



Common Sense Initiative

Mike DeWine, Governor
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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):

HCBS - January 2026

Rule Number(s): Amend: 5123-9-12, 5123-9-19
Rescind: 5123-9-35, 5123-9-47
New: 5123-9-35, 5123-9-47

Date of Submission for CSI Review: August 14, 2025

Public Comment Period End Date: August 28, 2025

Rule Type/Number of Rules:

New/ 2 rules

No Change/ rules (FYR?)

Amended/ 2 rules (FYR? 1 yes)

Rescinded/ 2 rules (FYR? no)

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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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 August 1, 2025, 44,878 individuals were enrolled in HCBS waivers administered by the Department:

<u>Waiver</u>	<u>Enrollment</u>
Individual Options	25,816
Level One	17,423
Self-Empowered Life Funding	1,639

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

The Department is seeking approval from the federal Centers for Medicare and Medicaid Services to amend its HCBS waivers effective January 1, 2026. This work impacts three administrative rules of the Department:

Rule 5123-9-12 (HCBS waivers - assistive technology under the individual options, level one, and self-empowered life funding waivers) defines Assistive Technology 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:

- Refine the definition of "Assistive Technology" to include non-electronic items.
- Clarify that Assistive Technology - Equipment may include the cost of software applications or monthly recurring fees such as subscriptions.
- Add a definition of "subscription."
- Add the actual definition of "team" from rule 5123-4-02 instead of merely referencing rule 5123-4-02.
- Reorder paragraph (D).
- Add paragraph (D)(5) to set forth that the terms of the arrangement for acquiring Assistive Technology - Equipment will be documented in the individual service plan or a written agreement.
- Add a safeguard in paragraph (D)(9) to make clear that Assistive Technology - Equipment that permits other persons to view/listen to/record an individual's activities or conversations will not be activated except when the provider is being paid to provide services.
- Add paragraph (F)(8) to address repair and replacement of Assistive Technology - Equipment.
- Clarify in paragraph (F)(10)(b) that additional training of a service animal may be covered only when the animal's initial training was funded by the individual's HCBS waiver.
- Align wording with newer rules.

Rule 5123-9-35 (HCBS waivers - remote support under the individual options, level one, and self-empowered life funding waivers) defines Remote 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:

- Revise the definition of "backup support" to clarify the manner in which backup support may be arranged.
- Require a provider of Remote Support and a paid provider of backup support to have a written agreement.
- Change the billing unit from one hour to 15 minutes.
- Refine the definition of "Remote Support."
- Eliminate the concept of a "Remote Support vendor."
- Clarify that Remote Support staff are subject to background investigations.
- Specify details of Remote Support that must be included in a person's individual service plan.

- Clarify requirements for the Remote Support monitoring base.
- Adjust requirements for service documentation.
- Align wording with newer rules.

Due to the volume of amendments, the existing rule is being rescinded and replaced by a new rule of the same number. Although the Department will be rescinding the existing rule and enacting a new rule, an amended version is provided so stakeholders can readily see what is changing.

Rule 5123-9-47 (HCBS waivers - support brokerage under the self-empowered life funding waiver) defines Support Brokerage 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:

- Make the Support Brokerage service available under the Individual Options and Level One waivers.
- Adjust the definition of Support Brokerage.
- Change the billing unit from one hour to 15 minutes.
- Permit individuals enrolled in HCBS waivers to provide Support Brokerage to others.
- Permit Support Brokerage to be provided virtually.
- Permit providers of Support Brokerage to be paid for driving time.
- Align wording with newer rules.

Due to the volume of amendments, the existing rule is being rescinded and replaced by a new rule of the same number. Although the Department will be rescinding the existing rule and enacting a new rule, an amended version is provided so stakeholders can readily see what is changing.

