

**Rule Summary and Fiscal Analysis (Part A)****Department of Mental Health and Addiction Services**

Agency Name

**Operations Management****Janel M Pequignot**

Division

Contact

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**5122:2-1-06****NEW**

Rule Number

TYPE of rule filing

Rule Title/Tag Line

**Board and agency dispute resolution.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **No**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **340.03(A)**
5. Statute(s) the rule, as filed, amplifies or implements: **340.03(A)**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being filed in order to establish and present the process by which boards and agencies can resolve a non-Medicaid contract dispute.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule;  
If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

This rule adds time frames for negotiations; requirement for written statement defining each party's position; removes antiquated ODMH positions listed in the rule; and spells out ODMH's role in the dispute resolution process as more of a resource, and less as an active participant in the mediation. It sets out a detailed time frame for the mediator and the mediation process; provides for non-binding arbitration as an option, and specifies that all discussions are pursuant to State and Federal Evidence Rule 408 (inadmissible in any legal proceeding), and are to be held confidential by the parties.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71

to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

*This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.*

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

4/13/10 Revision:

Paragraph (C)(2) - slight re-wording to and re-ordering of the sentence to increase clarity.

Paragraph (H) - removed errant " ) ".

Corrected RSFA Q # 7 to read Federal Evidence Rule 408 rather than 308.

10/1/2010 Refile:

Paragraph (A) - add additional clarification in sentence # 1, that this process is for resolution of "non-Medicaid" contracts, by adding "non-Medicaid" to the first sentence and deleting phrase "excluding medicaid covered services provided to medicaid consumers". Add "resolution process" to end of sentence.

Paragraphs (C), (D), (F) & (G) - added "calendar" wherever it did not appear in front of "days" in reference to timelines.

Paragraph (F) - added requirement that both parties agree in writing to make mediation agreement binding.

RSFA - included additional potential costs for mediation or arbitration and estimate of fees charged where these can be identified in Question # 15. Previous RSFA included

potential costs of county compliance in Question # 15. Question # 16 was changed to identify potential impact on counties and a Part B was filed to list potential costs to county. Clarified in Question # 6 that the dispute resolution process is for non-Medicaid contracts.

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

**FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

0

This rule will have no impact on revenues and expenditures.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

This rule is applicable only when a mental health Board and a contract provider have a contract dispute. Although not the initial steps for dispute resolution, the rule includes two avenues for dispute resolution, mediation and non-binding arbitration, which involve costs. The involved parties must equally split the costs of the mediator and/or arbitrator, plus pay their own expenses related to mediation and/or arbitration. Both parties must agree to mediation, so this is not a required cost in the dispute resolution process. The Department can require both parties to participate in non-binding arbitration.

The length of mediation and/or arbitration, and all required or optional costs, depend primarily on the complexity of the case and number of issues to be resolved. The estimated cost of a mediator and/or arbitrator is \$100 - \$300/hour, based on a review of industry websites and Ohio Department of Mental Health experience. Room rental charge, if one is not included in the mediator's or arbitrator's charge or a free room is not available, may range from less than \$100 for a short hearing, to a few thousand for a complex, multi-day hearing. A court reporter may be used to record the proceedings. A sample of industry shows fees ranging from \$45/hour to \$65/hour attendance fee and \$5.50/page to \$7.25/page transcription charge. The cost of a mediator and/or arbitrator, as well as a room rental fee (if incurred) and/or court reporter fee (if incurred), is to be equally split between the two parties.

Each party is also responsible for its own costs. A provider agency may choose to be represented by legal counsel, whose hourly fees vary, often ranging between \$100 to \$300/hour. A provider agency will need to utilize staff time when engaging in a dispute resolution process. This includes, if participating in mediation and/or arbitration, preparing for and attending the hearing. Current experience is that contract disputes are a rare occurrence, so when a dispute arises, these duties will presumably be included in involved employees' current job responsibilities, and no additional staff cost is anticipated.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

|                      |              |               |                            |
|----------------------|--------------|---------------|----------------------------|
| (a) School Districts | (b) Counties | (c) Townships | (d) Municipal Corporations |
| No                   | Yes          | No            | No                         |

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

We are unable to estimate the cost of compliance in dollars. This rule is applicable only when a mental health Board and a contract provider have a contract dispute. Although not the initial steps for dispute resolution, the rule includes two avenues for dispute resolution, mediation and non-binding arbitration, which involve costs. The involved parties must equally split the costs of the mediator and/or arbitrator, plus pay their own expenses related to mediation and/or arbitration. Both parties must agree to mediation, therefore there is no required cost of compliance with this rule for a party involved in mediation. The Department can require both parties to participate in non-binding arbitration. The length of mediation and/or arbitration, and all required or optional costs, depend primarily on the complexity of the case and number of issues to be resolved.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? *Not Answered*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please see Question # 2

**(a) Personnel Costs**

Each party is also responsible for its own costs. If a county mental health board and provider are not able to resolve an existing dispute and choose to participate in mediation or are required to participate in non-binding arbitration, a mental health board may choose to be represented by legal counsel. If the mental health board is represented by the county prosecutor, then it is anticipated that the representation is included in the prosecutor's duties and no increase in staff cost for the prosecutor is anticipated. A lawyer's hourly fees vary, often ranging between \$100 to \$300/hour. A mental health board will need to utilize staff time

when engaging in a dispute resolution process. This includes, if participating in mediation and/or arbitration, preparing for and attending the hearing. Current experience is that contract disputes are a rare occurrence, so when a dispute arises, these duties will presumably be included in involved employees' current job responsibilities, and no additional staff cost is anticipated.

**(b) New Equipment or Other Capital Costs**

There is no anticipated cost in this category.

**(c) Operating Costs**

There is no anticipated cost in this category.

**(d) Any Indirect Central Service Costs**

None known.

**(e) Other Costs**

The estimated cost of a mediator and/or arbitrator is \$100 - \$300/hour, based on a review of industry websites and Ohio Department of Mental Health experience. Room rental charge, if one is not included in the mediator's or arbitrator's charge or a free room is not available, may range from less than \$100 for a short hearing, to a few thousand for a complex, multi-day hearing. A court reporter may be used to record the proceedings. A sample of industry shows fees ranging from \$45/hour to \$65/hour attendance fee and \$5.50/page to \$7.25/page transcription charge. The cost of a mediator and/or arbitrator, as well as a room rental fee (if incurred) and/or court reporter fee (if incurred), is to be equally split between the two parties.

**6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.**

Current experience is that contract disputes are a rare occurrence. The Ohio Revised Code and current rule process requires that parties initially attempt to resolve a dispute through good faith collaboration and negotiation, prior to without needing mediation or non-binding arbitration. Agencies and mental health boards can avoid the cost by resolving a dispute without utilizing mediation or non-binding arbitration. Otherwise, boards will need to allocate funds from existing operating budgets.

**7. Please provide a statement on the proposed rule's impact on economic development.**

There is no anticipated impact on economic development.