CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Mental Health

Regulation/Package Title: IHBT/Provider Qualifications/Accreditation

Rule Number(s): 5122-24-01; 5122-25-02; 5122-29-17; 5122-29-28; 5122-29-30

Date: 16 April 2013

Rule Type:

New	5-Year Review
X Amended	Rescinded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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Rule 5122-24-01, Definitions, includes definitions used throughout the certification standards. The rule is being amended to remove duplicate definitions contained elsewhere, definitions no longer utilized and to reflect that providers now contract with the Ohio Medicaid agency for Medicaid services.

Rule 5122-25-02, Accreditation ~~Requirements~~ (proposed change to name of rule), lists the mental health services which currently require national behavioral health accreditation as a condition of ODMH certification, and contains rules to implement this program. The rule is being amended to include Intensive Home-Based Treatment and Assertive Community Treatment to the list of services, and to offer providers a choice in seeking accreditation prior to applying for ODMH certification, rather than making this a mandate.

Rule 5122-29-17, Community Psychiatric Supportive Treatment (CPST), contains the standards for this Medicaid approved community-based mental health service. The rule is being amended to remove the list of eligible providers/supervisors, which is contained in rule 5122-29-30, in order to be consistent with other ODMH service standard rules in Chapter 5122-29.

Rule 5122-29-28, Intensive Home Based Treatment (IHBT), describes short-term, intensive mental health services to a child and his/her family with a goal of preventing out-of-home placement, or to facilitate returning a child to a home. The rule is being amended to revise the description and activities which comprise IHBT service.

Rule 5122-29-30, Eligible Providers and Supervisors, contains the individuals permitted by scope of practice to perform ODMH certified services, and related definitions and information. The rule is being amended to remove duplicative providers, include additional providers eligible to provide and/or supervise Community Psychiatric Supportive Treatment (CPST) service and remove providers not eligible for Medicaid reimbursement. The eligible providers of IHBT service is being amended in accordance with Ohio scope of practice requirements based on the amended service standards and to reflect evidenced-based models upon which the rule is based.

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

   Sections 5119.61; 5119.611 and 5119.612 of the O.R.C.

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.

The State of Ohio plans to submit a Medicaid State Plan Amendment to the Centers for Medicaid and Medicaid Services requesting approval to include the amended IHBT service to the list of Ohio Medicaid reimbursable services with a goal of an July 1, 2013 implementation date. The IHBT rule amendments are necessary as part of this process.

The Federal Centers for Medicaid and Medicare Services (CMS) does not recognize certain providers as eligible to receive Medicaid reimbursement for ODMH certified services. ODMH is removing these individuals from the matrix of eligible providers/supervisors.

In addition, CMS does not currently recognize some individuals who are licensed and/or registered by the Ohio Boards of Psychology, and Counselor, Social Worker and Marriage & Family Therapists as eligible to provide Community Psychiatric Supportive Treatment (CPST) service for the purposes of seeking Medicaid reimbursement. ODMH is requesting CMS approve adding these individuals to the State Plan Amendment as approved providers/supervisors. The CPST rule amendment is necessary as part of this process.

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

   The IHBT rule is being amended in order to support the inclusion of these services in the federal Medicaid program. The IHBT service rule was developed based upon evidenced based practices, national behavioral health care accrediting body standards, and by incorporating feedback from stakeholders. A broader array of available Medicaid-billable mental health services will help improve consumer outcomes, decrease psychiatric hospitalizations for youth and adults, reduce out-of-home placements for children, all of which will also control costs associated with the expenditure of public funds.

