



Common Sense Initiative

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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

HCBS - July 2024

Rule Number(s): Amend: 5123-9-13, 5123-9-15, 5123-9-25
New: 5123-9-27

Date of Submission for CSI Review: March 1, 2024

Public Comment Period End Date: March 15, 2024

Rule Type/Number of Rules:

New/ 1 rule

No Change/ rules (FYR?)

Amended/ 3 rules (FYR? 1 yes)

Rescinded/ rules (FYR?)

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.

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CSIPublicComments@governor.ohio.gov

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.**

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.

The Individual Options, Level One, and Self-Empowered Life Funding waivers are Medicaid-funded Home and Community-Based Services (HCBS) waivers available to Ohioans with developmental disabilities so they may receive services in their own homes as an alternative to receiving services in an institutional setting. The Medicaid HCBS waiver program is authorized by Section 1915(c) of the Social Security Act. The program permits a state to furnish an array of services that assist Medicaid beneficiaries to live in the community. Waiver services complement and/or supplement the services available to participants through the Medicaid State Plan and other federal, state, and local programs as well as the support families and communities provide. An individual with developmental disabilities enrolls in a specific waiver based on his or her needs. As of February 1, 2024, 43,661 individuals were enrolled in HCBS waivers administered by the Department:

<u>Waiver</u>	<u>Enrollment</u>
Individual Options	25,053
Level One	16,754
Self-Empowered Life Funding	1,854

Additional information about the waivers administered by the Department is available at:
<https://dodd.ohio.gov/waivers-and-services/waivers>

The Department is proposing to amend three rules governing HCBS:

- Rule 5123-9-13 (Home and community-based services waivers - career planning under the individual options, level one, and self-empowered life funding waivers) defines Career Planning and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to add outcome-based payments available to providers of the Job Development component of Career Planning. There are two types of outcome-based payments. A provider may obtain either or both payments for each individual served:
 - One payment when the individual secures competitive integrated employment.
 - Another payment if the individual secures competitive integrated employment that pays at least \$12 per hour and/or employs the individual for an average of at least 30 hours per week.

The amount of the payments varies based on an individual's acuity assessment group assignment. Additional amendments are being made to define "acuity assessment group" and eliminate what is currently Appendix A because it contains payment rates for the service through June 30, 2024; the amended rule is projected to be effective July 1, 2024.

- Rule 5123-9-15 (Home and community-based services waivers - individual employment support under the individual options, level one, and self-empowered life funding waivers) defines Individual Employment Support and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is being amended to add outcome-based payments available to providers of Individual Employment Support. There are two types of outcome-based payments. A provider may obtain either or both payments for each individual served:
 - One payment when the individual retains competitive integrated employment for 90 days.
 - Another payment when the individual retains competitive integrated employment for 180 days.

The amount of the payments varies based on an individual's acuity assessment group assignment. Additional amendments are being made to define "acuity assessment group," add "customized employment" to paragraph (B)(13)(a), and eliminate what is currently Appendix A because it contains payment rates for the service through June 30, 2024; the amended rule is projected to be effective July 1, 2024.

- Rule 5123-9-25 (Home and community-based services waivers - specialized medical equipment and supplies under the individual options, level one, and self-empowered life funding waivers) defines Specialized Medical Equipment and Supplies and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. The rule is due for five-year review. Based on a comprehensive review, the rule is being amended to:
 - Revise the definition of "Specialized Medical Equipment."
 - Set forth explicitly, that an agency provider will ensure personnel possess appropriate skills and expertise.

- Remove a provision that requires a veterinarian attending to service animals be licensed.
- Set forth explicitly, that Specialized Medical Equipment and Supplies will be authorized only after the item was unavailable through the Medicaid State Plan.
- Eliminate a provision that required a provider of Specialized Medical Equipment and Supplies to assume full liability for equipment improperly installed or maintained.
- Align wording with newer rules.

In addition, the Department is proposing to adopt a new rule for a new HCBS waiver service:

- Rule 5123-9-27 (Home and community-based services waivers - health care assessment under the individual options, level one, and self-empowered life funding waivers) defines Health Care Assessment and sets forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service. Health Care Assessment uses technology to facilitate real-time consultation and support provided by a physician, a physician assistant, or an advanced practice nurse to assist an individual and/or the individual's caregivers to understand the individual's presenting health symptoms and identify appropriate next steps. The intent of the service is to provide right-on-time health assessment to determine the best clinical course of action, often avoiding unnecessary emergency room visits and decreasing the need for inpatient admissions.

