



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: April 6, 2022

RE: **CSI Review – Waiver Simplification (OAC 5123-9-06, 5123-9-18, 5123-9-19, 5123-9-20, 5123-9-23, 5123-9-25, 5123-9-26, 5123-9-27, 5123-9-29, 5123-9-35, 5123-9-40, 5123-9-41, 5123-9-43, 5123-9-45, and 5123-9-46)**

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This rule package consists of one new, one rescinded and thirteen amended rules proposed by the Ohio Department of Developmental Disabilities (Department). This rule package was submitted to the CSI Office on February 15, 2022, and the public comment period was held open through March 1, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 15, 2022.

Ohio Administrative Code 5123-9-06 specifies documentation and payment standards for services provided under the Individual Options (IO) and Level One (L1) waiver programs administered by the Department. The rule is amended to update cross references and to cap total annual benefits for adults at \$45,000 annually and benefits for children at \$35,000 annually. OAC 5123-9-18 establishes provider qualifications, service delivery requirements, documentation standards, and payment processes for non-medical transportation services provided through Home and Community-Based Services (HCBS) waivers administered by the Department. The rule has been amended to streamline language and clarify that annual budget limitations only apply to individuals enrolled in the IO waiver program.

OAC 5123-9-19 establishes requirements regarding providing and paying for adult day support, career planning, group employment support, individual employment support, non-medical transportation and vocational habilitation services through HCBS waivers administered by the

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Department. The rule has also been amended to streamline language and clarify that annual budget limitations only apply to individuals enrolled in the IO waiver program. OAC 5123-9-20 establishes provider qualifications, service delivery requirements, service documentation standards, and payment procedures for money management services provided under the IO or L1 waivers administered by the Department. The rule has been amended to eliminate a reference to a payment limitation and to update references and streamline language. OAC 5123-9-23 sets forth provider qualifications, service delivery and documentation requirements, and payment standards for environmental accessibility adaptation services provided through the IO and L1 waiver programs administered by the Department. The rule has been amended to remove a reference to a payment limitation and to streamline language.

OAC 5123-9-25 sets forth provider qualifications, service delivery and documentation requirements, and payment standards for specialized medical equipment and supplies provided through the IO and LO waiver programs administered by the Department. The rule has been amended to remove a reference to a payment limitation and to update citations. New OAC 5123-9-26 sets forth provider qualifications, service delivery and documentation requirements, and payment standards for self-directed transportation services funded through the IO, L1 and Self-Empowered Life Funding (SELF) waiver programs administered by the Department. The Department proposes to rescind OAC 5123-9-27 which sets forth coverage and eligibility standards for emergency assistance services provided to individuals enrolled in the L1 waiver as it has determined to eliminate the payment limitations that might prevent an individual from accessing services during an emergency.

OAC 5123-9-29 sets forth provider qualifications, service delivery and documentation requirements, and payment standards for home delivered meal services provided through the IO, L1, or SELF waivers administered by the Department. The rule has been amended to incorporate the service under the SELF waiver, align payment rates and requirements with the Department of Aging's PASSPORT program, eliminate a reference to a payment limitation, and update citations. OAC 5123-9-35 sets forth provider qualifications, service delivery and documentation requirements, and payment standards for remote support services provided through the IO, L1, or SELF waivers administered by the Department. The rule has been amended to streamline language, update citations, and remove a payment limitation. OAC 5123-9-40 establishes administrative processes for the SELF waiver, and has been amended to update citations, streamline language, and remove a reference to a benefit limitation cap for certain services.

OAC 5123-9-41 establishes provider qualifications, service delivery and documentation requirements, and payment standards for clinical or therapeutic intervention services provided through the L1 or SELF waivers administered by the Department. The rule has been amended to incorporate the services into the L1 waiver program, to increase payment rates, streamline language and update citations. OAC 5123-9-43 establishes provider qualifications, service delivery and documentation requirements, and payment standards for functional behavioral assessments provided through the L1 and SELF waivers administered by the Department. The rule has been amended to streamline language, update citations, and incorporate behavioral assessment services into the L1 waiver program. OAC 5123-9-45 sets forth provider qualifications, service delivery and documentation requirements, and payment standards for participant-directed goods and services provided through the L1 and SELF waivers administered by the Department. The rule has been amended to incorporate the services into the L1 waiver, establish a financial cap of \$2,500 during

each waiver eligibility period, provide additional eligibility details regarding the service, update citations and streamline language. Finally, OAC 5123-9-46 specifies provider qualifications, service delivery and documentation requirements, and payment standards for participant or family stability assistance services provided through the L1 or SELF waivers administered by the Department. The rule has been amended to update citations and incorporate these services into the L1 waiver program.

During early stakeholder outreach, the Department convened a workgroup to evaluate the rules. Members of the workgroup included representatives from the Ohio State University Nisonger Center, the Ohio Self Determination Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Provider Resource Association, Ohio Healthcare Association, The Arc of Ohio, Ohio Waiver Network, and others. Additionally, the Department convened four townhall meetings in April 2021 to allow members of the public to share their perspectives. Finally, the Department distributed the proposed rules for stakeholder comments by email prior to submitting to CSI for review. Based on feedback from stakeholders, the Department determined to eliminate various payment limitations for services, established a new rule supporting self-directed transportation services, aligned requirements and payment rates for home-delivered meals with the Department of Aging PASSPORT program, added four services to the L1 waiver, and clarified what is covered under the participant-directed goods and services program.

During the CSI public comment period, comments were received from the Ohio Provider Resource Association (OPRA), Ohio Self Determination Association (OSDA), and Medina County Board of Developmental Disabilities (MCBDD). OPRA requested clarification regarding assisting individuals in choosing cost-effective transportation options, encouraged additional administrative flexibility in selecting appropriate transportation options, and recommended additional guidance be provided regarding the requirement for entities who transport individuals to maintain appropriate liability insurance. In response to the comment, the Department advised that transportation providers should consult with their insurance carriers regarding liability insurance requirements as individual circumstances prevent a universal requirement being in rule and that the rules are designed to enable an individual and his or her team to identify the mode of transportation that best fulfills his or her specific needs. OSDA suggested various technical clarifications to avoid unintended confusion and potential conflicts between the rules. In response, the Department adopted changes that provide additional definitions or expand existing definitions for clarity, removed a conflicting term, and amended the definition of self-directed transportation to allow for transportation services to be provided for of advocacy activities or events. MCBDD suggested that the requirement to deliver meals weekly is concerning, as some effective meal providers consolidate delivery of frozen meals to reduce costs. The Department responded that the weekly requirement to deliver frozen meals was an existing requirement and that the number of meals per week should be based on an individual's needs, but that increasing payment rates for the service as well as provider recruitment efforts conducted by the Ohio Department of Medicaid will help to address concerns about meal availability.

The business community impacted by the rules includes 65 clinical/functional intervention providers, 154 environmental accessibility adaptation services providers, 44 functional behavioral assessment providers, 15 home-delivered meal providers, 422 money management services providers, 95 participant and family stability services providers, 315 remote support services providers, and 122 specialized medical equipment and supplies providers certified by the Department to deliver services.

The adverse impacts to business include costs associated with becoming certified to provider services, submitting information and maintaining documentation concerning services rendered, potential disciplinary action for non-compliance with administrative or operational requirements, and employee time necessary to fully comply with service delivery standards. The Department states that the adverse impact to business is justified to ensure that the Department complies with federal and state statutory requirements to adopt rules that implement Medicaid HCBS waivers.

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.