



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Developmental Disabilities

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Regulation/Package Title (a general description of the rules' substantive content):

Licensed Residential Facilities - Person-Centered Planning

Rule Number(s): 5123:2-3-03 (rescind) and 5123-3-03 (new)

Date of Submission for CSI Review: March 29, 2021

Public Comment Period End Date: April 12, 2021

Rule Type/Number of Rules:

☒ New/ 1 rule

☐ Amended/ ____ rules (FYR? ____)

☐ No Change/ ____ rules (FYR? ____)

☒ Rescinded/ 1 rule (FYR? yes)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

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**Which adverse impact(s) to businesses has the agency determined the rule(s) create?
The rule(s):**

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 5123:2-3-03 (Licensed Residential Facilities - Person-Centered Planning) sets forth requirements to ensure that services for individuals living in residential facilities licensed by the Department are delivered pursuant to a service plan that is developed through person-centered planning. The Department licenses two types of residential facilities:

- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) certified by the Ohio Department of Health in accordance with federal regulations, and
- Non-ICFIID residential facilities that provide services primarily to individuals enrolled in Medicaid Home and Community-Based Services (HCBS) waivers.

The Department worked with a diverse group of stakeholders over the past two years to develop the Ohio Individual Service Plan (Ohio ISP), a standard assessment and planning process and template that will be used statewide for all individuals served no matter how their services are funded. Rule 5123:2-3-03 is being revised to require ICFIID to use Ohio ISP for the individuals they serve and to add details to describe the elements of the assessment and plan that will be captured in Ohio ISP. Additional revisions are being made to update citations to administrative rules.

In accordance with its established course of renumbering rules to eliminate division numbers, the Department is rescinding rule 5123:2-3-03 and adopting a replacement rule of the same title numbered 5123-3-03. Although the Department will be rescinding the existing rule and adopting a new replacement rule, a version of the rule showing revisions in underline and strikethrough is provided so stakeholders can readily see what is changing.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

5123.04, 5123.19, 5124.03

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- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
If yes, please briefly explain the source and substance of the federal requirement.

Medicaid-funded services are subject to federal regulations. Provisions of the rule support person-centered planning as required by federal regulations.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Implementing a statewide system to ensure all Ohioans with developmental disabilities benefit from comprehensive assessment and planning is the reason for creating Ohio ISP. A service plan created in Ohio ISP follows an individual when he or she moves from one setting to another (e.g., from one ICFIID to another) which ensures continuity of services for the individual and is more efficient for providers of services.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Rules are required to ensure Ohio is compliant with the Revised Code and federal regulations governing Medicaid-funded services provided to individuals who reside in ICFIID and those who are enrolled in Department-administered HCBS waivers.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Department measures the success of rules governing Medicaid-funded services in terms of the number of individuals receiving services, the health and welfare of individuals receiving services, individuals' satisfaction with the services they receive, and Ohio's compliance with the federal Medicaid program and the approved HCBS waivers.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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In 2019, the Department committed to implementing a standard assessment and planning process and template that will be used statewide to support all people who receive services in Ohio's developmental disabilities system regardless of where they live or how their services are funded. To begin this work, the Department collected feedback from people throughout Ohio who develop and use service plans. The Department's Office of System Support and Standards hosted a series of regional Feedback Forums for people who receive services, family members, service providers, and service plan authors to discuss the pros and cons of current service plans and share their experience and knowledge. Six Feedback Forums were conducted in 2019:

May 22 - Central Ohio (Lewis Center)
May 30 - Northwest Ohio (Bowling Green)
June 3 - Northeast Ohio (Akron)
June 5 - Southern Ohio (Chillicothe)
June 5 - Southwest Ohio (Dayton)
June 14 - Eastern Ohio (Cambridge)

In July 2019, the Department convened the Ohio ISP Workgroup to develop the standard assessment and planning process and template. The Workgroup was comprised of diverse stakeholders including people who receive services, family members, service providers, and staff from county boards of developmental disabilities (responsible for assessment and planning for individuals who live in the community), and ICFIID (responsible for assessment and planning for residents of ICFIID):

