CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Developmental Disabilities

Regulation/Package Title: ICFIID Cost Report

Rule Number(s): 5123:2-7-12 (Rescind and New)
5123:2-7-19 (Rescind)

Date: September 15, 2016

Rule Type:

X **New**
☐ **Amended**
☐ **5-Year Review**
X **Rescinded**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.

   Rule 5123:2-7-12 sets forth standards and requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFIID), other than state-operated ICFIID, to submit cost reports to the Department and maintain supporting documents and records. Rule 5123:2-7-19 sets forth costs that are not allowable through the cost reporting mechanism.

   ICFIID are residential facilities licensed by the Department that must meet federal Medicaid requirements to participate in the program. Approximately 5,600 Ohioans with developmental disabilities live at ICFIID which provide all aspects of residents' care and support.

The Department is revising rule 5123:2-7-12 to:

- Align with the current method of submitting cost reports through the Ohio Department of Medicaid's Medicaid Information Technology System (MITS) and requests for cost report filing extensions via email;
- Add timelines for cost reports submitted by downsized ICFIID and partially converted ICFIID;
- Correct references to the Revised Code, the Administrative Code, and the Ohio Department of Medicaid;
- Incorporate provisions from currently effective rule 5123:2-7-19; and
- Reorder provisions of the rule in a more logical manner.

The Department is proposing to rescind existing rules 5123:2-7-12 and 5123:2-7-19 and bring forth a single new replacement rule numbered 5123:2-7-12. Although the Department is planning to rescind existing rule 5123:2-7-12 and bring forth a "clean" new rule, a version of the rule that tracks revisions is being provided so stakeholders can readily see what is changing.

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

   5123.04, 5124.02, 5164.02

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; federal regulations require ICFIID to submit cost reports.

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 rule does 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)?**

   The rule ensures that ICFIID report cost information in a uniform manner in accordance with federal and state regulations.

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

The Department will measure success by the extent to which ICFIID timely submit complete and accurate cost reports.

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.***

Department staff discussed forthcoming changes to the cost report process at meetings of the ICFIID Reimbursement Workgroup on March 15 and August 16, 2016. The ICFIID Reimbursement Workgroup is comprised of representatives of:

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, the rule and the Business Impact Analysis will be 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 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 Department of Medicaid
Ohio Developmental Disabilities Council
Ohio Health Care Association
Ohio Provider Resource Association
Ohio Self Determination Association
Ohio SIBS (Special Initiatives by Brothers and Sisters)
Ohio Superintendents of County Boards of Developmental Disabilities
Ohio Waiver Network
People First of Ohio
Values and Faith Alliance

The rule and the Business Impact Analysis will be posted at the Department's *Rules Under Development* webpage (http://dodd.ohio.gov/RulesLaws/Pages/Rules-Under-

Development.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?**

   Stakeholders indicated the existing rule is out of date and difficult to follow. The Department reordered the rule content, added paragraph headings, and eliminated provisions that merely repeat statutory language.

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?**

   None.

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 responded to feedback from operators of ICFIID who asked that cost report data be submitted through a web-based system. The Department considered designing its own web-based system, but determined instead to capitalize on the existing Medicaid Information Technology System utilized by nursing facilities to report costs.

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. The Department is required to adopt rules to implement standards, requirements, and procedures to govern the ICFIID program. The federal Centers for Medicare and Medicaid Services requires Ohio to administer Medicaid programs in a manner that ensures statewideness. The purpose of this rule is to establish federally-compliant standards of accountability for Ohio's ICFIID.

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

    The rule applies to operation of ICFIID. The Department is charged with regulating the ICFIID program and consults with the Ohio Department of Medicaid with regard to rules governing the program.

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 will communicate information about the changes to all affected ICFIID in advance of the effective date of the rule (projected to be January 2017) and provide guidance and technical assistance directly to staff of ICFIID to ensure the rule is understood and applied consistently throughout the state.

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;

There are approximately 430 ICFIID that must submit cost reports in accordance with the rule.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rule already exists; the proposed revisions do not increase the rule's adverse impact. The rule requires ICFIID to report information which consumes staff resources; pay monetary damages for failing to retain required financial, statistical, or medical records; and sets forth that an ICFIID failing to submit cost reports in accordance with the rule may be subject to termination of its Medicaid provider agreement and/or reduction in its payment rate in accordance with Section 5124.106 of the Revised Code.

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.

Most ICFIID engage accounting firms to submit data on their behalf; the Department does not have access to details regarding those arrangements. The actual software used to create the cost report file remains unchanged. Submission of data via the Medicaid Information Technology System is faster and easier than the former method of submitting cost reports on an electronic disk with supporting paper documentation via U.S. mail.

In accordance with paragraph (I)(2), failure to retain required financial, statistical, or medical records to the extent that filed cost reports are unauditable renders the provider liable for the greater of $1,000 per audit or 25% of the amount by which the

undocumented cost increased the Medicaid payments to the provider during the fiscal year.

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

The requirement for ICFIIDs to submit cost reports is set forth in federal and state law. The rule is necessary to establish uniform requirements to be followed by ICFIID throughout Ohio.

Regulatory Flexibility

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

Paragraph (C)(2) exempts a new ICFIID/operator (i.e., one starting on or after October 2) from submitting a year-end cost report for that calendar year.

Paragraph (C)(4) permits ICFIID to request an extension for submitting a cost report.

Paragraphs (G)(2) and (G)(3) allow ICFIID an opportunity to provide additional information and documentation and revise cost reports before the Department issues a preliminary determination of whether reported costs are allowable.

Paragraph (H) sets forth that ICFIID may amend cost reports to correct material errors or include additional information.

Paragraph (I)(3) affords a provider whose records have been found to be unauditable 60 days to provide necessary documentation and avoid paying a penalty.

Paragraph (I)(5) allows ICFIID to make records available at alternative locations.

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?

Staff of the Department's Division of Medicaid Development and Administration will be available to answer questions and provide technical assistance as necessary.