



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## MEMORANDUM

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

**FROM:** Caleb White, Business Advocate

**DATE:** October 5, 2023

**RE:** **CSI Review – HCBS Payment Rate Increases (OAC 5123-9-05, 5123-9-06, 5123-9-13, 5123-9-14, 5123-9-15, 5123-9-16, 5123-9-17, 5123-9-18, 5123-9-19, 5123-9-20, 5123-9-21, 5123-9-22, 5123-9-24, 5123-9-26, 5123-9-29, 5123-9-35, 5123-9-37, 5123-9-39, and 5123-9-40)**

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This rule package consists of eighteen amended rules and one rescinded rule proposed by the Ohio Department of Developmental Disabilities (DODD) as part of the statutory five-year review process.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 August 25, 2023, and the public comment period was held open through September 11, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 25, 2023.

The rules in this package are amended in response to the passage of Ohio House Bill (H.B.) 33, which increased appropriations to fund payment rate increases for direct support professionals. As a result, DODD amended the rules in this package to increase payment rates, funding ranges, and budgets for providers of Home and Community-Based Services (HCBS).

This rule package contains fifteen rules which cover specific services and set forth what types of

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providers may provide each type of service. The rules which fall under this category are Ohio Administrative Code (OAC) 5123-9-13 through 5123-9-18, 5123-9-20 through 5123-9-22, 5123-9-24, 5123-9-26, 5123-9-29, 5123-9-35, 5123-9-37, and 5123-9-39. These rules are amended to increase the payment rates for HCBS providers, while some of these rules are further amended to update and streamline their respective rule language and to clarify definitions.

In addition to the rules governing the specific services, this rule package also contains three rules which address the services offered through HCBS. These rules contain the amount of funding limitations and benefit limitations for HCBS providers and services. The rules under this category are OAC 5123-9-6, 5123-9-19, and 5123-9-40. These rules are primarily amended to increase the funding ranges and benefit limitations to accommodate the increases in payment rates for HCBS providers. Other amendments to these rules include the updating and streamlining of each rule's language.

In addition to these two types of rules this package also contains one rescinded rule. This rule, OAC 5123-9-5, sets forth the requirements and processes related to retention payments for direct support professionals that provide specific services to individuals who are enrolled in HCBS waivers that are administered by DODD. This rule is to be rescinded as the program in which this rule governs concludes on December 31, 2023, in accordance with H.B. 33.

During early stakeholder outreach, DODD posted updates on the HCBS Payment Rate Increases contained in H.B. 33 on their website and discussed them during different webinars (two), committees (two), advocacy days (two), as well as at an advisory council, a conference, a convention, and in a meeting. In addition to this outreach, DODD discussed the various increases to the payment rates, funding ranges, budget limitations, and benefit limitations at a meeting of their Waiver Workgroup on August 21, 2023. This workgroup includes representatives from Advocacy and Protective Services, Inc., the Arc of Ohio, Ohio Association of County Boards of Developmental Disabilities, Ohio Council for Home Care and Hospice, Ohio Department of Medicaid, Ohio Developmental Disabilities Council, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities, Ohio Provider Resource Association, Ohio Self Determination Association, Ohio Superintendents of County Boards of Developmental Disabilities, Ohio Waiver Network, and Values and Faith Alliance. In addition to the outreach, DODD also maintains an email account for feedback regarding the HCBS waivers and over the past six months has received fifty-five emails regarding payment rates, funding ranges, and budgets. While this rule package contains changes to increase the payment rates, funding ranges, and budgets related to HCBS waivers in response to legislative changes, DODD also received many comments from stakeholders requesting this change. DODD also updated some descriptive definitions in response to stakeholder feedback obtained through the early stakeholder outreach period and committed to considering any additional feedback they receive prior to the filing of the rule. During the CSI public comment period, DODD received two comments.

The first comment was submitted by the Ohio Provider Resource Association voicing support for the changes contained in the rules. The second comment expressed concern that the payment rate increases were not included in the initial drafts. DODD responded by publishing the specific payment rates on their website.

The business community impacted by the rules includes agency and independent providers certified by DODD to provide various HCBS services. The adverse impacts created by the rules include the time spent obtaining certifications, application fees, the reporting and maintenance of information regarding services provided, the potential suspension, denial, or revocation of certification for a failure to comply with the rules, and the time required to comply with rule requirements. DODD notes that the costs associated with these adverse impacts can vary widely depending on if the provider is an independent or agency provider and due to specific factors, such as the nature and number of individuals they serve, the number of services provided, the volume of services provided as well as the number of staff employed, and the wages or benefits paid by an agency provider. DODD states that the adverse impacts to business are justified as DODD is required by state and federal law to promulgate rules governing the Medicaid HCBS waivers it administers.

### **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.