- Anita Allen, Vice President, Ohio Provider Resource Association
- Holly Brugh, Director of Service and Support Administration, Summit County Board of Developmental Disabilities
- Carrie Bush, Director of Service and Support Administration, Ashland and Wayne County Boards of Developmental Disabilities
- Amber Cross, Director of Service and Support Administration, BHN (Belmont/Harrison/Noble) Alliance
- Dawn Freudenberg, Director of Planning Innovation and Quality, Hamilton County Board of Developmental Disabilities
- Amber Gibbs, Director of Community and Medicaid Services, Cuyahoga County Board of Developmental Disabilities
- Michele Giess, Superintendent, Richland County Board of Developmental Disabilities
- Christopher Haldeman, Qualified Intellectual Disability Professional and Former Service and Support Administrator
- Melissa Hart, Frontline Supervisor, SHC/The Arc of Medina County
- Nicole Kaczynski, Family Member, Direct Support Professional, SHC/The Arc of Medina County
- Amanda Kiser, Qualified Intellectual Disability Professional, Echoing Hills Village, Inc.
- Debbie Jenkins, Policy Director, Ohio Health Care Association
- Karin Lopper-Orr, Executive Director, Blick Center
- Justin Madison, Service and Support Administrator and Behavioral Supports, Stark County Board of Developmental Disabilities

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- Bryston McKnight, Service and Support Administrator, Pickaway County Board of Developmental Disabilities
- Michele Myerholtz, Assistant Superintendent, Lucas County Board of Developmental Disabilities
- Chelsea Pozderac, Program Director, Transitional Living Centers, Inc.
- Arrelle Robinson, Program Manager, New Leaf Residential Services, Inc.
- Robert Shuemak, Advocacy Support Advisor, Hamilton County Board of Developmental Disabilities
- Melissa Skaggs, Chief Innovation Officer, Arc Industries, Inc.
- Jo Spargo, Executive Director, REM Ohio, Inc.
- Marci Straughter, Advocate
- Loretta Stroud, Family Member
- Jeanne Stuntz, President, Dynamic Pathways, Inc.
- Abbey Summers, CFO/Administrator, New Leaf Residential Services, Inc.
- Mary Thompson-Hufford, Chief Executive Officer, The Fuse Network
- Bethany Toledo, Executive Director, Ohio Alliance of Direct Support Professionals
- Sharon Travis, Executive Director, Southwest Ohio Council of Governments
- Chris Waldron, Service and Support Administrator, Union County Board of Developmental Disabilities
- Dustin Watkins, Executive Director, Bittersweet Farms
- Whitlee Wayland, Service and Support Administrator, Ross County Board of Developmental Disabilities
- Bradley Wyner, Behavior Support Specialist Supervisor, Rose-Mary Center

The Workgroup reviewed information gathered at the Feedback Forums and subsequently developed the assessment and planning process and template and determined the course for piloting, training, and implementation of Ohio ISP. The Workgroup met six times in 2019 (July 17, August 21, September 18, October 16, November 20, and December 18), seven times in 2020 (January 15, February 19, May 20, June 17, July 15, August 19, and October 21), and two times in 2021 (February 17 and March 3). Information about [Workgroup meetings](#) is available at the Department's website.

Pilot-testing of Ohio ISP was conducted from January through October 2020. Data collected from the testing teams informed adjustments to the process and template and development of related training. Training began in late 2020 and is ongoing. Rollout is planned to start in 2021 with full implementation in 2022.

Information about Ohio ISP has been widely disseminated via the Department's communications.

