



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: March 18, 2024

RE: **CSI Review – Miscellaneous ICFIID (OAC 5123-7-01, 5123-7-12, 5123-7-24, 5123-7-25, 5123-7-27, 5123-7-33, and 5123-7-34)**

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This rule package consists of one new rule, six amended rules, and one rescinded rule proposed by the Ohio Department of Developmental Disabilities (DODD) as part of the statutory-five year review process.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 February 2, 2024, and the public comment period was held open through February 16, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 2, 2024.

Ohio Administrative Code (OAC) 5123-7-01 contains definitions pertaining to an intermediate care facility for individuals with intellectual disabilities (ICFIID). The rule is amended to remove a definition as well as update language and citations. OAC 5123-7-12 sets forth the requirements for ICFIIDs to submit cost reports to DODD and maintain the supporting documentation and records. The rule is amended to update language, add clarifying language, and remove a citation. The rule also includes an appendix which contains the chart of accounts used by ICFIIDs to classify costs is provided. The appendix is amended to add clarifying language. OAC 5123-7-24 establishes the

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conditions necessary for an ICFIID to receive a costs of ownership payment. The rule is amended to update language and citations as well as remove unnecessary language. OAC 5123-7-25 sets forth the process for calculating the per-bed cost of a nonextensive renovation project at an ICFIID. The rule is amended remove unnecessary language as well as update language, citations, and effective dates.

OAC 5123-7-27 is rescinded and replaced by a new rule with the same number. The new rule establishes the process for an ICFIID or a group or association of ICFIID providers to request reconsideration of an ICFIID's per diem payment rate. Compared to the rescinded version of the rule, the new version is revised to update language and structure, allow an ICFIID to request a rate consideration based on a situation where actual allowable costs are significantly higher than those recognized by the ICFIID's current per diem payment rate and the ICFIID's ability to deliver necessary care and active treatment is severely jeopardized, and remove a provision allowing an ICFIID to request a rate consideration upon direct admission of a resident from a DODD-operated ICFIID on the basis of extreme hardship. OAC 5123-7-33 sets forth the method and process for determining the per resident/per day rate paid to an ICFIID for direct care costs using the Ohio Developmental Disabilities Profile. The rule is amended to update language and citations, remove unnecessary language and a definition, renumber the different types of peer groups of ICFIIDs, add a sixth peer group, remove a provision concerning the calculation of direct care costs as it is no longer in effect, and remove a reference to DODD using an ICFIID's case mix score from the last quarter of 2017 for Fiscal Year 2019. OAC 5123-7-34 establishes the method and process for determining the quality incentive payment that an ICFIID may receive for achieving quality indicators. The rule is amended to update a citation, replace references to "individual plan" with "individual service plan," update the list of essential elements of person-centered planning that is addressed in an ICFIID's written policy, and permit DODD to conduct a virtual review of an ICFIID's implementation of its written policy for a quality indicator.

During early stakeholder outreach, DODD shared the rules and proposed amendments with its ICFIID Reimbursement Workgroup (Workgroup) for review on January 9, 2024. DODD also disseminated the rules to stakeholders via its clearance process around this time. A member of the Workgroup asked how DODD would define "significantly higher" when determining if an ICFIID would qualify for a rate reconsideration. DODD responded that the provision in question describes a two-part test that the ICFIID would have to demonstrate. Another member of the Workgroup asked how many providers were currently receiving the add-on for direct admission of a resident from a DODD-operated ICFIID. DODD replied that there were none then and that none had requested an add-on for several years. No comments were received during the CSI public comment period.

The business community impacted by the rules includes 413 ICFIIDs operating in Ohio. The adverse impacts created by the rules include the time and costs associated with reporting information,

providing documentation, complying with proper standards and procedures, and failure to receive an enhanced payment due to noncompliance. DODD states that the adverse impacts to business are justified to implement statutory requirements to govern 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.