment model to allow for rate increases for providers. OAC 5123-9-19 establishes additional payment and service standards for adult day support, non-medical transportation, and vocational habilitation services provided through HCBS waivers. The rule is amended to streamline language, update citations, and adopt the new payment model allowing for rate increases for providers.

OAC 5123-9-21 establishes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for informal respite services provided through HCBS waivers. The rule is amended to streamline language, update citations, and increase the payment rate for informal respite services. OAC 5123-9-22 establishes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for community respite services provided through HCBS waivers. The rule is amended to streamline language, specify the billing process for multiple segments of service delivery time accrued through a day, update citations, and adopt the new payment model allowing for rate increases for providers. OAC 5123-9-24 establishes provider qualifications, service delivery requirements, and payment standards for transportation services provided through HCBS waivers. The rule is amended to streamline language, update citations, and adopt the new payment model allowing for rate increases for providers.

OAC 5123-9-30 sets forth provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for homemaker/personal care services provided through HCBS waivers. The rule is amended to update citations and adopt the new payment model allowing for rate increases for providers. OAC 5123-9-32 sets forth provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for participant-directed homemaker/personal care under the individual options, level one, and self-empowered life funding waivers. The rule is amended to update citations and adopt the new payment model allowing for rate increases for providers.

OAC 5123-9-33 establishes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for shared living services provided under the individual options waiver. The rule is amended to clarify the total number of persons with developmental disabilities that may live in a home in which an individual receives shared living services and to adopt the new payment model allowing for rate increases for providers.

OAC 5123-9-34 establishes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for residential respite services provided through the individual options, level one, and self-empowered life waivers. The rule is amended to streamline language, update citations, remove special powers granted to the Director of the Department during the COVID-19 pandemic state of emergency, and adopt the new payment model allowing for rate increases for providers. OAC 5123-9-39 establishes provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for waiver nursing services provided through the individual options waiver. The rule is amended to streamline language, to define medically necessary services in the same manner as those elsewhere defined as a medical necessity, to align verbiage with Medicaid terminology, to limit waiver nursing services to 12-hour increments unless in medically-necessary cases, to require that service recipients be under the supervision of a physician, physician assistant, or advanced practice registered nurse, to remove special powers granted to the Director during the COVID-19 pandemic state of emergency, and to adopt the new payment model allowing for rate increases for providers.

The Department also proposes to rescind existing OAC 5123:2-9-15 and 5123:2-9-16 and replace with new OAC 5123-9-15 and 5123-9-16. The new rules establish provider qualifications, service delivery requirements, service documentation responsibilities, and payment standards for individual and group employment support services. The rules have been modified from previous 5123:2-9-15 and 5123:2-9-16 to streamline language, update citations, remove training provisions addressed elsewhere in rule, and adopt the new payment model allowing for rate increases for providers.

During early stakeholder outreach, the Department held meetings with representatives of Advocacy and Protective Services, Arc of Ohio, the Ohio Association of County Boards of Developmental Disabilities, Ohio Association of Goodwill Industries, Ohio Health Care Association, Ohio Provider Resource Association, Ohio Waiver Network, Values and Faith Alliance, Ohio Department of Medicaid, Ohio Self Determination Association, Ohio Developmental Disabilities Council, and others. Additionally, the Department sent the proposed rules to numerous additional stakeholders for review and comment. Based on feedback from stakeholders, the Department determined to reduce the group size for adult day support and vocational habilitation services from five to four individuals. No comments were received during the CSI public comment period.

According to the BIA, the business community affected by these rules includes HCBS waiver service providers. The adverse impact to business includes costs associated with fulfilling provider qualifications, complying with service delivery requirements, documenting services, and various other administrative responsibilities established by the rules. The adverse impact

may also include potential fines or disciplinary actions for failure to comply with the rules, though the Department states that its policy is to waive these penalties for first-time offenders or procedural issues when appropriate. The Department states that the adverse impact to business is necessary to implement federally approved HCBS waivers and additionally notes that the changes to the rules are designed to enact payment rate increases for the provider community.

### **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.