May 13, 2019: [Director's Corner](#)
 May 13, 2019: [Memo Monday](#)
 May 30, 2019: [Family Connection](#)
 July 8, 2019: [Memo Monday](#)
 July 19, 2019: [Pipeline](#)
 November 9, 2020: [Memo Monday](#)

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November 23, 2020: [Memo Monday](#)
November 30, 2020: [Memo Monday](#)
December 3, 2020: [Family Connection](#)
February 1, 2021: [Memo Monday](#)
February 22, 2021: [Memo Monday](#)

Throughout development of Ohio ISP, Department staff shared information at stakeholder meetings and events attended by members/representatives of:

- Family Advisory Council
- Family Live Chat
- Ohio Alliance of Direct Support Professionals
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Provider Resource Association
- Ohio Self Determination Association
- Project STIR (Steps Toward Independence and Responsibility)
- Service and Support Administration Directors

Also throughout development, any person has been able to:

- [Sign up](#) to receive updates about the work.
- Submit feedback via OSSAS@dodd.ohio.gov.
- Participate in [live chats](#) to receive updates and ask questions.

The Department produced videos that provide an [Overview of Ohio ISP](#) which have been viewed approximately 5,000 times. Live chats were conducted on November 19, December 5, and December 14, 2020. Additional live chats will be scheduled in 2021.

Through the Department's rules clearance process, the rule and the Business Impact Analysis form are disseminated to representatives of the following organizations for review and comment:

Advocacy and Protective Services, Inc.
The Arc of Ohio
Autism Society of Central Ohio
Councils of Governments
Disability Housing Network
Disability Rights Ohio
Down Syndrome Association of Central Ohio
Family Advisory Council
The League
Ohio Association of County Boards Serving People with Developmental Disabilities
Ohio Council on 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 SIBS (Special Initiatives by Brothers and Sisters)
Ohio Superintendents of County Boards of Developmental Disabilities

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The rule and the Business Impact Analysis form are posted at the Department's website during the clearance period for feedback from the general public:

<https://dodd.ohio.gov/wps/portal/gov/dodd/forms-and-rules/rules-under-development/2-proposed-rules-for-review-and-comment>

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Stakeholders provided feedback throughout development of Ohio ISP regarding what information should be captured in the assessment and planning processes and specific details about wording to be used in the template. The Department made adjustments as indicated:

Feedback Provided	Adjustment Made
Content overlapped between sections of the assessment.	Questions were moved and some questions were combined to streamline topics.
Wording was confusing to the individual and sometimes to the team.	Wording of questions was simplified.
The team was unsure what information was being sought by some questions.	Wording was clarified and additional guidance was added to questions.
Not all questions made sense to be asked for every individual.	Some questions will automatically filter out based on demographics (e.g., a child will not be asked questions about retirement).
The assessment was difficult to complete for non-verbal individuals and people with profound disabilities.	Training will be provided on how to tailor questions and content toward the specific needs of each individual.
The length of the assessment and plan as well as the narrative style will make it difficult for Direct Support Professionals to parse through.	The system will generate a one-page summary containing the most important information about the individual.
Space is needed to include additional external assessments in the plan.	External assessments can be uploaded within the plan.

On February 26, 2021, rule 5123:2-3-03 with proposed revisions was shared with members of the Ohio ISP Workgroup in advance of clearance. Workgroup members provided suggestions that resulted in pre-clearance adjustments to wording in paragraphs (B)(4), (B)(7), (C)(1), (E)(2), and (E)(3).

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Data regarding citations issued by the Department to regulated entities demonstrate inconsistent practices and noncompliance with assessment and service planning

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requirements.

Data collected from pilot-testing of Ohio ISP informed adjustments to the process and template and development of related training.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

None; implementing a statewide system to ensure all Ohioans with developmental disabilities benefit from comprehensive assessment and planning is the reason for creating Ohio ISP.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No; the federal Centers for Medicare and Medicaid Services requires Ohio to implement Medicaid-funded programs in a uniform, statewide manner.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