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.

Authorize: 5123.04, 5123.049, 5123.1611

Amplify: 5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21

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. The rules implement services available to individuals enrolled in HCBS waivers administered by the Department. States must request a Medicaid Section 1915(c) HCBS waiver. Section 1915(c) of the Social Security Act authorizes the Secretary of Health and Human Services to waive certain specific Medicaid statutory requirements so that a state may voluntarily offer HCBS to a state-specified target group of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid State Plan.

5. If the regulation implements a federal requirement, but 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)?**

Rules are necessary to implement the Department's federally-approved 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 the rules in terms of the number of individuals receiving the services governed by the rules, the extent to which the services provided meet the needs of individuals enrolled in Department-administered HCBS waivers, and Ohio's compliance with federal regulations and the federally-approved 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.

5123-9-13 (Career Planning) and 5123-9-15 (Individual Employment Support)

In January 2020, the Department chartered a representative group of stakeholders to help implement strategies to improve adult day, employment, and transportation services. This group is called the Blueprint Group. Members represent all sectors of the developmental disabilities field, including individuals served and their families, providers of services, county boards of developmental disabilities, and other support systems in Ohio. The Blueprint Group generated several sub-groups:

- Blueprint Rule and Waiver Implementation Team
- Blueprint Communication Implementation Team
- Blueprint Training and Technical Assistance Implementation Team

The Blueprint Rule and Waiver Implementation Team includes representatives of:

- Advocacy and Protective Services, Inc.
- Alpha Group
- Arc Industries

- The Arc of Ohio
- Belmont, Harrison, and Noble County Boards of Developmental Disabilities
- Cincinnati Goodwill
- Clermont County Board of Developmental Disabilities
- Cuyahoga County Board of Developmental Disabilities
- Empowered Community Services
- Ohio Association of County Boards of Developmental Disabilities
- Ohio Association of People Supporting Employment First
- Ohio Department of Medicaid
- Ohio Health Care Association
- Ohio Self Determination Association
- The Ohio State University Nisonger Center
- Ohio Provider Resource Association
- Portage Industries
- Summit County Board of Developmental Disabilities

The Blueprint Communication Implementation Team includes representatives of:

- 19 Services, Inc.
- Clermont County Board of Developmental Disabilities
- Cuyahoga County Board of Developmental Disabilities
- Ohio Association of County Boards of Developmental Disabilities
- Ohio Health Care Association
- Ohio Provider Resource Association
- Ohio Self Determination Association
- Transitional Living Centers, Inc.

The Blueprint Training and Technical Assistance Implementation Team includes representatives of:

- Clearwater Council of Governments
- Fairfield County Board of Developmental Disabilities
- Mid-East Ohio Regional Council
- Ohio Association of People Supporting Employment First
- Ohio Health Care Association
- Ohio Provider Resource Association
- Ohio Self Determination Association
- Summit County Board of Developmental Disabilities
- X-Excel, Ltd.

The outcome-based payments for Career Planning-Job Development and Individual Employment Support were discussed at meetings of the various Blueprint groups on:

April 19, 2023

July 5, 2023

July 7, 2023
July 21, 2023
August 16, 2023
September 22, 2023
September 29, 2023
October 11, 2023
October 13, 2023
November 3, 2023
November 8, 2023
November 13, 2023
December 1, 2023
December 6, 2023
December 15, 2023
January 3, 2024
January 5, 2024
January 17, 2024
January 22, 2024
January 31, 2024
February 5, 2024

On January 22, 2024, the outcome-based payments for Career Planning-Job Development and Individual Employment Support were discussed at a meeting of the Waiver Workgroup.

The Waiver Workgroup includes representatives of:

Advocacy and Protective Services, Inc.
The Arc of Ohio
Ohio Association of County Boards of Developmental Disabilities
Ohio Council for 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 Superintendents of County Boards of Developmental Disabilities
Ohio Waiver Network
Values and Faith Alliance

On January 24, 2024, the outcome-based payments for Career Planning-Job Development and Individual Employment Support were discussed at a meeting of Service and Support Administration Directors of county boards of developmental disabilities.

On February 15, 2024, Department staff discussed the outcome-based payments for Career Planning-Job Development and Individual Employment Support with representatives of the Ohio Association of County Boards of Developmental Disabilities.