   The requirement for agencies to first obtain national behavioral health accreditation for certain services was previously implemented at the request of providers and stakeholder organizations, and is intended to improve the quality of mental health services across the state, and reduce regulations by removing the duplicative Ohio Department of Mental Health survey process for already accreditation organizations. However, as part of the planned consolidation of ODMH and the Ohio Department of Alcohol and Drug Addiction Services, ODMH is proposing to align its accreditation rules with ODADAS', which make seeking accreditation voluntary. This is consistent with the recommendation of the provider regulations committee that was convened in 2012 to advise on regulatory matters related to consolidation. ODMH will still offer

deemed status for any appropriately accredited agency in accordance with the Ohio Revised Code. While accreditation may improve the quality of Medicaid billable mental health services, non-accredited agencies are still required to go through a state survey process, meet state requirement, and can and do provide quality mental health services, including some who may do so at the same level of quality as an accredited provider.

The matrix of eligible providers and supervisors of services is based, in part, upon the Ohio Revised Code.

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)?**

The Ohio Department of Mental Health is the state agency with the authority to develop service standards for Community Mental Health Medicaid services, and the Ohio Department of Job and Family Services, which administers the Ohio Medicaid Program, promulgates rules, when necessary, to authorize billing Medicaid for services.

O.R.C. 340.09 requires a service to be certified by ODMH if a Board wants to pay for a service using non-Medicaid (local) public funds.

The State of Ohio plans to submit a Medicaid State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) requesting approval to include the amended IHBT services in the list of Ohio Medicaid reimbursable services with a goal of a July 1, 2013 implementation date. In addition, division (E)(1) of section 5119.611 of the Ohio Revised Code states:

(E) "The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The rules shall do all of the following:

(1) Establish certification standards for community mental health services, including assertive community treatment and intensive home-based mental health services, that are consistent with nationally recognized applicable standards and facilitate participation in federal assistance programs."

This will increase consumer access to the service clinically determined appropriate to meet his/her treatment needs. The evidenced-based/informed, and emerging or clinical best practice models upon which these rules are based are known to improve consumer outcomes and keep youth and adults in the least restrictive environment, e.g. keep individuals out of more expensive inpatient psychiatric hospitals or allow youth to remain in their family homes, communities and schools. ODMH's goal is to support the utilization of these evidenced-based/informed, or emerging or clinical best practice models by developing standards based upon evidenced-based services.

The matrix of eligible providers and supervisors in rule 5122-29-30 is based upon scope of practice in accordance with the Ohio Revised and Administrative Code and, where applicable and when not in conflict with other requirements, national certifying or registering bodies.

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

   During the regional Ohio Department of Mental Health Community Mental Health Prior Authorization Trainings (October – November 2011), ODMH committed to work toward the addition of Health Homes, ACT and IHBT as Medicaid-billable services to increase the spectrum of Medicaid-billable services available to meet varying clinical intensity needs of Ohio's mental health consumers. The amendment of the IHBT rule is the next step in this plan. Recently ODMH and ODJFS promulgated a health home rule as a Medicaid reimbursable service in parts of Ohio, with full implementation expected by July 1, 2013. ODMH tracks state psychiatric hospital bed utilization, and will track cost savings associated with offering more clinically appropriate mental health services.

   ODMH will also monitor success by tracking the number of agencies which obtain/maintain IHBT certification to provide the service.

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.

   In 2011 - 2012, the Ohio Department of Mental Health invited a wide variety of stakeholders, including providers, consumers, and advocates using a variety of mediums (e-mail, other committee meetings, face-to-face, etc.) to participate on an IHBT committee for the purposes of amending the IHBT rules. Each committee met four times. The following is not an all-inclusive list of those who actively participated in committees and/or follow-up work to develop the proposed rules: Ohio Association of County Behavioral health Authorities, The Ohio Council of Behavioral Health & Family Services Providers, The Ohio Empowerment Coalition for Mental Health Recovery, the National Alliance on Mental Illness Ohio, Ohio Association of Child Caring Agencies, Inc., Ohio Federation for Children's Mental Health, Ohio Coordinating Center for Act, Center for Innovative Practice Coordinating Center of Excellence, Integrated Dual Diagnosis Treatment Coordinating Center of Excellence,

individual consumers and family members, and the Ohio Departments of Mental Health and Job and Family Services.

