



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Jacob Ritzenthaler, Business Advocate

DATE: March 18, 2024

RE: CSI Review – Early Intervention Program (OAC 5123-10-01, 5123-10-02, 5123-10-03, and 5123-10-04)

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 amended 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 December 12, 2023, and the public comment period was held open through January 9, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 12, 2023.

Ohio Administrative Code (OAC) Chapter 5123-10 establishes requirements for the Early Intervention (EI) Program, which provides developmental services to children through age two. OAC 5123-10-01 establishes procedural safeguards for the EI program, including definitions used throughout the rule, requirements for obtaining a parent's consent for services, provision of prior written notice, retention and access to EI records and confidential information, dispute and complaint procedures, and the processes for mediation and due process hearings. The rule is proposed for amendment to clarify that EI records include any type of record format, include family assessments using form EI-02, update references to other DODD forms, remove requirements that allow the Director of DODD to waive provisions of the rule due to COVID-19 state of emergency, and remove unnecessary regulatory restrictions. OAC 5123-10-02 concerns requirements for eligibility and

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services, including relevant definitions, including criteria for eligibility, timelines for evaluation and assessment, screening procedures, evaluation of a child and assessment of a child and family, individualized family service plans, transitions to other programs, and service coordination. The rule includes amendments that update definitions, introduce new requirements for the referral of children to the EI program from the Ohio Department of Job and Family Services, remove requirements for annual redetermination of a child's eligibility, require assessments to include identification of child participation in family activities, reduce the timeline for an EI service coordinator to submit payment arrangement information from thirty days to fourteen days, update requirements for sharing personally identifying information with the Ohio Department of Education and Workforce and local education agencies, reducing the timeline for following up with a referral source from sixty days to ten days after the individualized family service plan (IFSP) is filed, require that EI service coordination case notes be completed within thirty days of the specific activity, remove language that allows the Director to waive rule requirements due to the COVID-19 pandemic, and remove unnecessary regulatory restrictions.

OAC 5123-10-03 sets forth requirements concerning payment structures, including the types of services that receive payment, funding sources, determination of a parent's ability to pay for EI services and cost participation, using private or public insurance to pay for EI services, and procedural safeguards. The rule is amended to increase the number of hours of no-cost EI services provided to a family each year from fifty-five to one hundred, remove requirements that allow the Director of DODD to waive provisions of the rule due to COVID-19 state of emergency, and remove unnecessary regulatory restrictions. OAC 5123-10-04 establishes credential qualification standards for early intervention service coordinators and supervisors, including employment, education, and professional development criteria for issuing and renewing credentials. The rule is amended to reduce the level of educational degree and work experience necessary for approval, include service coordination training within the requirements for one-year credential renewal, streamline requirements concerning credentials issued prior to the effective date of the rule, include language that allows the Director to waive a requirement of the rule for good cause or upon request, and to remove unnecessary regulatory restrictions.

During early stakeholder outreach, DODD reviewed the rules during meetings of the Early Intervention Advisory Council and Stakeholder Group, the Ohio Association of Services for Children and Family's Early Intervention Committee, and workgroups established by DODD for reviewing specific rules. During that time, DODD received input from stakeholders regarding the associated forms, presumptive eligibility diagnoses, personally identifiable information shared with local school districts, referral source follow-ups, and education and experience requirements. In response to stakeholder feedback received during the CSI public comment period, DODD made changes to the rules concerning clarifying language and providing notice for initiating services. DODD also provided clarification as appropriate and reassured stakeholders that it would conduct training

concerning new requirements or form adjustments. DODD did not make changes in response to comments that requested retaining the ability to perform virtual IFSP meetings, stating that the option was only permitted by federal requirements during the COVID-19 pandemic. DODD also did not make changes concerning lowering the blood lead rate level for presumptive EI program eligibility, stating that the level is consistent with Individuals with Disabilities Education Act standards and that children with blood lead levels beneath the presumptive eligibility threshold may still be referred for early intervention services as necessary.

The business community impacted by the rules includes sixty-eight EI service providers currently contracted by DODD. The adverse impacts created by the rules include requirements for achieving and maintaining qualifications for a credential, compliance with requirements for determining eligibility and referring children, provision of written notification to parents, and maintaining confidential information. DODD estimates that time spent by a provider to enter into a contractual agreement is approximately three-and-a-half hours and that a web-based overview of service provision takes approximately three hours. Providers are also required to maintain professional credentials for the services that they provide, which can include audiology, occupational therapy, physical therapy, and others. EI service coordinators and supervisors must complete a fifteen-hour orientation training and fifty hours of professional development over five years. DODD states that the adverse impacts are necessary to comply with federal conditions for participation in the EI program.

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.