

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** Ohio Department of Mental Health and Addiction Services

**Regulation/Package Title:** Forensic Centers Review

**Rule Number(s):** 5122-32-01

**Date:** May 5, 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Rescinded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.*

The rule for forensic centers was due for its R.C. 119.032 five-year review by August of this year; and as part of that review the Department, in consultation with the directors of the forensic centers, is updating the rule to be consistent with statute, current practice, and current rule writing standards. The rule has some additional material added, but has also been reordered to follow a logical progression through the forensic center designation process. This reordering will result in the rule falling under the fifty per cent rule and will be filed as a simultaneous rescind of the existing rule and filing of a new rule.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

**The rule as a whole changes the name of the centers to “designated forensic evaluation centers.” Psychiatric is dropped in favor of evaluation as the center directors felt that it more accurately reflects what the centers do.**

**Paragraph (A) was changed to clarify that forensic evaluation centers are for adults or juveniles transferred under specific statutory provisions, and not juveniles in general.**

**Paragraph (B) specifies that this rule applies only forensic centers that are “designated forensic evaluation centers” and which are receiving department funds.**

**Paragraph (C) is definitions, which have been updated to be consistent with Chapter 5119. of the Revised Code.**

**Paragraphs (D) and (E) set forth that the Department establishes geographic regions within the state for the purposes of designating one forensic center in each region. Designated is used here, instead of the previous term certified. Certification has a specific meaning for providers and designates the type of mental health and addiction services the provider is certified by the Department to provide. The term designated was chosen to eliminate any confusion between the two processes.**

**Paragraph (F) are the requirements to be a designated forensic evaluation center. A provider must be certified to provide the forensic service, follow the requirements of this rule, and submit an application through a board in the geographic region in which the center is to serve. This paragraph also provides that a designated center may renew on an annual basis by resubmitting an application, and that the designation for a geographic region is not vacant unless a center does not renew or is not renewed by the Department for failure to comply with the rule.**

**Paragraph (G) lists the contents of the application for designation.**

**Paragraph (H) provides that applicants will be notified within thirty days of their application of their status, and that appeals may be made through the R.C. 119. process.**

**Paragraph (I) lists the physical and organizational requirements for designation as a center.**

**Paragraphs (J) to (N) list the operational requirements of a designated forensic evaluation center.**

**Paragraph (O) provides for a quality improvement process that exists through the Department’s work with the association of forensic center directors.**

**Paragraph (P) makes it explicit that a provider may be certified to provide forensic service, but not be a designated forensic evaluation center.**

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

R.C. 5119.10(B)(7)

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)?

Revised Code directs the Department to conduct evaluations of the mental condition of defendants as ordered by courts and for the treatment of defendants found incompetent to stand trial. This rule sets forth standards by which independent forensic evaluation centers can operate and carry out this function which is vital to the proper workings of the judicial system.

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

Success is measured by the availability of forensic evaluation services to the courts in each geographic area. The reporting of center activities to the Department insures that centers are conducting forensic evaluations and performing the function required of them by statute.

### **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 directors of all designated forensic evaluation centers were contacted by email throughout March and April of this year to discuss changes to the rule. The final changes to the rule were discussed and approved at a meeting on April 23, 2014.

The Association of Designated Forensic Evaluation Center Directors is:

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[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

Netcare Forensic Center (Columbus)	Terry Kukor
Court Clinic Forensic Services (Cincinnati)	Carla Dreyer
Forensic and Mental Health Services (Hamilton)	Jenny O'Donnell
Forensic Psychiatry Center for Western Ohio (Dayton)	Kara Marciani
Forensic Diagnostic Center of District Nine (Byesville)	Andrew Reisner
Psycho-Diagnostic Clinic (Akron)	Arcangela Wood
Forensic Psychiatric Center of Northeast Ohio (Youngstown)	Jerry Heinbaugh
Forensic Diagnostic Center of District V (Mansfield)	Dale Ruppel
Court Treatment and Diagnostic Center (Toledo)	Judy Forgac
Court Psychiatric Clinic (Cleveland)	George Schmedlen

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

**The directors were instrumental in fine-tuning the language of the rule. In particular the name change of the centers was at their suggestion, as well as the change from “precedence” to “priority” in paragraph (M), and expanding on the language for renewing designated status.**

**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 rule in general was kept consistent with the prior version of the rule because the statutory requirement for proper forensic evaluations has remained unchanged and consistency in both evaluators and methods is necessary to provide courts with the useful determinations. The association of forensic center directors did not have any recommendations for alternatives in the methods that centers are designated or the requirements of work for designated centers.**

- 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.*

This rule defines general outlines on the type of work that forensic centers are to make themselves available to do and that priority should be given to that work when using state funds. Beyond those guidelines, how the centers conduct their operations is up to them, and their day-to-day operations do vary depending on the demographics of the region they serve.

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

OhioMHAS is the state agency designated by statute for conducting these specific evaluations. Most juvenile evaluations are outside the purview of this statute and are handled by the courts separately.

- 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 rule changes do not contain large scale operational changes; however the centers have been included in the development of the rule and are already aware of all changes being proposed.

#### **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.

*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 rule is limited in scope to the eleven designated forensic evaluation centers, and any forensic provider who wishes to enter the business. At this time there have been no applications to be designated as the forensic evaluation center for a geographic region other than the current incumbent centers.

**While the rule does require designated forensic evaluation centers to conduct certain activities as set forth in paragraph (J), it is those activities that the center is receiving funding from OhioMHAS to conduct. Without that funding, those activities would not be regulated under this rule.**

**The centers are required to report statistical information to OhioMHAS on at least a quarterly basis. The statistical information consists of the number and type of evaluations being conducted, and is of the type that these businesses routinely keep. The direct cost to the centers is minimal administrative overhead to separate the appropriate data and send it to the Department.**

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

**The statutory intent is to have a source for reliable and competent forensic evaluations for Ohio's court system to use. The rule is intended to provide a baseline standard for centers and to intrude upon their operations as little as possible.**

### **Regulatory Flexibility**

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

**Not applicable.**

- 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 will work with any center that has issues with compliance, as consistency in the evaluation process is important to proper determinations.**

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

**The Department works closely with forensic centers, and the association of forensic evaluation center directors is also available to provide assistance to their colleagues.**