5123-9-25 (Specialized Medical Equipment and Supplies)

The Department convened a workgroup to comprehensively review rule 5123-9-25 and develop amendments. The workgroup included:

- Lisa Comes, Service and Support Advisor, Ohio Association of County Boards of Developmental Disabilities
- Rachel Hayes, Director of Residential Resources, Ohio Provider Resource Association
- Monica Juenger, Chief Policy Officer, Ohio Association of County Boards of Developmental Disabilities
- David Lewis, Vice President, The Arc of Ohio
- Jennifer Rice, Service and Support Administration Director, Butler County Board of Developmental Disabilities
- Josh Svarda, Home Modification and Equipment Coordinator, Hamilton County Board of Developmental Disabilities
- Rodney Willis, Director of Medicaid Services, Richland County Board of Developmental Disabilities

The workgroup met four times (November 16, 2023, December 7, 2023, December 21, 2023, and January 4, 2024).

Proposed amendments to rule 5123-9-25 were shared and discussed at a meeting of the Waiver Workgroup on January 22, 2024. Membership of the Waiver Workgroup is described on page 7 of this document.

5123-9-27 (Health Care Assessment)

The Department convened a workgroup to develop the new Health Care Assessment service and rule. The workgroup included:

- Joseph Badell, Community Services Director, Darke County Board of Developmental Disabilities
- Lisa Comes, Service and Support Advisor, Ohio Association of County Boards of Developmental Disabilities
- Rachel Hayes, Director of Residential Resources, Ohio Provider Resource Association
- Debbie Jenkins, Policy Director, Ohio Health Care Association
- Monica Juenger, Chief Policy Officer, Ohio Association of County Boards of Developmental Disabilities
- David Lewis, Vice President, The Arc of Ohio
- Meliss Ricker, Director of Community Support Services, Allen County Board of Developmental Disabilities

The workgroup met four times (November 14, 2023, December 5, 2023, January 2, 2024, and January 16, 2024).

Proposed new rule 5123-9-27 was shared and discussed at a meeting of the Waiver Workgroup on January 22, 2024. Membership of the Waiver Workgroup is described on page 7 of this document.

All Rules

Through the Department's rules clearance process, the rules 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
Ohio Association of County Boards of Developmental Disabilities
Ohio Council for 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 Statewide Independent Living Council
Ohio Superintendents of County Boards of Developmental Disabilities
Ohio Waiver Network
People First of Ohio
Values and Faith Alliance

The rules 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?

5123-9-13 (Career Planning) and 5123-9-15 (Individual Employment Support)

Department staff discussed outcome-based payments and considered feedback from county boards of developmental disabilities to ensure the process for authorizing payments would not be too burdensome for county board Service and Support Administrators.

5123-9-25 (Specialized Medical Equipment and Supplies)

Stakeholders explained difficulties they have encountered trying to submit a request for equipment to an "unwilling" Medicaid State Plan vendor. Department staff, with support from staff of the Ohio Department of Medicaid, explained that the existing Medicaid requirement to access equipment through the Medicaid State Plan prior to using HCBS waiver funds to purchase equipment must be followed and offered to intervene in these

situations. In response to stakeholder feedback, wording was added to paragraph (D)(2) to reinforce the responsibilities of authorized vendors of equipment under the Medicaid State Plan.

5123-9-27 (Health Care Assessment)

Based on positive feedback from stakeholders who participated in a telemedicine pilot program funded by the Department in calendar years 2022 and 2023, the Department determined to pursue creating the new Health Care Assessment service.

Some representatives of county boards of developmental disabilities asked that the scope of the proposed new service be expanded to encompass telehealth services for all medical needs. Department staff responded that the new service cannot be that broad, as it would duplicate Telehealth, a service available through the Medicaid State Plan.

All Rules

Additional feedback provided by stakeholders during the clearance period will be considered before the rules are filed.

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?

5123-9-13 (Career Planning) and 5123-9-15 (Individual Employment Support)

Department staff analyzed claims data regarding employment services to determine the potential number of providers that might be eligible for outcome-based payments.

5123-9-25 (Specialized Medical Equipment and Supplies)

The workgroup reviewed data regarding claims for payment submitted by independent providers of the service to consider the viability of continuing to authorize independent providers to provide the service. At this time, the Department will continue to authorize independent providers of this service and will continue to monitor to confirm that independent providers are meeting all provider qualifications of the rule.

5123-9-27 (Health Care Assessment)

The workgroup reviewed data compiled by The Ohio State University Nisonger Center regarding a telemedicine pilot program funded by the Department in calendar years 2022 and 2023. The workgroup also reviewed similar Medicaid services implemented in Missouri and Pennsylvania. The data and information informed development of the new Health Care Assessment service.

