



Common Sense Initiative

Mike DeWine, *Governor*
Jim Tressel, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Jacob Ritzenthaler, Business Advocate

DATE: April 9, 2025

RE: **CSI Review – Home and Community-based Services (OAC 5123-9-08, 5123-9-12, 5123-9-25, 5123-9-39, 5123-9-44, and 5123-9-45)**

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This rule package consists of three amended rules, three new rules, and one rescinded rule proposed by the Ohio Department of Developmental Disabilities (DODD). This rule package was submitted to the CSI Office on February 14, 2025, and the public comment period was held open through February 28, 2025. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 14, 2025.

Ohio Administrative Code (OAC) Chapter 5123-9 establishes requirements concerning home and community-based services (HCBS) waiver programs, including the Individual Options, Level One, and Self-Empowered Life Funding waiver programs. OAC 5123-9-08 is a new rule that establishes responsibilities and procedures for when an individual receives HCBS services while engaged in extended travel. The rule sets forth requirements for travel planning and notification, responsibilities of county boards of developmental disabilities and providers, and limitations on the length of

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extended travel. DODD states that the new rule was developed in response to stakeholder concerns about the ability to receive services during extended travel. OAC 5123-9-12 establishes requirements for assistive technology services, which include the provision of items, systems, or services that address an individual's needs and help maintain or improve independence, functional capabilities, vocational skills, community involvement, or physical skills. The rule is amended to include the training of a service animal as assistive technology, as well as updating rule language. The rule also includes an appendix that lists billing units, services codes, and payment rates and is amended to include service animal training.

OAC 5123-9-25 sets forth requirements for specialized medical equipment and supplies. The rule is amended to state that items available as vehicle modifications under OAC 5123-9-44 are not considered specialized medical equipment or supplies and that, when the cost of a needed item exceeds \$10,000, DODD and the county board of developmental disabilities will collaborate with the individual to ensure health and welfare needs are met either through waiver funding or non-Medicaid funds. The rule also includes an appendix that lists billing units, service codes, and payment rates. OAC 5123-9-39 establishes requirements for waiver nursing. The rule includes changes to include a definition for "advanced practice registered nurse," "nursing task inventory," "physician," "physician assistant," and "waiver eligibility span," as well as updating definitions for several other terms. OAC 5123-9-44 is a new rule that sets forth requirements for vehicle modifications, which include adaptations or modifications to an individual's primary vehicle such as lifts, operating aids, raised or lowered roofs or floors, and maintenance or repairs. The rule includes an appendix that lists billing units, services codes, and payment rates. OAC 5123-9-45 establishes requirements for participant-directed goods and services and is amended to update the definition of service documentation, include items available as vehicle modifications in the list of excluded goods and services, and to specify that service requests are to be submitted within forty-five calendar days.

During early stakeholder outreach, DODD sent the proposed rules to industry stakeholders for feedback and reviewed the proposed rules during workgroup meetings. Stakeholder input was utilized to determine the rule language for the proposed new rules. During the CSI public comment period, DODD received comments from the Ohio Association of County Boards Serving People with Developmental Disabilities (OACB) and the Ohio Health Care Association (OHCA). OHCA submitted comments that requested an additional review of waiver nursing services to address issues in availability. DODD responded that nursing shortages have impacted all health care fields and brought attention to the means for obtaining waiver nursing care through various types of agencies and providers. OACB submitted comments that prompted amendments to requirements for vehicle owners to provide proof of insurance to only require insurance of the vehicle and not its modifications.

The business community impacted by the rules includes agency and independent providers of HCBS

services. DODD notes that there are currently 160 agency providers of assistive technology services, eighty-seven agency providers and seven independent providers of specialized medical equipment and supplies, and 556 agency providers and 286 independent providers of waiver nursing services. The adverse impacts created by the rules include requirements for a provider to maintain certification through DODD to provide specific services, obtain a provider agreement with the Ohio Department of Medicaid, and report information and documentation to DODD regarding the provision of services. DODD states that the adverse impacts created by the rules are necessary to ensure proper implementation of federal requirements for HCBS waiver service provision.

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.