The amendments to rule 5122-29-17 and 5122-29-30 are based upon the input of the Ohio Boards of Psychology, and Counselor, Social Worker and Marriage & Family Therapists, each of which is responsible to identify the scope of practice for individuals licensed/registered under the authority of the Board.

In 2012, the Ohio Departments of Alcohol and Drug Addiction Services and Mental Health convened a provider regulations committee consisting of provider, trade association, other stakeholder and state government representatives to discuss regulations in relation to the planned consolidation of the two departments. The committee recommended that ODMH make obtaining accreditation voluntary in order to align with ODADAS' rule.

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

   The IHBT stakeholder committees each held four meetings and reviewed the proposed draft rules to provide input and discussion into both the service descriptions and standards. Input was incorporated throughout both rules. Additional meetings and discussion have occurred since the November posting of the rule package, with ODMH continuing to incorporate feedback.

   The provider relations committee included AOD, MH and dually certified providers, and recommended that ODMH make obtaining accreditation voluntary in order to align with ODADAS' rule. The committee attendees and full scope of work, including discussion of the ODMH and ODADAS accreditation requirement, is available at:

   http://adamh.ohio.gov/ConsolidationTeamWork/ProviderRegulation.aspx

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 committees reviewed and utilized various national standards in developing the IHBT rules. These national standards are known for emphasis on quality clinical practice and improved consumer outcomes. Taking in account that each ODMH Certified provider needs to implement its accrediting body standards as well as any evidenced based/informed, emerging or clinical best practice model utilized by the provider, the goal was to develop a final set of standards that are flexible enough to not conflict with any of these.

The IHBT committee considered standards from the following to inform the development of the Intensive Home Based Treatment Service rule:

- **Multi-Systemic Therapy* standards**
- **CARF standards for Intensive Family Based Services**
- **COA standards for Family Preservation and Stabilization Services standards**
- **Input from providers which utilize Functional Family Therapy***

*** Evidenced-based/informed, or emerging or clinical best practice models**

The Ohio Licensing Boards and the Ohio Revised Code identify scope of practice for licensed/registered individuals. In addition, MST and Functional Family Therapy, which are evidenced-based models, along with COA require the individual providing the service be appropriately licensed by a state licensing board, e.g. social worker or counselor. This is consistent with division (E)(1) of section 5119.611 of the ORC which was previously cited in its entirety in Question # 5, and which states, in part, "Establish certification standards for community mental health services, including assertive community treatment and intensive home-based mental health services, that are consistent with nationally recognized applicable standards and facilitate participation in federal assistance programs."

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 Department used a variety of models to develop the final rules.

Although the credentialed individuals ODMH is proposing to add to the list of eligible providers/supervisors are permitted under the Ohio Revised Code and/or state licensing boards to provide Community Psychiatric Supportive Treatment service, CMS must approve adding the individuals to the State Plan Amendment so that ODMH certified agencies can bill Medicaid for services rendered by these individuals.

ODMH considered and discussed with stakeholders the option to not make a revision to paragraph (A) of rule 5122-25-02 which currently requires accreditation as a condition of accreditation. However, ODADAS providers have previously expressed support for the current ODADAS rules 3793:2-1-01 and 3793:2-1-01 which do not require providers to obtain accreditation as a condition of certification, but provide for an accredited agency to be granted deemed status, which means an agency's accreditation is accepted as evidence of compliance with ODADAS standards. Deemed status recognition by ODMH and ODADAS is mandated by the Ohio Revised Code.

Maintaining the rule without amendments does not allow the provider to decide whether to obtain accreditation or undergo a state survey process.

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.***

    The model developed for delivering IHBT focus on broader parameters for service delivery and incorporate flexibility at the provider level.

