

Comments on the OMB RFI: Deregulation

The Ohio Health Care Association (OHCA) represents providers of care and services to individuals with intellectual and developmental disabilities (ID/DD). I appreciate the opportunity to provide comments regarding regulations impacting providers of ID/DD services in response to the Request for Information: Deregulation. My comments will include regulations impacting both home and community-based services and intermediate care facilities for individuals with intellectual disabilities (ICF/IID). While some regulatory requirements are necessary to ensure Medicaid beneficiaries receive quality care, others add unnecessary administrative burden or may actually prevent individuals from directing their care and making everyday decisions that impact their lives.

Home and Community Based Services

- **Medicaid Access Rule – The whole rule could be repealed, but below are some of the most harmful aspects**
 - **42 CFR 441.302 (k)** – HCBS payment adequacy provisions
 - These provisions require the reporting of the percentage of Medicaid payment spent on direct care workers' compensation and for certain services, a requirement to spend at least 80% of the Medicaid payment on direct care workers' compensation. This regulation is a prime example of government overreach and will actually hurt access to these services, not improve access.
 - **HCBS Payment Rate Transparency 42 CFR 447.203 (b)(1), 447.203 (b)(2) to (4)**
 - These provisions require new reporting system requirements for HCBS providers and states. They are extremely costly. Many states have developed their own methods for creating rate analytics and this rule would be duplicative of those efforts as well.
- **HCBS Settings Rule – There are a few provisions of this rule that can be eliminated or revised while still allowing for the spirit of the regulation to continue.**
 - **42 CFR 441.301(c)(5)(v)** – CMS doesn't have sufficient staffing to perform these heightened scrutiny reviews; community integration should be determined by the person's experience and can be done at the state level, doesn't need to be the Secretary making the determination. This has led to long delays and decreased the availability of services to individuals.
 - **42 CFR 441.301(c)(4)** – The HCBS settings rule needs to address community-based day programs. There have been some interpretations that adult day programs cannot occur in a single location where an individual goes from their home to that location and then goes home afterwards. These locations are often located in their communities, in settings such as strip malls, buildings with other businesses, etc. and are not typically located in institutional settings. However, this has been interpreted as requiring individuals to leave the adult day setting and go to other locations within the community during the day. This is good for some people on HCBS waivers, but not for everyone and often times the reimbursement rates are not sufficient for lower levels of staffing, transportation costs and the cost to participate in the activity. The language in this rule needs clarification as it addresses residential settings, but not day/vocational settings.

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

- **42 CFR 442.109 recertification survey – not later than 15 months w/ 12-month statewide average.**
 - Many ICF/IIDs have been deficiency-free for multiple years in a row but are still subject to frequent recertification surveys. This one-size-fits-all approach to monitoring and oversight is inefficient and wasteful, particularly when there are no findings or concerns with prior surveys. Changing the regulatory structure would also allow surveyors to devote more time and attention to those facilities which are struggling to maintain regulatory compliance. I recommend this be rescinded and replaced with a tiered methodology for determining the frequency of ICF/IID recertification surveys based upon the number of facility citations as follows:
 - Every year if IJ, condition level citation or more than 10 citations
 - Every 2 years if 6-10 standard level citations
 - Every 3 years if 5 or less standard level citations
- **42 CFR 483.430 (a) – Requirements for QIDP**
 - Remove Bachelor's degree requirement for QIDP and replace with associate's degree or 2 years' experience coordinating or developing programs for people with intellectual or developmental disabilities.
- **42 CFR 483.460 (a)(4) – requirement for ICF to educate and offer COVID-19 vaccines to individuals and staff.**
 - Rescind: This is not necessary as the COVID pandemic is over.
- **42 CFR 483.483 (b), (c) & (d) – Meal Services, Menus & Dining Area/Services** – These regulations are too prescriptive and not reflective of how people eat and how people want to eat. The regulations should rely on person-centered desires and goals around dining and allow flexibility for each person to decide when, what, how and how much they would like to eat. These are basic choices that any individual without a disability get to make so people residing in ICFs should not have their eating/dining be so prescriptive.
- **42 C.F.R. §483.450(e)(2) – Drug Use for Inappropriate Behaviors and associated guidance in State Operations Manual tag W312**
 - This regulation establishes requirements for the approval and use of prescribed medication within ICF/IIDs for the control of inappropriate behaviors. ICF/IID facilities are increasingly supporting individuals with complex medical and behavioral health needs with the diminishment of access to services. These current restrictions hinder the ability of people with disabilities to receive timely and appropriate care, create obstacles for medical professionals to prescribe necessary medication, and limit access to certain essential medications. Certain medications offered on a PRN basis at times may offer quick relief from acute symptoms necessary to promptly support the recipient's comfort and ability to acquire, retain, and improve skill-development. For prescribing medical professionals, there are challenges related to navigating complex regulations and approval processes, which limit their ability to exercise professional judgment in determining the best course of treatment for their patients. Consequently, this results in some medical professionals opting not to serve people receiving ICF/IID services.
 - I recommend allowing the use of PRN medications to support behavioral management needs as long as:

- medications are prescribed by a medical provider and their use approved by the IDT;
- the facility follows all SCC requirements for medication management of inappropriate behaviors;
- medication administration is specifically outlined in the resident's approved Individual Program Plan or behavior management plan; and
- the facility has policies and procedures to ensure the appropriate use of PRN medications with layers of approvals before such medications are administered.

I appreciate your time reviewing these comments. Please feel free to contact Debbie Jenkins (DJenkins@ohca.org) with any questions.