Additionally, the Department is amending one rule due for five-year review:

Rule 5123-9-19 (HCBS waivers - general requirements for adult day support, career planning, group employment support, individual employment support, non-medical transportation, and vocational habilitation) establishes general requirements governing provision of and payment for the aforementioned services provided to individuals enrolled in HCBS waivers administered by the Department. The rule is being amended to:

- Add the actual definition of "agency provider" from rule 5123-2-08 instead of merely referencing rule 5123-2-08.
- Update the name of a referenced waiver service from "Waiver Nursing Services" to "Waiver Nursing."

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.**

	Statutory Authority	Rule Amplifies
5123-9-12, 5123-9-35, 5123-9-47	5123.04, 5123.049, 5123.1611	5123.04, 5123.045, 5123.049, 5123.16, 5123.161, 5123.1611, 5166.21
5123-9-19	5123.04, 5123.049, 5123.1611	5123.04, 5123.049, 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.***

5123-9-12 (Assistive Technology) and 5123-9-35 (Remote Support):

In 2021, the Department convened a group of providers of Remote Support to discuss how the service might be improved and better utilized. Group members included:

- Nick Alexander, THS Remote Support Services
- Susan Brownknight, LADD, Inc.
- Billie Catanzarite, SafeinHome
- Lisa Comes, Ohio Association of County Boards of Developmental Disabilities
- Kyle Corbin, SafeinHome
- Scott DeLong, Champaign Residential Services, Inc.
- Jimmy Finley, THS Remote Support Services
- Srinivas Gopal, Medforall
- Jarod Hunt, Wynn-Reeth
- David Ilg, THS Remote Support Services
- Teresa Kobelt, Ohio Provider Resource Association
- Mark Prohaska, SafeinHome
- Ali Rahimi, Medforall
- Carla Reichelderfer, LADD, Inc.
- Don Shirley, SafeinHome
- Adam Shoemaker, THS Remote Support Services
- Ben Shoemaker, THS Remote Support Services
- Ken Smith, NextGenAt, Inc.
- Lori Stanfa, Consultant
- Elizabeth Steiger, SafeinHome
- Elizabeth Wharton, SafeinHome
- Pam Wright, THS Remote Support Services

The group discussed the Remote Support and Assistive Technology services and rules at meetings on October 19, 2021, January 18, 2022, February 15, 2022, March 23, 2022, April 19, 2022, May 17, 2022, June 21, 2022, September 20, 2022, October 18, 2022, January 17, 2023, April 17, 2023, July 17, 2023, October 17, 2023, January 17, 2024, May 6, 2024, and October 17, 2024. On July 2, 2025, the Department shared the draft rules with members of the group.

In 2024, the Department convened the Ohio Technology First Advisory Committee to discuss the past, present, and future of Ohio's Technology First Initiative. The Committee of over 50 members includes providers, county board staff, educators, people with lived experience, family members, and other partners from across the state. The Remote Support and Assistive Technology services and rules were discussed at Committee meetings on November 16, 2023, December 19, 2024, and July 17, 2025. On July 2, 2025, the

Department shared the draft rules with Committee members in advance of discussion at the July 17th meeting. Approximately 50 people attended the July 17th meeting.

5123-9-47 (Support Brokerage):

The Department engaged members of the Ohio Self-Direction Team to comprehensively review the rule and recommend amendments. The following members participated:

- Kathleen Brunton, Mahoning County Board of Developmental Disabilities
- Dana Charlton, Ohio Self Determination Association
- Lisa Comes, Ohio Association of County Boards of Developmental Disabilities
- Steve Oster, Coshocton and Knox County Boards of Developmental Disabilities
- Nancy Richards, Clearwater Council of Governments
- Jeanne Stuntz, Dynamic Pathways, Inc.
- Sharon Travis, Southwestern Ohio Council of Governments
- Kelsi Weaver, Clearwater Council of Governments
- Renee Wood, Advocate

The group discussed necessary amendments to the rule on May 29, 2025. On July 31, 2025, the Department shared the draft rule with members of the Team. The Team met to discuss the draft rule on July 31, 2025.

