**DD System Regulatory Proposal**

1. Reimbursement and Service Design Reform: As part of the Waiver Reimbursement System Modernization Project, we will be presenting a separate proposal that will include actions and items that must be included in the effort and some things that we believe should not continue in order to simplify and prepare our DD system for long-term sustainability. Part of the proposal will include a variety of issues that complicate the current financial structure of DD waivers including reimbursement structures, acuity factors, prior authorizations, etc. Additionally, the proposal will include some recommendations for redefining services in a way that recognizes the broad range of service needs and thus skill sets required for direct support professionals.
2. Remote Supports Rule: Ohio has shown its dedication to being a Technology First state and we believe this service in the waivers can be modified to promote the use of various technology driven supports. Increased flexibility could lead to increased usage and benefit to those who utilize remote supports.
   1. Redefine the relationship between the residential provider and the technology supports provider. Need to address “free choice of provider” in connection with expectations of both the residential provider and the technology provider.
   2. Reconsider rates for active vs. passive remote supports.
   3. Create rate structure that covers small units of service such as virtual health related supports, verification, or assistance with self-administration of medications or well checks.
3. Waiver Nursing & Medication Administration: One of the lessons learned during the pandemic is that there is a desperate need to increase nursing capacity within our DD system. Although waiver nursing was added as a service years ago, utilization is extremely low due to the complex nature of accessing the service. This proposal seeks to make changes in the following areas:
   1. Short-term: work with DODD to develop a streamlined process to permit county boards to authorize waiver nursing to provide much needed reimbursement with severe nursing shortage in Ohio.
   2. Build on current work with DODD, enhance structure and processes to allow for expanded use for medication dispensers and other technology solutions for health-related needs.
   3. OAC 5123-9-37 needs to be revised to allow county boards and councils of governments to provide nursing services particularly now due to lack of willing and able providers.
   4. Long-term: work with DODD to find a way to allow expanded access to waiver nursing, including adding the service to Level 1 and SELF, and increase flexibility for these services. We believe this is being done in other states and would like to reduce the barriers for DD providers to provide waiver nursing services. In addition, we believe that technology related health care services, such as Station MD, should be covered by Medicaid.
4. Remove setting size barriers which often limit individual choice and staffing efficiencies.
   1. We propose consideration of changes to ORC 5126.01 (X)(1)(a) to remove the state-imposed size limitation for non-licensed waiver settings. Federal regulations do not contain setting size limitation and, in fact, the Centers for Medicare and Medicaid Services (CMS) intentionally removed any setting size limitations from their 2014 Home and Community Based Services (HCBS) Settings Rule and instead focused on the experience of the individuals receiving waiver services. Allowing 5 or 6 individuals that choose to reside in a home would increase staffing efficiencies and allow more people to receive the services they need from our limited staffing resources. We believe that providers in good standing should not have this limit placed on the number of people who may choose to live in a particular setting. While smaller settings would still continue to be an option, allowing a variety of residential options would allow individuals additional choice of where they want to live. We believe that individual autonomy and access to the broader community can be accomplished within a variety of setting sizes.
   2. We propose removing the language in ORC 5123.196 which limits the number of residential facility licenses.
   3. We propose to allow for additional certification of intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) beds for new ICFs to serve specialized needs for people who are unable to obtain services currently (for example, multi-system youth, high behavioral needs, etc.).

In addition to the above, we propose changes to OAC 5123- 9-33 – Ohio Shared Living, that will permanently permit HPC services to be provided in Shared Living (OSL) settings on the same day with some limitations. Ongoing promotion of OSL and expansion statewide would have a positive impact on services for people, as well as assist with the workforce crisis long term.

1. Increased flexibility in licensed residential settings-we propose to change OAC 5123-3-08 to do the following:
   1. Remove six bed ICF limitation (C)(5).
   2. Remove four bed licensed waiver setting limitation (C)(6).
   3. Remove prohibition for homes on adjoining property sites (C)(7).
   4. Remove prohibition for more than one structure on the same property (C)(8).
   5. Adjust requirement for number of bathrooms based on the needs of the people served (E)(4).
   6. Remove limitation for number of people in a bedroom based on physical space, needs, and desires of individuals served (E)(2)(c) & (OAC 5124.70).

While the department has been issuing temporary waivers of these rules, in order to develop new settings, these restrictions would need to be permanently removed. Many of these actions have been implemented by providers during the pandemic via short term waivers from DODD. Due to the long-term workforce projections, as well as other factors, we believe that these types of flexibilities being allowed permanently, for some locations, will prevent people from losing the services they need. Choice should be a primary factor in the development of all residential settings.

Flexibility in our current rules would allow for the creation of “intentional communities” or multi-unit living situations which are desired by many people receiving services and their families. The “settings” rules already ensures access to the community and preserves individual choice. This continues to be paramount in all residential development proposals. A predetermination of compliance with the settings rule would be helpful for providers or developers hesitant to invest with uncertainty. In addition, we need to streamline the residential development application and approval process to allow for expedited development of licensed settings.

