



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Michael Bender, Business Advocate

DATE: February 8, 2023

RE: **CSI Review – Miscellaneous ICFIID (OAC 5123:2-7-11, 5123:2-7-15, 5123:2-7-29, 5123:2-7-31, 5123:2-7-32, 5123-7-20, 5123-7-30, 5123-7-11, 5123-7-15, 5123-7-29, 5123-7-32, 5123-7-09, and 5123-7-12)**

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This rule package consists of four new rules, two amended rules, and seven rescinded rules proposed by the Ohio Department of Developmental Disabilities (DODD) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on October 28, 2022, and the public comment period was held open through November 11, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on October 28, 2022.

Ohio Administrative Code (OAC) 5123:2-7-11, 5123:2-7-15, 5123:2-7-29, and 5123:2-7-32 are rescinded and replaced by new rules OAC 5123-7-11, 5123-7-15, 5123-7-29, and 5123-7-32 respectively, with the new rules renumbered to remove the division number. OAC 5123-7-11, the proposed new rule, identifies the services that are generally available to individuals who are eligible for Medicaid and describes the relationship of such services to those provided to residents of an intermediate care facility for individuals with intellectual disabilities (ICFIID) not operated by DODD. Compared to the rescinded version of the rule, the new rule is revised to update language and a citation as well as to align wording with newer rules. OAC 5123-7-15, the proposed new rule,

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establishes the procedures for an ICFIID to submit claims to the Ohio Department of Medicaid (ODM) to be paid for services rendered. Compared to the rescinded version of the rule, the new rule is revised to update language and a citation as well as to align wording with the ODM rule in OAC 5160-1-19. OAC 5123-7-29, the proposed new rule, outlines the requirements for ICFIIDs to provide services to residents who are dependent on invasive mechanical ventilators and be reimbursed for providing such services. Compared to the rescinded version of the rule, the new rule is revised to change instances of “individual plan” to “individual service plan,” make clarifications on the submission of information to DODD, align wording with newer rules, remove language requiring an ICFIID to retain a duplicate copy of all documentation submitted to DODD, remove language requiring DODD to send a copy of a notice of determination to the county department of job and family services, require a notice of approval of prior authorization for ventilator services to include the email address rather than the location and phone number of the DODD staff member assigned to monitor the individual’s process at the ICFIID, eliminate a provision that addressed implementation of the rule in 2018, and update language, citations, typography, dates, and a website link. OAC 5123-7-32, the proposed new rule, provides for the administration of the Ohio Developmental Disabilities Profile (ODDP) to residents of an ICFIID. Compared to the rescinded version of the rule, the rule is revised to update language and a citation as well as to align wording with newer rules.

OAC 5123:2-7-31 is rescinded without replacement as it is no longer necessary. OAC 5123-7-20 and 5123-7-30 are rescinded without replacement due to the rescission of ORC 5124.195 and 5124.198. OAC 5123-7-09 provides for the management of personal needs allowance accounts of residents of ICFIIDs. The rule is amended to update language and citations as well as to add a provision previously contained in OAC 5123:2-2-07 regarding the disposition of a resident’s personal needs allowance account funds in the event of the resident’s death. OAC 5123-7-12 sets forth the standards and requirements for ICFIIDs to submit cost reports to DODD and retain supporting documents and records. The rule is amended to update language and citations, align wording with newer rules, and add guidance regarding the reporting of expenses related to a technology solution. An appendix referenced in the rule and containing the Chart of Accounts is provided and amended to improve formatting, update language and citations, and remove language stating that quality assurance accounts do not include costs previously reported as utilization review personnel.

