

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Mental Health and Addiction Services

Regulation/Package Title: Employment Service

Rule Number(s): 5122-29-11

Date: August 7, 2014

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Rescinded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.

This rule amendment would provide a guideline for employment services for Ohioans with a severe and persistent mental illness and/or co-occurring substance use disorder. It would define acceptable evidence based and best practices along with appropriate services for this population.

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

R.C. 5119.22, R.C. 5119.36

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)?

Boards of alcohol, drug addiction, and mental health services contract with local providers to provide services, per R.C. 340.03. The providers must be certified to provide services as defined by the Department, per R.C. 5119.36. The service standards authorized by R.C. 5119.36(E) are set forth in O.A.C. 5122-29, and this rule is one of those service standards. It provides the standard for this service when being provided through the auspices of the state of Ohio. This rule has not been appropriately updated since the 1990's. With the onset of Governor Kasich's Employment First initiative, language needed updated to fall in line with this statewide initiative.

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

The OhioMHAS approved fidelity reviewer will monitor successful outcomes. In addition, the OhioMHAS licensure and certification department will monitor the increase in new agencies that are following the updated guidelines.

Development of the Regulation

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7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Paragraphs (B) through (D) were the direct result of a stakeholder group that is working to improve IPS in Ohio called the Statewide Employment Committee. It is a committee that is led by OhioMHAS and ODD. There have been monthly meetings since June of 2013 to establish these sections for a document for OOD. It was imperative that OhioMHAS and OOD language and procedures match. Stakeholder groups (which met most recently on 2/21/2014 include OOD, Case Western Reserve University, Ohio Empowerment Coalition, Lifepoint Solutions, consumer advocates, COVA, Zeff Center, Ohio Council of Behavioral Health Providers, Compass Family, Greater Cincinnati Behavioral Health, and CSS.

Additionally, OhioMHAS has presented this rule for review by its Rules and Policy stakeholder committee. This committee is comprised of stakeholders who review and provide feedback on all OhioMHAS rule actions.

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

Information for this amendment was a direct result of work done in the Statewide Employment Committee (a stakeholder workgroup please see above) that is attempting to assist Opportunities for Ohioans with Disabilities transform their agency culture.

Changes in layout, specifically paragraphs (B) and (C), were the result of discussions initiated by the Ohio Council of Behavioral Health Providers at Rules and Policy committee meetings. Originally the rule had one comprehensive list of employment services, which was confusing to providers and did not carry out the intent of the rule. The rule has been adapted to split up the list into activities and supports, and to make it clearer what a provider was expected to do when providing an employment service.

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?

Scientific data was used to develop the criteria for who will be considered an IPS provider as determined by research from the Psychiatric Center of Dartmouth University. The Psychiatric Center of Dartmouth University is the entity responsible for overseeing the evidence based practice.

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 agency did not consider regulatory alternatives as it was important to be in alignment with the Governor's Employment First initiative as well as existing Opportunities for Ohioans with Disabilities guidelines.

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.

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

The Department is the sole regulator for certified mental health services. Other agencies, such as OOD, may use this certification as the basis for providing funding or enhanced funding to providers. But OhioMHAS remains the entity responsible for setting the standard for the service.

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 amendment will be communicated to providers of employment services, but is not expected to dramatically change their operations. There is an IPS program in place currently which will not change; this rule amendment is codifying its operation to be in line with other agencies activities. Currently, IPS is the only certified employment service administered by OhioMHAS, although the rule is open ended to allow for providers to enter the employment service field using other 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;

Any service provider that is providing employment services as a certified provider through a board of alcohol, drug addiction, and mental health services.

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

An OhioMHAS approved fidelity reviewer pays for the overhead costs of compliance with the rule. There is some overhead cost in the staffing necessary to conduct this

service. OhioMHAS currently contracts with an external agency to provide fidelity reviews. This practice is expected to continue.

c. Quantify the expected adverse impact from the regulation.

An IPS service provider will incur some employment overhead costs as a cost of doing business; however the IPS program costs for certification are borne by the fidelity reviewer.

Non-IPS employment service providers would experience some overhead expenses in setting up and administering services. No service providers are working in this area yet, but the additional expense for employment services beyond certification in accordance with OAC Chapter 5122-25 would be minimal overhead involved in starting up and maintaining a new line of business.

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

The certification standard helps to ensure more individuals who have a severe and persistent mental illness and/or co-occurring disorder are working.

Regulatory Flexibility

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

Not applicable. This is a service definition and it would be inappropriate.

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?

Paperwork violations and first-time offenses that do not compromise client care are reviewed on a case-by-case basis and usually used as an opportunity to educate the provider.

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

OhioMHAS Office of Licensure and Certification, Office of Recovery Supports, and approved fidelity reviewers.