



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Sean McCullough**, Director

### Business Impact Analysis

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

**Rule Contact Name/Contact Information:** Becky.Phillips@dodd.ohio.gov, 614-644-7393

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

Personal Funds

**Rule Number(s):** 5123:2-2-07 (Rescind) and 5123-2-07 (New)

**Date of Submission for CSI Review:** March 31, 2022

**Public Comment Period End Date:** April 14, 2022

**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☒ Rescinded/1 rule (FYR?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 5123:2-2-07 (Personal Funds of the Individual) establishes standards of accountability for providers of services to individuals with developmental disabilities when a provider is responsible for managing an individual's personal funds.

**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, 5123.28, 5123.62, 5124.03, 5126.08

**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.*

Yes. C.F.R. 483.420(a)(4) requires Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) to allow residents to manage their financial affairs and teach them to do so to the extent of their capabilities. C.F.R. 483.420(b):

- Requires an ICFIID to establish and maintain a system that assures a full and complete accounting of residents' personal funds.
- Requires that all purchases made using residents' personal funds be itemized in the accounting record.
- Precludes any commingling of a resident's funds with facility funds or with the funds of any person other than another resident.
- Sets forth that a resident's financial record must be available on request to the resident, parents (if the resident is a minor), or legal guardian.

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

Not applicable.

- 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)?**

The rule is necessary to ensure Ohioans with developmental disabilities are not victims of exploitation, misappropriation, or theft.

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

The Department will measure the success of the rule in terms of the number of incidents of exploitation, misappropriation, and theft involving individuals with developmental disabilities and the number of citations issued to providers of services due to failure to comply with the rule.

- 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.*

Through the Department's rule 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 Rights Ohio  
Down Syndrome Association of Central Ohio  
Family Advisory Council  
The League

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Ohio Association of County Boards of Developmental Disabilities  
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  
Ohio Waiver Network  
People First of Ohio  
Values and Faith Alliance

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/forms-and-rules/rules-under-development/proposed+rules+for+review>

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

Stakeholders indicated the definition of "personal funds" in paragraph (C)(11) was confusing and too limiting to address the scope of funds managed by a provider of services. The definition was simplified.

Some providers have been unclear regarding applicability of the rule when they serve in dual roles as a provider of services to an individual and also as that individual's payee. Paragraph (F)(4)(c) was added to provide clarity.

Stakeholders suggested that additional paragraph headings would help the reader find information. Paragraph headings were added and former paragraphs were grouped together as appropriate under the new headings.

**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?**

Department staff examined data regarding citations issued to providers of services for failure to comply with rule 5123:2-2-07 since October 1, 2016, when the existing rule went into effect. The analysis revealed that providers need help to conduct and document proper reconciliation of individuals' funds. In conjunction with implementation of new rule 5123-2-07, the Department plans to enhance available resources and training to support providers' efforts to comply with the rule.

**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?**

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The Department considered requiring persons who conduct reconciliations in accordance with paragraph (G)(5) of the rule to complete Department-provided training. The Department instead determined to develop and make available, but not mandate use of, additional resources and training.

**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?**

The Department is charged with rulemaking for programs it administers, including the Medicaid-funded Home and Community-Based Services and ICFIID programs. Department staff collaborated with staff of the Ohio Department of Medicaid to develop the rule.

**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.**

Information regarding the revisions being made to the rule will be provided through resources posted at the Departments' website and via listservs, publications, and webinars. 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 will adjust its compliance review tools and guidance materials to reflect revisions made to the rule. Staff of the Department's Office of System Support and Standards and Division of Residential Resources are available to provide technical assistance as needed.

**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 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.*

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Rule 5123-2-07 applies broadly across the developmental disabilities service delivery system and impacts certified providers and licensed residential facilities. There are two types of certified providers:

- Agency Providers (entities that employ staff to provide services).
- Independent Providers (self-employed persons who provide services and do not employ anyone else to provide the services).

There are two types of licensed residential facilities:

- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID) which are also certified by the Ohio Department of Health in accordance with federal regulations and provide all aspects of care and support for individuals with developmental disabilities who reside therein.
- Non-ICFIID residential facilities that provide services primarily to individuals enrolled in Medicaid Home and Community-Based Services waivers.

Type of Provider	Number
Certified Agency Provider	2,122
Certified Independent Provider	10,600
Residential Facility - ICFIID	421
Residential Facility - Non-ICFIID	649

The adverse impact of the rule includes requirements for providers to report information, requirements for providers to restore personal funds when loss is due to provider action or inaction, and generally, the time required by providers to comply with the requirements of the rule.

- Paragraph (D) includes requirements related to assessment, development of individual service plans, and maintenance of information for persons served.
- Paragraph (F) requires providers responsible for managing individuals' funds to develop and implement a written policy, ensure staff are trained in requirements of the policy and the rule, and make notifications to an individual's team.
- Paragraph (G) requires providers to maintain a system of accounting for individuals' personal funds.
- Paragraph (H) sets forth that a provider may have to restore personal funds to an individual.
- Paragraph (I) requires a provider to report information in the event of an individual's death.

The cost of staff time to comply with the requirements of the rule and attend related training will vary among providers based on multiple factors such as the nature and number of individuals served for whom the provider manages personal funds, the number of staff engaged in managing individuals' personal funds, and wages paid to staff. The Department is

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renewing its commitment to make related resources and training available free-of-charge.

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

Systemwide standards are necessary to safeguard Ohioans with developmental disabilities from exploitation, misappropriation, and theft.

**Regulatory Flexibility**

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

Existing rule 5123-3-10 (Licensed Residential Facilities - Procedures to Waive Rule Requirements) permits the Director of the Department to waive a condition or specific requirement of a rule adopted by the department to license or regulate the operation of residential facilities.

**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?**

Staff of the Department's Office of System Support and Standards and Division of Residential Resources are available to provide technical assistance as needed.

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