1. Provider Compliance & County Board Accreditation: We believe that provider compliance and county board accreditation need revamped to allow for increased partnership when providers or county boards are in good standing.
   1. Compliance should be focused on providers/county boards who are struggling and not those who have demonstrated consistency in their ability to be in significant compliance with rules and regulations. Providers/county boards in good standing should have access to technical assistance and support rather than being subject to ongoing compliance reviews.
   2. County board accreditation: Given the nature of county board services, we recommend a compliance structure that is different than that of providers and more focused on the actions required from the county board.
   3. Create a very limited self-review compliance tool to be utilized for providers who are in good standing and also otherwise accredited.
2. Provider Certification Requirement: Limited revisions to the Provider Certification rule would assist with addressing the staffing crisis.
   1. Permanently remove the 18 year old requirement for DSPs.
   2. Permanently remove the high school diploma/GED requirement for DSPs.
   3. Allow for a shortened orientation and make the streamlined onboarding flexibilities authorized through the Appendix K permanent.
   4. Revise training requirements in connection with #3 above and address the various methods for training adult learners.
3. Multi-system Youth/Intensive Behavioral Support ICF Add-on: Unfortunately, the design of this program has not led to the intended outcome of creating additional residential options for children with intensive behavioral support needs. We would like to work with DODD to redesign the program in a way that can meet the variety of needs across the state.
4. ICF Modernization: There are several modifications needed for the ICF program to ensure long term sustainability.
5. While the department and stakeholders spent a lot of effort on creating the current reimbursement structure, there were several concerns that all agreed needed to be addressed in the future.
   1. The acuity scoring for people with high behavioral needs does not accurately reflect the resources needed to serve these individuals, especially if they do not have other medical or adaptive needs in addition to their behavioral needs.
   2. The group agreed to capture additional information on active treatment costs and then revise the reimbursement to address active treatment. Additionally, since then, DODD is getting ready to implement service and reimbursement changes to day and vocational services funded through the waiver. ICF reimbursement should be in-line with waiver reimbursement to allow ICF residents choice in where they receive their day services.
6. The cost reporting for ICFs needs reviewed and streamlined to ensure that only necessary data is being requested. A comprehensive review of the ICF cost report hasn’t been completed in over a decade and it is time to complete this and hopefully reduce some of the administrative expense in completing this function.

Implementation Approach and Timelines

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| Regulatory Item | Budget Ask | Administration Proposal | Timeline/Priority |
| #1 Remove setting size barriers which often limit staffing efficiencies – due to DSP staffing crisis and long-term workforce projections | Unlicensed Settings size limitations (ORC 5126.01 (X)(1)(a))  Limitation on number of residential facility licenses (ORC 5123.196)  Allow for additional certified ICF beds (remove temp law section 261.130) |  | Budget Ask to compliment financial ask. |
| #2 Increased flexibility in licensed residential settings – due to DSP staffing crisis and long-term workforce projections | Allow waiver of the two people per bedroom when the physical space, needs and desires of the individuals served support the waiver (ORC 5124.70)  Create statute language to allow flexibilities that are currently restricted in OAC 5123-3-08 |  | Statute change via Budget process |
| #3 Reimbursement and Service Design Reform with the goals of simplification and long-term sustainability of waiver services |  | Simplify and prepare waiver system to be sustainable.  Address reimbursement complexities  Address broad range of service needs in residential settings in a way that creates a system that supports the key issues with recruitment and retention of direct support professionals. | Complete majority of proposal by end of June, finalize in first couple weeks of July |
| #4 Waiver Nursing & Medication Administration |  | Improve access and flexibility for waiver nursing services  Allow CBs & COGs to provide nursing services (OAC 5123-9-37)  Medicaid reimbursement for StationMD and other tele-health services  Develop reimbursement structure to allow for expanded use for medication dispensers and other technology solutions for health related needs (see separate presentation) | Create proposal by end of June with goal of rule revisions by end of summer |
| #5 Remote Supports Rule |  | Revise remote supports rule to increase flexibility, consider passive vs active supports, create structures for health related technology in collaboration with #5 above (OAC 5123-9-35) | Start with Hamilton County proposal and build upon it to address some additional concerns by end of June with hope to complete by end of summer |
| #6 Provider Compliance & County Board Accreditation |  | Transition from compliance reviews to technical assistance for providers in good standing.  Create self-review compliance tool for providers in good standing and otherwise accredited  Revise compliance structure for county board accreditation to focus on CB actions. | Create small group within the next month with a goal of creating a framework within 6 months to submit to the department. |
| #7 Provider Certification Requirement |  | One year waiver ends Sept 1st   * Remove 18 year old requirement * Remove HS Diploma/GED requirement   Allow shortened orientation and onboarding flexibilities  Revise training requirements | Create proposal to submit to the department by end of July. |
| #8 ICF Modernization | Will eventually be needed, but may not be FY24-25 budget | Request DODD reconvene the ICF reimbursement workgroup to review inadequacies in reimbursement formula  Review Cost Report to simplify and modernize | Create small group to develop recommendations by the end of September |
| #9 Multi-system Youth/IBSRAO | Remove temp law section 261.130 | Revise Intensive Behavior Support rate add-on rule (OAC 5123-7-28) to create a program addresses unmet needs  Review OACB ARPA proposal to build capacity | Temp Law change in Budget  Create small group to develop alternative proposal to the current IBSRAO program by October.  Follow up on ARPA proposal by end of June |