

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Developmental Disabilities

Regulation/Package Title: Transportation and Homemaker/Personal Care Rate Increases

Rule Number(s): 5123:2-9-24 and 5123:2-9-30

Date: September 4, 2013

Rule Type:

☐ New
☒ Amended

☐ 5-Year Review
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. 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 and Level One waivers are Medicaid Home and Community-Based Services (HCBS) waivers available to Ohioans with 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. The state has discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State Plan and other federal, state, and local public programs as well as the support that families and communities provide. The approved waivers are available at the Department's website

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(<http://dodd.ohio.gov/medicaid/Pages/CMS-Approved-Waivers.aspx>). An individual with developmental disabilities is enrolled in a specific Medicaid waiver based on his or her needs. Approximately 17,400 individuals are enrolled in the Individual Options Waiver and approximately 12,500 individuals are enrolled in the Level One Waiver.

Ohio has applied to the federal Centers for Medicare and Medicaid Services (CMS) to increase the payment rate for two services available to individuals enrolled in the Individual Options and Level One waivers:

- Transportation (as set forth in rule 5123:2-9-24) and
- Homemaker/Personal Care On-Site/On-Call (as set forth in rule 5123:2-9-30).

The Department's administrative rules for these services must be revised to reflect the new payment rates.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

5166.21

3. 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 Medicaid HCBS Waivers. CMS requires states to implement rules to administer Medicaid waivers. Rules governing Transportation and Homemaker/Personal Care services under the Individual Options and Level One waivers already exist and now must be revised to reflect the new payment rates. The rules will not become effective until CMS approves the new rates.

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

Not applicable; the rules do not exceed the federal requirement.

5. 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 required to implement Medicaid waivers approved by CMS. Ohio is seeking approval from CMS to increase the payment rates for two waiver services: Transportation and Homemaker/Personal Care On-Site/On-Call.

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

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The Department measures the success of regulations in terms of the number of individuals enrolled in and receiving services through the Individual Options and Level One waivers, the health and welfare of individuals enrolled in the waivers, individuals' satisfaction with the services they receive, and Ohio's compliance with the Medicaid HCBS program and the approved waivers.

Development of the Regulation

7. 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.

The Ohio Provider Resource Association (OPRA) led legislative effort to secure new monies for a waiver rate increase. The Ohio legislature responded to OPRA's call for a waiver rate increase by including in the recently passed state budget (House Bill 59 of the 130th General Assembly) \$5.42 million in Fiscal Year 2014 and \$5.42 million in Fiscal Year 2015.

In July 2013, the Department convened a group of stakeholders to discuss how to allocate the initial \$5.42 million in FY 2014. The group unanimously determined to increase rates for Transportation and Homemaker/Personal Care On-Site/On-Call. Representatives of the following organizations participated in the discussion:

- The Arc of Ohio
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Health Care Association
- Ohio Provider Resource Association
- Values and Faith Alliance

Through the Department's rules clearance process, draft rules are disseminated to representatives of the following organizations for review and comment:

- Advocacy and Protective Services, Inc.
- The Arc of Ohio
- Autism Society of Ohio
- Councils of Governments
- Disability Housing Network
- Disability Rights Ohio
- Down Syndrome Association of Central Ohio
- Family Advisory Council
- The League
- Ohio Association of County Boards Serving People with Developmental Disabilities
- Ohio Developmental Disabilities Council
- Ohio Health Care Association

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Ohio Provider Resource Association
Ohio Self Determination Association
Ohio SIBS (Special Initiatives by Brothers and Sisters)
Ohio Superintendents of County Boards of Developmental Disabilities
People First of Ohio
Values and Faith Alliance

The draft rules are simultaneously posted at the Department's *Rules Under Development* webpage (<https://doddportal.dodd.ohio.gov/rules/underdevelopment/Pages/default.aspx>) during the clearance period.

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

Individuals who receive services said the rate increases must be extended to independent providers (i.e., a self-employed person who provides services and does not employ anyone else to provide the services) as well as to agency providers (i.e., an entity that employs persons for the purpose of providing services). The rate increases apply to both types of providers.

Individuals who receive services and providers of services indicated the rate increases must apply to both the Individual Options and Level One waivers. The rate increases apply to both waivers.

Stakeholder organizations determined how to implement the rate increases.

9. 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?

Data regarding Individual Options and Level One waiver service utilization were analyzed to determine the impact of increasing the rates and to inform the stakeholder organizations in identifying the best approach.

10. 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?

The Department and the stakeholder organizations considered various scenarios with regard to services affected, percent of rate increase, and implementation timelines to determine which one would have the most beneficial impact. The group considered increasing the rate for other types of Homemaker/Personal Care (i.e., Routine Homemaker/Personal Care, Homemaker/Personal Care Daily Billing Unit, and Homemaker/Personal Care provided as Emergency Assistance under the Level One Waiver) but determined that increasing the

payment rate for Homemaker/Personal Care On-Site/On-Call and Transportation services yielded the best outcome.

- 11. 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; CMS requires Ohio to promulgate and enforce rules that regulate requirements and processes to be followed by administrators, providers of services, and recipients of services under Medicaid waivers.

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

The Department is responsible for promulgating rules regarding Medicaid waivers administered by the Department. The Department is amending existing rules to increase payment rates for two existing services under the Individual Options and Level One waivers, not creating new regulations.

- 13. 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 has committed to implement the payment rate increases as soon as possible, deemed to be January 1, 2014. The Department is working with the Ohio Department of Medicaid to secure CMS approval for the rate increases. Once the rules are amended to implement the new payment rates, the rates will apply to all providers of the services.

Adverse Impact to Business

- 14. 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;
- b. Identify the nature of the adverse impact (e.g., license 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.

Although the existing rules include requirements for providers of services including provider qualifications, provision of services, and service documentation, the amendments being made

to the rules have no adverse impact to the business community. The rules are being amended to increase the rate providers of services are paid for delivering the services. Providers led the legislative effort to secure new monies for a waiver rate increase and participated in the decision-making process to determine how the rate increase would be implemented.

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

The amendments being made to the rules have no adverse impact to the business community.

Regulatory Flexibility

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

Yes; rule 5123:2-9-24 sets forth that operators of commercial vehicles that provide Transportation are exempt from meeting certain staff training requirements and paying provider certification application fees required by rule 5123:2-2-01.

17. 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 under the following circumstances:

1. When failure to comply does not result in the misuse of state or federal funds;
2. When the regulation being violated, or the penalty being implemented, is not a regulation or penalty required by state or federal law; and
3. When the violation does not pose any actual or potential harm to public health or safety.

18. What resources are available to assist small businesses with compliance of the regulation?

The amendments being made to the rules do not impose any new requirements on providers. The payment rates will be modified in information technology systems to coincide with the effective date for the payment rate increases. Claims for payment for services provided on or after that date will automatically be paid at the higher rate. Staff of the Department's Medicaid Policy, Provider Certification, and Provider Payment and Support units are available to provide technical assistance should any be necessary.