

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Developmental Disabilities

Regulation/Package Title: Community Capital Funds for Licensed Residential Facilities

Rule Number(s): 5123:1-1-04

Date: January 14, 2015

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Rescinded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.

Rule 5123:1-1-04 is a proposed new rule that sets forth a process for the Ohio Department of Developmental Disabilities to make available community capital assistance funds for boards of county commissioners, county boards of developmental disabilities, and nonprofit corporations to develop licensed residential facilities for individuals with developmental disabilities who are moving from Intermediate Care Facilities for Individuals with Intellectual Disabilities (Intermediate Care Facilities) to smaller community-based homes.

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

5123.04, 5123.351, 5123.36, 5124.60

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- 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.**

The rule supports the federal initiative that individuals with developmental disabilities be served in integrated community settings.

- 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 a 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 Department is offering capital funding as an incentive for large Intermediate Care Facilities to convert beds to smaller community-integrated homes in accordance with Section 5124.60 of the Revised Code. Section 5123.351 of the Revised Code requires the Department to promulgate rules with respect to eligibility for state reimbursement of expenses incurred by facilities and programs established and operated for individuals with developmental disabilities.

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

The Department will measure success in the number of individuals with developmental disabilities moving from large Intermediate Care Facilities to smaller community-integrated homes.

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.**

In July 2013, the Department shared proposed amendments intended to incorporate this process into an existing rule (5123:1-1-03) with representatives of the following organizations:

Advocacy and Protective Services, Inc.
The Arc of Ohio
Autism Society of Ohio
Councils of Governments

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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
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

Based on feedback at that time, the Department determined instead to develop a new standalone rule (5123:1-1-04) to delineate the new process.

In August 2014, the Department shared a draft version of the proposed new rule 5123:1-1-04 with representatives of the following organizations for review and comment in advance of the Department's rules clearance process:

Ohio Association of County Boards Serving People with Developmental Disabilities
Ohio Developmental Disabilities Council
Ohio Disability Housing Network
Ohio Health Care Association
Ohio Provider Resource Association
Ohio Waiver Network
Values and Faith Alliance

The Department incorporated revisions to the draft rule based on feedback at that time.

Through the Department's rules clearance process, the proposed new rule and the Business Impact Analysis will be disseminated to representatives of the following organizations:

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

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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

During the clearance period, the proposed new rule and the Business Impact Analysis will be posted at the Department's *Rules Under Development* webpage (<https://doddportal.dodd.ohio.gov/rules/underdevelopment/Pages/default.aspx>) for feedback from the general public.

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

In 2013, the Ohio Association of County Boards Serving People with Developmental Disabilities indicated county boards did not want a role in the development of licensed homes resulting from conversion of Intermediate Care Facility beds; therefore, the Department developed a new standalone rule instead of amending an existing rule regarding community capital funds for development of unlicensed homes.

Based on feedback received after sharing the proposed new standalone rule with stakeholders in August 2014, the Department added provisions to clarify that applications for community capital funding will be considered for licensed residential facilities only when viable alternative housing options are not otherwise available in the local community and when the proposed licensed residential facilities meet federal guidelines for Home and Community-Based Services settings. Additional revisions were made to clarify that:

- The Department may provide funds for up to 90% of the total cost of purchase or construction; and
- Community capital funds may not be used to purchase or construct a residential facility when the cost exceeds by more than 10% the appraised value of the home.

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?

The Department considered data regarding current service delivery settings. Approximately 3,700 individuals with developmental disabilities reside in 139 larger (i.e., 9+ beds) Intermediate Care Facilities. This rule is intended to serve as an incentive for operators of large, older institutional facilities to convert licensed beds to small community-integrated homes.

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 considered incorporating the process for funding the purchase or construction of licensed residential facilities into an existing rule for funding unlicensed homes. Based on feedback from stakeholders, the Department developed a separate rule for the new process.

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 process for securing state funding must be delineated and uniformly followed to ensure consistency and fairness.

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

The rule delineates a process for securing community capital assistance funds from the Department; the Department is responsible for promulgating rules regarding its capital assistance funds. There are no other regulations in this area.

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 disseminate the rule via its electronic rules distribution list. Staff of the Department's Divisions of Legal and Oversight, Medicaid Development and Administration, and Residential Resources will collaboratively consider applications for community capital assistance funding to ensure consistency. The outcome of applications for requests to develop licensed residential facilities are posted at the Department's website (<http://dodd.ohio.gov/residential/Pages/Licensed-Facilities--.aspx>).

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.

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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.

- a. The potential scope of the impacted business community is 139 larger (i.e., 9+ beds) Intermediate Care Facilities that may choose to apply to the Department for funding assistance to convert licensed beds from Intermediate Care Facilities to smaller homes in the community to serve individuals with developmental disabilities who are enrolled in the Individual Options Medicaid Home and Community-Based Services Waiver.
- b. Applying for community capital funds under the rule requires staff of Intermediate Care Facilities to complete forms and report information. An applicant that is awarded funds may be subject to repayment of the funds if the applicant fails to comply with provisions of the rule.
- c. The time it takes for an Intermediate Care Facility to apply for community capital funds will vary depending on the nature and complexity of the proposal submitted. Department staff estimate that competing required forms will take four to twelve staff-hours. Additional time will likely be required to discuss the application with Department staff. Department staff will be available to answer questions and provide assistance as needed.

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

The rule sets forth a process for interested parties to apply for state funding. No one is required to submit an application for state funding. The regulatory intent is to expand opportunities for individuals with developmental disabilities to move from large institutional settings to smaller homes in the community.

Regulatory Flexibility

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

No. Applicants will be required to follow the process set forth in the rule to ensure consistency and fairness.

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?

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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 Divisions of Legal and Oversight, Medicaid Development and Administration, and Residential Resources will provide potential applicants and applicants with technical assistance as necessary throughout the process of applying for community capital assistance funds.