Rules Generally:

The HCBS waiver amendments planned for January 2026 were discussed at meetings of the Waiver Workgroup on May 19 and July 21, 2025. The Waiver Workgroup includes:

- Christine Brown, Advocate
- Dana Charlton, Ohio Self Determination Association
- Lisa Comes, Ohio Association of County Boards of Developmental Disabilities
- Matt Ferrell, Ohio Waiver Network
- Ruben Garcia, Advocate
- Jerilyn George, Advocacy and Protective Services, Inc.
- Amber Gibbs, Cuyahoga County Board of Developmental Disabilities
- Nate Griffin, Ohio Health Care Association
- Tanya Hitchens, Guernsey County Board of Developmental Disabilities
- Debbie Jenkins, Ohio Health Care Association
- Monica Juenger, Ohio Association of County Boards of Developmental Disabilities
- Arif Kamran, Ohio Department of Medicaid
- Kim Kelly, Family Member
- Emily Kendall, Ohio Provider Resource Association
- Kim King, Ohio Council for Home Care and Hospice
- Phill Kirk, Ohio Provider Resource Association
- Carolyn Knight, Ohio Developmental Disabilities Council
- Teresa Kobelt, Ohio Provider Resource Association
- David Lewis, The Arc of Ohio
- Deb Lyle, Values and Faith Alliance

- Kellie McCain, Ohio Department of Medicaid
- Cheryl Meister, Ohio Council for Home Care and Hospice
- Steve Oster, Knox County Board of Developmental Disabilities
- Kathy Phillips, Ohio Waiver Network
- Terrie Rodriguez, Values and Faith Alliance
- ShaRhonda Sly, Ohio Department of Medicaid
- Celia Schloemer, Ohio Self Determination Association
- Jo Spargo, Family Member
- Jamie Steele, Ohio Provider Resource Association
- Gary Tonks, The Arc of Ohio
- Jean Wyatt, Ohio Developmental Disabilities Council
- Pete Van Runkle, Ohio Health Care Association
- Josh Young, Ohio Self Determination Association

On July 3, 2025, the Department shared the draft rules for Assistive Technology and Remote Support with Workgroup members. On July 21, 2025, the Department shared the draft Support Brokerage rule with Workgroup members.

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
 Autism Society of Greater Akron
 Councils of Governments
 Disability Rights Ohio
 Down Syndrome Association of Central Ohio
 Elevate DD
 Family Advisory Council
 The League
 Milestones Autism Resources
 OCALI
 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 Olmstead Task Force
 Ohio Provider Resource Association
 Ohio Self Determination Association
 Ohio SIBS (Special Initiatives by Brothers and Sisters)
 The Ohio State University Nisonger Center
 Ohio Statewide Independent Living Council
 Ohio Superintendents of County Boards of Developmental Disabilities

Ohio Waiver Network

People First of Ohio

University of Cincinnati University Center for Excellence in Developmental Disabilities
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?

5123-9-12 (Assistive Technology):

- Stakeholders asked that the rule permit the arrangement for acquiring Assistive Technology - Equipment to be documented in a written agreement *or the individual service plan*. Paragraph (D)(5) was revised accordingly.
- Providers of Assistive Technology - Equipment provided cost data that informed the percentages allowed in paragraphs (F)(6), (F)(7), and (F)(8) to cover the cost of the provider's responsibilities.

5123-9-35 (Remote Support):

- Remote Support providers indicated that prohibiting a monitoring base to be located in the home of Remote Support staff was incompatible with their current business model. Paragraph (D)(8) was modified to permit a monitoring base to be located at the home of the Remote Support staff. (A monitoring base may not be located at the home of any person who receives HCBS.)
- Stakeholders said use of the terms, "Remote Support provider" and "Remote Support vendor," was confusing. Use of "Remote Support vendor" has been eliminated.
- Stakeholders requested that the rule permit Remote Support to be provided in community locations, beyond an individual's residence. They also requested changing the way the service is authorized and billed. The Department did not make these two changes but committed to exploring them for possible implementation in a future round of waiver amendments.