In accordance with Section 5123.19 of the of the Revised Code the Department is responsible for promulgating rules regarding residential facilities licensed by the Department. Section 5124.03 of the Revised Code requires the Department to adopt rules to implement Chapter 5124. which governs ICFIID. Department staff collaborate with staff of the Ohio Department of Medicaid when developing rules governing Medicaid-funded services.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Department will continue to disseminate information regarding Ohio ISP through its various publications, webinars, and live chats. The final-filed rule will be posted at the Department's website and directly disseminated to county boards of developmental disabilities and the approximately 3,000 persons who subscribe to the Department's Rules Notification listserv. The Department's information technology applications, regulatory tools, and interpretive/guidance materials will be updated to reflect the changes. Staff members of the Department's Office of System Support and Standards are available to provide technical assistance.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community; and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for**
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compliance,); and

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The rule applies to residential facilities licensed by the Department. There are two types of licensed residential facilities:

Licensed Residential Facilities - ICFIID N = 428

Licensed Residential Facilities - Non-ICFIID N = 632

The rule as it already exists requires licensed residential facilities to:

- ensure individuals with developmental disabilities participate in decisions that affect their lives and services;
- ensure person-centered planning is the foundation for development of service plans;
- develop service plans in accordance with rule 5123-4-02 for individuals who live in licensed residential facilities that are not ICFIID and in accordance with provisions set forth in paragraph (E) of the rule for individuals who live at ICFIID;
- describe, annually and upon request, to each resident of an ICFIID the supports and services available to persons enrolled in HCBS waivers;
- contact the county board of developmental disabilities when a resident of an ICFIID requests assistance to move from the ICFIID to a community setting;
- document performance of tasks described in paragraph (E) of the rule;
- present alternative services or activities to a resident of an ICFIID when informed consent is refused or revoked; and
- provide the service plan for a resident of an ICFIID to the resident, the resident's guardian or representative, parties responsible for implementation of the service plan, and authorized regulatory agents.

The costs associated with performing these duties vary based on factors such as the number and nature of individuals served, the number of staff employed, and staff wages and benefits and are unknown to the Department.

The change being made to the rule (i.e., to require ICFIID to use Ohio ISP for assessment of residents and development of residents' service plans) will require that staff of ICFIID complete training. The Department is providing the training free-of-charge. The training is available in a web-based format so that staff may complete the training when it is convenient to do so and without travel time and expense. The training to be completed by each staff member is approximately 10 hours. The costs associated with staff time required to complete the training will vary among ICFIID based on factors such as the number of staff to be trained and the wages paid to staff who complete the training.

The information technology platform for Ohio ISP is available at no cost to ICFIID and other

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users. The Department anticipates that implementation of Ohio ISP will ultimately yield system efficiencies as an ICFIID will have access to standard information about an individual moving into the ICFIID.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rule is intended to ensure services provided to individuals living in residential facilities licensed by the Department are:

- compliant with requirements set forth in the Revised Code and federal regulations and
- developed and delivered in a person-centered manner.

The Ohio ISP process and template will ensure individuals and their families are driving assessment and planning and that these critical functions are carried out in a standard comprehensive manner throughout the State.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No; licensed residential facilities must provide services pursuant to a service plan that is developed through person-centered planning.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

It is the policy of the Department to waive penalties for first-time or isolated paperwork or procedural regulatory noncompliance whenever appropriate. The Department believes the waiver of these penalties is appropriate when:

1. Failure to comply does not result in the misuse of state or federal funds;
2. The regulation being violated, or the penalty being implemented, is not a regulation or penalty required by state or federal law; and
3. The violation does not pose any actual or potential harm to public health or safety.

20. What resources are available to assist small businesses with compliance of the regulation?

To prepare for the successful launch of Ohio ISP, the Department created multiple resources and training materials. The information technology platform for Ohio ISP and related training is available at no cost to ICFIID and other users. Overview presentations are available on [YouTube](#). [Live chats](#) are being conducted to provide information and a forum for participants to receive answers to their questions. Training is available at [MyLearning](#).

The Department's information technology applications, regulatory tools, and interpretive/guidance materials will be updated to reflect the changes being made. Staff

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members of the Department's Office of System Support and Standards are available to provide technical assistance.

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