



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: December 18, 2024

RE: **CSI Review – Major Unusual Incidents and Unusual Incidents (OAC 5123-17-02)**

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This rule package consists of one new rule and one rescinded rule proposed by the Ohio Department of Developmental Disabilities (DODD) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on November 14, 2024, and the public comment period was held open through December 2, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 14, 2024.

Ohio Administrative Code (OAC) 5123-17-02 establishes the procedures, process, and requirements relating to the reporting, investigation, response, and prevention of major unusual incidents (MUIs) and unusual incidents (UIs). This rule also contains various appendices which contain procedures and forms related to the review and investigation of MUIs and UIs. This rule is to be rescinded and replaced with a new rule of the same number and largely the same content. This new rule differs from the rescinded version of the rule as it expands the purpose statement of the rule, changes the administrative review process contained in both the rule itself and the appendices to create a more streamlined process, replaces the term and definition for "verbal abuse" with "emotional abuse," replaces the term and definition for "accidental or suspicious death" with "unexplained or unanticipated death," changes the definitions for "failure to report," "missing individual," and "unanticipated hospitalization." The rule also differs in that it removes one of the incidents that

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constitutes a peer-to-peer act, updates and makes more explicit requirements for reasonable measures to be taken by a provider upon the identification of an MUI and for employees to report an MUI, clarifies and updates the requirements and procedure related to the removal of a developmental disabilities employee that is involved in the abuse of an individual, adds a reporting requirement for the staff of agency providers related to the review of certain MUIs, eliminates a provision that permitted a county board of developmental disabilities to follow the administrative investigation procedure for certain MUIs. The new rule further eliminates reporting requirement for agency providers, adds a notification requirement for investigative agents, updates a list of MUIs that DODD and county boards of developmental disabilities are to review and close, eliminates a requirement for county boards of developmental disabilities to review UI logs of providers on a quarterly basis, eliminates a requirement for DODD to review the logs of county boards of developmental disabilities on a monthly basis, and eliminates a provision that granted DODD flexibility to modify the provisions of the rule during the COVID-19 state of emergency. In addition to these substantive changes, this rule is also rewritten to update and streamline language.

During early stakeholder outreach, DODD developed the rules with a workgroup which consisted of various stakeholders such as the Ohio Health Care Association, the Ohio Provider Resource Association, the Ohio Association of County Boards of Developmental Disabilities, and several county boards of disabilities. This group met eight times between December 2023 and October 2024. In addition to this DODD also met with the Family Advisory Council Core Group to discuss the appendices of the rule. During this period DODD in response to stakeholder feedback updated the purpose statement in the rule, updated definitions and terminology, updated the forms for Category C incidents, added language regarding the investigative agent's role in cases that are investigated by a public children services agency, and eliminated a provision which permitted a county board of developmental disabilities to follow the administrative investigation procedure for certain Category A major unusual incidents.

During the CSI public comment period, DODD received comments from two organizations. The first comment came from the Ohio Provider Resource Association. This commenter thanked DODD for its efforts to streamline and restructure the rule but requested the elimination of references to training for agency board members as they are not considered developmental employees and asked for DODD to issue guidance on the type and diagnostic information that should be included in an Individual Service Plan related to unscheduled hospitalizations that trigger MUIs. DODD responded to the commenter by eliminating the requirement for board members to have ongoing annual training and clarified that unscheduled hospitalization was the subject of extensive discussion by the rule workgroup. DODD stated that the list of diagnoses that trigger an MUI was reduced in the rule and that the triggering duration of a hospital stay was increased from twenty-four to forty-eight hours. DODD further stated that the diagnoses that remain in the rule pose significant risks to the population it serves and should trigger a Category C review under the rule. The second commenter, Lorain

County Board of Developmental Disabilities/Murray Ridge Center, asked for clarification on the definition for prohibited sexual relations, what constitutes choking relief techniques, which hospitalizations are considered UIs, if criteria can be added to plans for listed conditions, about hospital readmissions that last forty-eight hours or longer, if the systems issue definition only applies only to neglect, and for clarification on the new forms included in the appendices. DODD responded to these comments by providing clarification. This commenter also asked for peer-to-peer acts to not include parents or children who are both receiving services, clarification on who is responsible for documenting reasonable measures on an incident report and if there are timelines attached to this responsibility, for prohibited sexual relations to require the primary person involved to be removed from direct contact with individuals during the investigation, to use a universal incident report, and for the requirement for the sending of UI reports to the service and support administrator to be the same for both agency and independent providers. In response to these comments DODD clarified that “peers” in peer-to-peer acts means only that each of the persons involved in the incident has a developmental disability, amended the rule to clarify that a provider is responsible for taking and documenting reasonable measures on the incident report, stated that they concluded that an absolute requirement to remove an employee from contact with an individual should be limited to allegations of physical and sexual abuse and clarified that an agency provider can remove the primary person involved in allegations of prohibited sexual relations, and clarified that while they support the concept of a universal UI report form, they recognize that many county boards have invested in electronic incident systems that meet the requirements. DODD also stated that while agency providers are required to have their staff follow the agency policies and procedures for the investigation and response to UIs, independent providers do not have a similar mechanism other than a service and support administrator. DODD further elaborated that the rule requires both types of providers to review UI reports monthly and ensure that the patterns and trends identified have been addressed.

The business community impacted by the rules includes all types of providers in Ohio's developmental disabilities service delivery system which includes independent and agency providers certified by DODD, residential facilities licensed by the DODD, and intermediate care facilities for individuals with intellectual disabilities licensed by the Ohio Department of Health. The adverse impacts created by the rules include reporting requirements and review and investigation requirements. The costs associated with these impacts are the time it takes to report incidents and make notifications regarding incidents, undertake safeguarding measures, investigate and analyze incidents, as well as the costs associated with training staff. DODD notes that several changes in the new rule will reduce the adverse impact to business by simplifying a definition, changing a provision regarding the reporting of incidents which will result in the reporting of fewer major unusual incidents, and removing a requirement for independent providers to review and analyze trends and patterns of major unusual incidents and send an annual report to DODD. DODD states that the adverse impacts created by the rules are justified to establish a statewide system to ensure the health and welfare of Ohioans with developmental disabilities and fulfill federal requirements.

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.