



February 9, 2017

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Ms. Phillips:

Thank you for the opportunity to provide testimony regarding the proposed rule OAC 5123:2-9-03.

My name is Steve Beha. I am the sibling of a brother and the father of a son who both rely on the services supported by the Ohio Department of Developmental Disabilities and the local county boards of developmental disabilities. I am also here representing The Arc of Ohio which is a statewide association made up of people with intellectual and developmental disabilities, their families, friends, interested citizens and professionals in the disability field. Together with our individual members and local chapters, we represent more than 330,000 Ohioans with intellectual and developmental disabilities as well as their families.

The Arc of Ohio echos the testimony of Disability Rights Ohio concerning this proposed administrative rule.

Individuals with intellectual and developmental disabilities as well as their families depend on Independent Providers to deliver the personalized care which they require to remain healthy, safe and a part of their community. Individuals and families from across the state have contacted us with their stories of how Independent Providers are an integral part of their life and they do not want to have their freedom to choose the services of their Independent Providers revoked by this proposed limit to their hours of service. We request that the state revise this rule to display real freedom of choice.

With a truly person centered service delivery system, there is no box into which every individual, every family or every provider of service will fit. However, this proposed rule places that box squarely around the hours of service and support that can be provided by an Independent Provider to an individual or a family, which limits their freedom of choice and retracts the promise of a person centered delivery system. We request that the state revise this rule to reflect true person centered service delivery.

We are greatly troubled by the outright revocation of an individual's right to obtain home and community-based services from any qualified and willing provider in section (E)(1) of this proposed rule. Individuals and families have the right to choose qualified and willing providers, including Independent Providers, according to the Code of Federal Regulations ([42 C.F.R. 431.51](#)) which states, "a beneficiary may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to furnish the services and willing to furnish them to that particular beneficiary." Likewise, the Ohio Revised Code ([ORC 5123.044](#) and [ORC 5126.046](#)) states, "an individual with a developmental disability who is eligible for home and community-based services has the right to obtain the services from any provider of the services that is qualified to furnish the services and is willing to furnish the services to the individual." The language of the proposed rule specifically limits the interpretation of those codes to exclude Independent Providers from the class of providers from which individuals and families have the right to choose. We request the state remove this revocation of an individual's right to choose home and community-based services from any qualified and willing Independent Provider.

While we understand the state's concern regarding the cost and efficiency of care, we have our own concerns that this proposed rule limiting Independent Providers to 40 hours per work week will place individuals and families in jeopardy given

the current difficulty of finding qualified and quality waiver supports. Many states have found solutions and have chosen to implement the US Department of Labor Home Care Rules in ways which allow for a more expansive role of Independent Providers than this proposed rule. The state of California allows 66-70 hours per week with exemptions that allow up to a maximum of 90 hours per week, the state of Washington allows for 60 hours of work per week, and other states have similar regulations with wide exceptions to allow for more hours of needed service. No one knows what the future holds or what liabilities it may contain, but we do know the importance of Independent Providers and the services they provide today. We request the state provide relevant and recent information from states that have successfully implemented DOL Home Care Rules without limiting an individual's freedom of choice as this proposed rule does.

The worry of provider fatigue, which this rule is presumed to address, is valid, but limiting the hours an Independent Provider works will not alleviate that concern. Individuals and families do not typically want their Independent Providers to work more than 40 hours in a work week, but they do so for the same reason Agency Providers do: The pool of qualified and quality staff is limited. Families as well as agencies both must make the choice of overtime versus no support at all. This rule does nothing to realistically reduce provider fatigue; rather it will increase family fatigue and reduce the access individuals have to available Independent Provider services.

Finally, I would like to present [Sam's Story](#). Anyone can find Sam's story on the website "My DODD" under the "My Services" category. As I read directly from DODD's example of how Sam works with an Independent Provider, think about how personal his services are, think if any of the proposed exemptions of emergency and provider shortage would apply to Sam or his Independent Provider and think of how his person centered services could be impacted if he was not able to choose his Independent Provider to work the hours he needed:

"This is Sam.

Sam needs help with a few things every day.

He needs help with things like getting in the shower and getting dressed.

Sam feels better when someone he knows really well helps him with those things.

He really does not like help from someone he has never met before.

Sam chose Leo to provide the services he wants.

Leo is a service provider that works on his own.

Sam and Leo discuss the services Leo will provide.

Sam feels better if Leo is the only person who helps him get in the shower or get dressed."

In Sam's Story, if Leo reached his 40 hour service limit on Thursday, Sam could have someone he doesn't know taking care of him on Friday and Saturday. Now, two days of service by another provider may not seem like much when developing a plan or when authorizing services or when writing a new rule. Two days per week may not seem like much until you are the one who has a stranger helping you get dressed or assisting you in the shower.

Thank you for your time and your consideration.



Steve Beha
The Arc of Ohio
Associate Director