5123-9-47 (Support Brokerage):

- The Support Brokerage service was created in July 2012, as part of the Self-Empowered Life Funding Waiver. Stakeholders have been asking the Department to make the Support Brokerage service available to individuals enrolled in the Individual Options and Level One waivers. The Department is amending the Individual Options and Level One waivers and rule 5123-9-47 to include the service.
- Stakeholders suggested more people would use and benefit from the service if the billing unit was changed from one hour to 15 minutes. The rule was adjusted to reflect this input.
- Members of the Ohio Self-Direction Team provided feedback about many aspects of the rule including the service definition, the role of a Support Broker, and qualifications for

Support Brokers. Team members provided feedback and made suggestions regarding new provisions permitting virtual support and compensation for driving time. Their feedback informed new paragraphs (C)(8), (D)(2), (D)(3), (D)(4), and (F)(2). The Team asked why the currently effective rule imposes requirements for unpaid volunteers. As a result, paragraph (C)(1)(b) is being removed.

Rules Generally:

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?

Department staff reviewed outcomes of compliance reviews of Remote Support services. Compliance review data indicated that additional clarification regarding provision of the service was needed to safeguard individuals' privacy and ensure the service is provided in accordance with the federally-approved HCBS waivers.

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.

5123-9-12 (Assistive Technology):

The Department had proposed eliminating the phrase "engineered solution" from the definition of "Assistive Technology." Stakeholders expressed concern that elimination of the phrase might call into question whether person-centered technology solutions would be covered. "Engineered solution" was restored.

5123-9-35 (Remote Support):

The Department considered prohibiting a Remote Support monitoring base to be located at any person's residence. Several providers of the service indicated this was incompatible with their current business model as the monitoring base may be located at the residence of the Remote Support staff. The rule was adjusted to permit more flexibility with regard to the location of a monitoring base; additional safeguards were added to ensure operation of the monitoring base is compliant with applicable standards and laws.

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 rules will be posted at the Department's website throughout the rule promulgation process. The final-filed rules will be posted at the Department's website and directly disseminated to county boards of developmental disabilities and the approximately 7,400 persons who subscribe to the Department's rules notifications.

Department staff are available to answer questions and provide technical assistance as needed.

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.

5123-9-12 (Assistive Technology), 5123-9-35 (Remote Support), and 5123-9-47 (Support Brokerage):

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).

Assistive Technology and Remote Support may be provided only by agency providers. Support Brokerage may be provided by both agency providers and independent providers.

	Agency Providers	Independent Providers
Assistive Technology	163	Not applicable
Remote Support	532	Not applicable

	Agency Providers	Independent Providers
Support Brokerage	11	20

The adverse impact of the rules includes:

- Having to be certified by the Department to provide services;
- Submitting an application and supporting information and documents to obtain initial and renewal certification;
- Obtaining a Medicaid provider agreement from the Ohio Department of Medicaid;
- Reporting information and maintaining documentation about services provided; 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 specific services provided, the volume of services provided, and for agency providers, the number of staff employed and the wages/benefits paid to staff.

5123-9-19 (General requirements for Adult Day Support and employment services):

Paragraph (E)(5) requires agency providers to ensure and document that sufficient numbers of staff are engaged in provision of Adult Day Support, Group Employment Support, and Vocational Habilitation to ensure the health and safety and achievement of outcomes for individuals being served and sets forth that no more than 16 individuals may receive services in one group. These services are provided only by agency providers:

	Agency Providers
Adult Day Support	913
Group Employment Support	294
Vocational Habilitation	536

This requirement has been in place since creation of the services in 2007 and is embedded in the existing service delivery models.

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*).

The definition of "service documentation" in paragraph (B) of rules 5123-9-35 and 5123-9-47 is being restructured with subparagraphs to make the required elements more apparent and to align with newer rules.

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.

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/waivers>

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 regarding Medicaid policy should be directed to the Division of Medicaid Administration at waiverpolicyta@dodd.ohio.gov. Questions related specifically to the Assistive Technology or Remote Support services should be directed to the Community Life Engagement Team at technologyfirst@dodd.ohio.org.