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? *Alternative regulations may include performance-based regulations, which define the*

required outcome, but do not dictate the process the regulated stakeholders must use to comply.

5123-9-13 (Career Planning) and 5123-9-15 (Individual Employment Support)

The Department considered whether or not the outcome-based payments should be based on an individual's acuity assessment level and determined that increasing the incentive for achieving desired outcomes for individuals needing more support best aligned with policy goals.

The Department considered multiple ways to structure outcome-based payments and arrived at the proposed method as a way of increasing competitive integrated employment while ensuring compliance with federal requirements and minimizing payment system complexity.

5123-9-25 (Specialized Medical Equipment and Supplies)

The Department preliminarily considered closing enrollment of independent providers of the service but determined eligibility for independent providers would be maintained.

5123-9-27 (Health Care Assessment)

The Department preliminarily intended to name the service "Telehealth Assessment," but determined this label might cause confusion with the Medicaid State Plan service named "Telehealth." Ultimately, the Department adopted the name for the service used by the federal Centers for Medicare and Medicaid Services.

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

Through an interagency agreement with the Ohio Department of Medicaid, the Department is charged with adopting rules governing the HCBS waivers administered by the Department. Department staff work with staff of the Ohio Department of Medicaid to ensure the Department's rules align with the federally-approved HCBS waivers.

14. 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 disseminate information about the rules through its various publications. The final-filed rules will be posted at the Department's website and directly disseminated to county boards of developmental disabilities and the approximately 4,700 persons who subscribe to the Department's Rules Notification listserv.

Staff of the Department's Division of Medicaid Administration are available to answer questions and provide technical assistance as needed. Staff of the Department's Community Life Engagement Project are available to answer questions and provide technical assistance regarding the outcome-based payments for the Career Planning-Job Development and

Individual Employment Support services.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

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

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 rules govern services provided to individuals enrolled in HCBS waivers and the persons and entities that provide the services. There are two types of providers:

- Agency providers (entities certified by the Department that employ persons to provide the services); and
- Independent providers (self-employed persons certified by the Department who do not engage any other persons to provide the services).

	Agency Providers	Independent Providers
Career Planning-Job Development	215	45
Individual Employment Support	376	129
Specialized Medical Equipment and Supplies	92	8

The adverse impact of the rules as they currently exist includes:

- Having to be certified by the Department to provide services;
- Submitting an application and supporting information and documents to obtain and maintain certification;
- Obtaining and maintaining a Medicaid provider agreement from the Ohio Department of Medicaid;
- Reporting information and maintaining documentation about services provided;
- Being subject to denial, suspension, or revocation of certification for failure to comply with a rule; and
- Staff time required to comply with requirements of the rules.

The actual adverse impact varies widely among providers based on factors such as the type of provider, the nature and number of individuals served, the volume of services provided, and for agency providers, the number of staff employed and the wages/benefits paid.

Rules 5123-9-13 (Career Planning) and 5123-9-15 (Individual Employment Support) are

being amended to incorporate incentive payments for providers of services who support individuals in achievement of employment goals. Providers are not required to participate, but those who do so will be paid more for delivering the service.

The amendments being made to rule 5123-9-25 (Specialized Medical Equipment and Supplies) are intended to provide clarity and remove disincentives to provision of services.

Rule 5123-9-27 (Health Care Assessment) is creating a new service which represents a new opportunity for providers of services to engage in delivery of HCBS and generate revenue.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No.

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

The Ohio Revised Code and the federal Centers for Medicare and Medicaid Services require the Department to promulgate rules governing the Medicaid HCBS waivers it administers. The amendments being made are intended to support equitable payment rates to providers of HCBS.

Regulatory Flexibility

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

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

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 waiving 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?

The Department will disseminate information about the rules through its various publications and make information available at the Department's website:

<https://dodd.ohio.gov/waivers-and-services>.

The rules will be posted at the Department's website throughout the rule promulgation process:

<https://dodd.ohio.gov/forms-and-rules/rules-under-development/rules-under-development>

Department staff are available to answer questions and provide technical assistance as needed. Questions and requests for assistance may be submitted at any time.

Please direct general HCBS waiver or policy questions to:

Division of Medicaid Administration

waiverpolicyta@dodd.ohio.gov

For technical assistance related to Career Planning-Job Development or Individual Employment Support outcome-based payments, please contact:

Community Life Engagement Project

employmentfirst@dodd.ohio.gov