During early stakeholder outreach, DODD disseminated the proposed rules to various stakeholders for review and posted them on its website in order to obtain feedback. The stakeholders who received the proposed rules included Advocacy and Protective Services, Inc., The Arc of Ohio, the Autism Society of Central Ohio, the Councils of Governments, Disability Rights Ohio, the Down Syndrome Association of Central Ohio, the Family Advisory Council, The League, the Ohio Association of County Boards of Developmental Disabilities, ODM, the Ohio Developmental Disabilities Council, the Ohio Health Care Association (OHCA)/Ohio Centers for Intellectual Disabilities, the Ohio Provider Resource Association (OPRA), the Ohio Self Determination Association, Ohio Special

Initiatives by Brothers and Sisters, Ohio Superintendents of County Boards of Developmental Disabilities, the Ohio Waiver Network, People First of Ohio, and the Values and Faith Alliance. Stakeholders requested that DODD remove a reference to ODM form 09405 “Personal Needs Allowance Account Remittance Notice” from OAC 5123-2-07, as the form only applies to ICFIIDs while the rule applies broadly across the entire developmental disabilities service delivery system. DODD agreed and relocated the reference to OAC 5123-7-09. ICFIID operators, technology vendors, and ODM staff asked for clarification on how costs associated with acquisition of assistive technology for ICFIID residents was to be reinforced. DODD responded by adding clarifying language to OAC 5123-7-12. ODM also requested that DODD align OAC 5123-7-15 with amendments being made to OAC 5160-1-19, to which DODD agreed. During the CSI public comment period, DODD received comments from the OHCA and the OPRA. Comments focused on personal needs allowance accounts, expenses related to technology solutions, claims submissions, and reimbursement for ventilator services.

The OHCA asked why language related to personal needs allowance accounts was being added to OAC 5123-7-09 given that OAC 5123:2-2-07 already dealt with an individual’s personal funds. DODD explained that the language was restored after being eliminated from OAC 5123-7-09 in 2019 and that OAC 5123:2-2-07 was no longer effective, being replaced by OAC 5123-2-07. DODD added that OAC 5123-2-07 referred to Chapter 5123-7 for situations in which an ICFIID had possession of an individual’s personal funds at the time of the individual’s death. The OHCA and the OPRA both expressed concern over a proposed provision that excluded the reporting of expenses related to technology solutions covered via grants, fundraising, or donations. DODD agreed with these concerns and removed this provision from the rules. The OHCA inquired as to why DODD was changing the timeline for resubmission of denied claims and also urged DODD to update the rules to incorporate the new Ohio Medicaid Enterprise System (OMES) which would be used for claims submissions. DODD explained that it had proposed the rule revisions to align with those being made simultaneously by the ODM. Subsequent rule revisions by ODM and delays in the implementation of OMES led DODD to revise the rules to simply refer to the ODM rule in OAC 5160-1-19. DODD, after consulting with ODM, further streamlined the rules by eliminating a provision concerning the exchange of information regarding residents of an ICFIID. Lastly, the OHCA called for changes to the ICFIID ventilator service payment methodology, with the OPRA requesting an increase in the reimbursement rates. DODD replied that it would explore increasing the ventilatory services rate as part of the Fiscal Years 2024-2025 budget process.

The business community impacted by the rules includes 418 ICFIIDs operating in Ohio. The adverse impacts created by the rules include making notifications, reporting information, providing documentation, transferring a resident’s personal needs allowance account funds upon the resident’s death, denial of an untimely claim, training staff in the administration of the ODDP, and monetary damages and penalties. According to DODD, the staff time and costs needed to comply with the

requirements will vary among ICFIIDs depending on factors such as the nature and number of individuals served in addition to staff size and wages. DODD estimates that completing the ODDP for a resident would take approximately two hours, while attesting that a resident's support needs have not changed only takes a few minutes. DODD provides training for the administration of the ODDP at no cost via an online independent training module which takes approximately two hours to complete. DODD states that the adverse impacts to business are justified to follow ORC requirements to ensure that Ohio implements the Medicaid-funded ICFIID program in a uniform, statewide manner that is compliant with federal regulations.

Recommendations

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

Conclusion

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