CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Mental Health and Addiction Services

Regulation/Package Title: Service Definitions

Rule Number(s): 5122-29-03, 5122-29-04,5122-29-05, and 5122-29-10

Rescinding – 3793:2-1-08(K), (L), (N), (O), (P), (S), (R), (W), and (X)

Date: March 9, 2016

Rule Type:

X New	**X 5-Year Review**
☐ Amended	**X Rescinded**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.

   As part of the merger of the Ohio Department of Mental Health (ODMH) and the Ohio Department Alcohol and Drug Addiction Services (ODADAS), the Department of Mental Health and Addiction Services (MHAS) is combining and updating the definitions of services provided by certified service providers. As part of this process MHAS has focused on updating content to be consistent with current practice and wherever practical remove the distinctions between mental health (MH) and alcohol and other drug services (AOD)/substance use disorder (SUD).

   The former service definitions for ODMH service rules can be found in OAC Chapter 5122-29. Within this chapter each individual rule typically defined a standalone service and the rule had no dependencies within the rest of 5122-29. The former ODADAS service definitions were in one rule, 3793:2-1-08. MHAS is working to have all services defined in 3793:2-1-08 combined with corresponding services in 5122-29 or adopted as new standalone rules within 5122-29. The Department will not proceed with filing these rules with LSC until all of the rules in 3793:2-1-08 have been accounted for in this fashion.

   However, MHAS will be putting these rules out for public comment and review by CSIO in several packages, to allow for an easier review of individual services.

   In this package there are the following rules:

   Assessment – The new rule 5122-29-04 will replace existing 5122-29-04 and 3793:2-1-08(K). This rule is a combined MH and AOD rule. It introduces a two-step assessment process, allowing for an initial "quick" assessment followed at a later date by a full assessment.

   COUNSELING AND THERAPY – The new rule 5122-29-03 will replace existing 5122-29-03 and 3793:2-1-08(N), (O), and (P). This rule is a combined MH and AOD rule. This rule has been consolidated to its essential elements, and has had the distinction between individual, group, and family counseling removed.

   CRISIS INTERVETNION – The new rule 5122-29-10 will replace existing 5122-29-10 and 3793:2-1-08(L) and (W). This rule is a combined MH and AOD rule. The rule has been shortened to focus on the essential elements of crisis intervention.

   MEDICAL SERVICES – The new rule 5122-29-05 will replace existing 5122-29-05 and 3793:2-1-08(S), (R), and (X). This rule is also a combined MH and AOD rule. The rule

is intended to be a certified service under which medical services can be provided within certain practitioners' scope of practice. This rule will for individuals receiving treatment for psychiatric symptoms or substance use disorders to also receive medical services related to those treatments from the same provider.

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

   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.**

   NA

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)?**

   R.C. 5119.36 states that MHAS shall establish certification standards that improve the quality of service or the health and safety of persons receiving services. The Department has kept the goal of improving service delivery through modernizing the service definitions foremost in the writing process.

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

   MHAS has data collection systems that measure patient outcomes and will be monitoring for improvement through that data.

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 rules in this package were shared with the Department's stakeholder roundtables in May and June of 2015. The roundtables are service providers who have direct

knowledge of these services and an interest in how they are rewritten. The roundtables are:

Addictions roundtable

Mental health roundtable

Prevention roundtable

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

   Stakeholders have provided input on several wording and technical changes, however their most significant input was on the format of the assessment rule and process. Because of dialog conducted in roundtable meetings with providers, the Department has moved to adopt a two-tier assessment process. Feedback from providers indicated the need to allow for a quicker but still valid assessment for some individuals to shorten the time to treatment. Additionally, other services have been modernized and focus on the minimum requirements for safe provision of the service, allowing the provider to operate. Particular attention should be given to the medical services rule, which combines several formerly discrete services and allows providers to act within their scope of practice and provide necessary medical services to individuals otherwise receiving services at an MHAS certified provider.

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 has used it clinical resources to develop the rule language.

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?**

    These rules are a complete rewrite and consolidation of existing programs; they represent alternatives that still meet statutory requirements to protect health and safety of individuals.

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.***

    In general, these rules represent a move away from process rules and work towards a performance or outcome based rule. Although there will always be a need for certain

process requirements in these types of rules, the intent is to define what a service is and let providers work within their scope of practice.

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

    These rules apply only to MHAS certified providers, and only within the context of certified services.

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 conduct an education and awareness initiative amongst certified providers. After adoption of the rules the Department will work with providers through regularly scheduled certification surveys to ensure consistent compliance.

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.

    These rules will impact any provider who is required to be certified to provide services by R.C. 5119.36. The impact of certification is found primarily in being compliant with overall provider certification standards found in OAC 5122-25 to 5122-28. Each provider will be impacted by these rules to whatever degree they provide the individual services in this package.

    However, the intent of the changes in this rule package is to simplify and consolidate. The medical services rule consolidates what had been four separate sets of requirements depending on what a provider was doing in a clinical setting. Likewise, the crisis intervention rule is simplifying a similar number of

requirements. The assessment process is both being simplified and updated to meet the needs of both individuals receiving services and those providing services. Time to treatment will be shortened, and administrative overhead can either be reduced or spread out to be more efficient. While there may be some adjustment that will have some administrative cost when providers switch service definitions, the long-term impact is expected to be a more efficient regulatory scheme that will save money and help individuals.

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

In discussions at stakeholder roundtables, this is the most balanced method the Department could adopt.

Regulatory Flexibility

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

No, exemptions based on business are not appropriate for service definitions.

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?

As a matter of routine, the Department prefers to work with providers and assist them with fixing issues rather pursuing enforcement actions. The Department would only pursue enforcement actions for those paperwork or first-time violations where malicious intent was apparent.

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

The Department will provide assistance during the transition to the new service definitions through its Bureau of Licensure and Certification.