

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Mental Health and Addiction Services

Regulation/Package Title: OAC Chapter 5122-28

Rule Number(s): OAC 5122-28-01 to 05

Date: 11/21/2014

**Rule Type:**

New

5-Year Review

Amended

Rescinded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.*

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The rules in Chapter 5122-28 apply to quality assurance, service evaluation, and research activities conducted by providers of mental health services who are certified by the Department of Mental Health and Addiction Services (Department). As part of the Department's review and consolidation of all rules after combining the Department of Mental Health and the Department of Alcohol and Drug Addiction Services, these rules have been reviewed and changes necessary to incorporate both mental health and alcohol and other drug (AoD) services have been made.

All of the rules in the Chapter have been amended to reflect both mental health and AoD services, to use the term "provider" instead of "agency"; and where appropriate references to the Revised Code have been updated.

5122-28-04 is being amended to remove a permissive statement regarding outcome reporting that was unnecessary in the rule. New paragraph (D) has been added in consultation with stakeholders to remove the requirement that clients be discharged after a set period of inactivity. In some settings clients may go extended periods without seeing or being in contact with a provider, and requiring treating the client as new in those circumstances serves no clinical purpose and imposes a burden on both the provider and the client. The amended rule allows for providers to not discharge clients, but does not change the requirement for reporting set by R.C. 5119.61.

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

R.C. 5119.36 and 5119.61

**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.**

No.

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

Not applicable.

**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)?**

These rules cover data gathering intended to improve both the provider's specific service delivery and the outcomes of the service provided under the auspices of state certification. Additionally, the rules provide for ethical guidelines for research activities undertaken by

providers. The rules protect client's receiving services and help to assure that limited resources are being properly allocated.

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

These rules are focused on data and data reporting, as such, the continued use of Department reporting tools is the measure of success of these rules.

**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 Department's standing Rules and Policy Committee has met on a monthly basis throughout calendar year 2014 and discussed these and other service certification related rules. The Committee is comprised of individual stakeholders and stakeholder organizations, including the Ohio Association of County Behavioral Health Authorities, the Ohio Council of Behavioral Health & Family Services Providers, and representatives from individual county boards.

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

Most changes to the rules are prompted by the department consolidation and presented no issue to the stakeholders. The changes in 5122-28-04 regarding client discharge are a direct input from stakeholders as an area in which client service could be improved.

**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?**

Not applicable.

**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 alternatives suggested by stakeholders have been fully incorporated into the rules.

**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.***

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Where possible the rules specify the outcome expected, and not how a provider should arrive at that data or process. The research activities rule does have some process based parts in order to specific ethical conduct.

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

These rules apply only to providers who are certified by the Department to provide mental health or AoD services, and apply only to those certified activities.

**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 rules are part of the certification requirements for providers and are applied to all certified providers. The rules are covered by the certified provider’s surveyor at the time of certification inspection.

**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;**

Any Department certified provider of mental health or AoD services pursuant to R.C.. 5119.36

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

A certified provider who is not in compliance with these rules could have restrictions placed on their certification, preventing the provider from providing services to statue funded clients. Compliance with the rules does require employee time to prepare and follow the proper procedures for data handling and reporting.

**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.*

The adverse impact for compliance with these rules will be in administrative overhead that will vary from provider to provider. Each rule requires developing a

process, which should already be in place for existing providers, and then collecting data or acting on the data presented through that process as needed. The research activities rule is an ethical standard to be used as part of the research process, and is also part of the administrative overhead of any research project. Total expenditures in employee time should be minimal once the initial procedures are established.

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

The need to insure resources are being properly expended and allocated justifies the collection of outcome data and performance improvement processes.

**Regulatory Flexibility**

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

No alternatives are provided, the rules are intended to protect the client and provide objective data regarding performance. Provider size is not an applicable concern to those areas.

**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?**

The Department works with providers to improve processes and bring them into compliance with rules at all stages, and will assist any provider to fix data issues.

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

The Department's Office of Licensure and Certification can provide assistance with determining a provider's needs and educational materials are available on these subjects.