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

    The Ohio Department of Mental Health is the state agency with the authority to develop service standards for Community Mental Health Medicaid services, and the Ohio Department of Job and Family Services, which administers the Ohio Medicaid Program, promulgates rules, when necessary, to authorize billing Medicaid for services. ODMH works in tandem with ODJFS to develop rules which are complementary rather than duplicative.

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.**

    Chapters 5122-25 to 5122-29 of the Administrative Code define a certification process that is the same for all providers. At the request of a majority of providers, ODMH offers deemed status for its certified agencies by requiring national behavioral health accreditation, and accepts the accrediting body review of standards as evidence of meeting ODMH requirements. If the rule is changed to make obtaining accreditation voluntary, ODMH will still offer deemed status in accordance with the Ohio Revised Code.

    ODMH can conduct webinar training on the revised service standards.

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 currently certified community mental health providers which voluntarily chooses to add IHBT and/or CPST service to its existing ODMH Certification, any ODMH certified provider currently certified for one or more of these services, or any new provider which wants to become certified by ODMH and

provide one of more of these services. Please note that, while an agency must by certified by ODMH in order to bill Community Mental Health Medicaid for eligible services, an agency may choose which of the Medicaid eligible services which it wants to provide – a Certified agency is not required to provide all Medicaid services, and would not be required to add IHBT to its agency certification.

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

ODMH Certification is required in order to bill Community Mental Health Medicaid or receive a contract with the local community mental health board to receive local public funds to pay for services. There is no ODMH requirement for a certified agency to obtain certification for IHBT service.

If ODMH does not amend rule 5122-25-02 and make accreditation voluntary, providers will be required to continue to obtain behavioral health accreditation prior to applying for ODMH certification. Accreditation fees are higher than certification fees charged by ODMH. By rule, fees are waived for accredited organization.

Please note that currently certified and accredited providers are not required to pay the costs of an off cycle accreditation survey, which would increase agency costs. Instead ODMH will certify at no cost an already accredited/certified agency that demonstrates conformance to ODMH rules for IHBT and then allow a limited time (up to 4 years depending on accrediting body and accreditation cycle) after obtaining ODMH Certification to add the appropriate accreditation.

Agencies currently certified for IHBT may also need to dedicate staff time to train on/implement the standards, dependent upon the current model/standards which the agency utilizes.

The amendment to add additional providers to the list of eligible providers/supervisors of CPST service is expected to increase the pool of qualified staff from which providers may hire. There is no known required adverse impact as a result of this amendment. Whether to tie wages and benefits paid based upon an individual's credentials is a business practice decision, and not tied to the proposed regulations.

The amendment to remove certain providers from the list of eligible providers/supervisors is being proposed to add a safeguard to assist agencies in not inappropriately billing Medicaid for non-CMS approved provider/supervisors, or, for IHBT service, to align with scope of practice and evidenced based models.

The amendment to implement a yearly external fidelity review for providers of IHBT service is being proposed to support the delivery of evidence- based and promising practices, those which research has shown lead to positive consumer outcomes.

Maintaining the existing accreditation requirement creates an adverse impact, and ODMH is proposing to eliminate it by amending rule 5122-25-02.

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.

Accreditation fees vary based upon accrediting body; agency size including budget, number of locations, consumers served and staff; number of services accredited, etc. Average fees range from $6895 to $20,000 for a 3 or 4 year accreditation, although fees can be higher or lower. This is based upon fee schedules provided by the accrediting bodies. Some agencies already have accreditation in IHBT. Agencies may or may not incur an additional accreditation fee if choosing to add IHBT service. This is dependent upon the accrediting body standards and agency size (including number of consumers, staff and sites), and ODMH is unable to estimate the cost of an increase, if applicable. If rule 5122-25-02 is amended as proposed, then an agency which does not have behavioral health accreditation may be required to pay a fee to the Department as required by the Ohio Revised Code. However, the ODMH fee schedule is lower than those charged by accrediting bodies. If ODMH does not amend rule 5122-25-02 requiring accreditation prior to obtaining ODMH certification, new providers will continue to have difficulty obtaining funding to provide services to meet accrediting body requirements, and will be required to pay the higher accreditation fee as opposed to the certification fee charged by ODMH. The fee schedule is available at:

http://mentalhealth.ohio.gov/assets/licensure-certification/rules/5122-25-08.pdf

The amount of additional staff time to implement the standards is difficult to estimate. It may differ based upon the expertise of employees within the agency, size of IHBT programs, number of staff, etc. In addition, some agencies already provide IHBT and exceed the ODMH standards due to implementing an evidenced-based practice or accrediting body standards, and will need to make few, if any, changes to implement the regulations.

ODMH made the external fidelity review flexible (non-specific) in regards to how a provider obtains an external fidelity review. Providers may partner with other providers to conduct the review for each other, at a minimum cost of staff time to conduct the reviews. If a provider utilizes a paid external reviewer, the estimated cost for a review is: 1) Center for Innovative Practices (IHBT fidelity review) = 8 – 12 hours per review at a cost of up to $125/hour.

There will be a salary cost increase for any agency which currently utilizes a two-person team that includes one unlicensed individual to provide IHBT. The new rule requires both persons to be licensed. According to The Ohio Council of Behavioral Health and Family Services Providers 2010 Compensation and Benefits Survey Report, the state-wide average annual salary cost difference between an unlicensed individual and a bachelor's level licensed social worker ranges from $1800 (unlicensed person with a master's degree) to $9,300 (unlicensed person with no post high school education. Actual salary costs may vary based upon region in the state, or other licenses, e.g. hiring a master's level social worker, counselor or marriage and family therapist rather than a bachelor's level social worker.

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

Ohio is not able to add a service as a community mental health Medicaid covered service without implementing standards and the ability to assure compliance.

Requiring a fidelity review supports the delivery of evidenced based or promising practices in order to achieve better consumer outcomes.

Persons eligible to receive IHBT service are those assessed to need higher level of mental health services to remain in or return to their homes. Requiring licensure of individuals providing IHBT service ensures that staff are qualified to provide this

intensive clinical service in its entirety, and is consistent with the evidenced based practices upon which the IHBT rule is based, leading to better outcomes.

IHBT is a bundled services, i.e. a combination of other ODMH certified services including behavioral health counseling and therapy, mental health assessment, and community psychiatric supportive treatment (or health home services). Certified agencies which currently provide IHBT are required to bill for the services unbundled. This increases the costs to the agency, including documentation (service provider has to write multiple progress notes) and associated billing costs. After CMS approval of IHBT as Medicaid billable services, an agency may continue to bill for the services unbundled if it chooses not to implement the new standards.

Regulatory Flexibility

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

    No, the regulation does not provide exemptions or alternative means of compliance for small businesses. However, ODMH was flexible in how any sized agency may obtain an external fidelity review. An agency may request a waiver or a variance pursuant to OAC 5122-25-06.

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?**

    ODMH's general practice is to require a written plan of correction, whereby a provider identifies how it will correct a violation that cannot be immediately corrected. ODMH does have the authority to issue a probationary Certificate in place of a full certificate when (a) Serious deficiencies are found during the department's determination of an agency's compliance with the certification standards; or (b) The agency's documented corrective action(s) is not approved by the department. There is no penalty associated with issuing a probationary certificate, i.e. the agency may still provide and bill for the service as long as the service is medically necessary and documented. ODMH does not have the authority to allow expenditure of public funds for services which are not medically necessary and undocumented.

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

    ODMH has staff available to provide technical assistance and training on the standards. ODMH sponsors yearly CARF and Joint Commission training for providers to assist with maintaining conformance to accrediting body standards. By contracting directly

with the accrediting bodies, ODMH is able to offer the training at fees of approximately $200 - $400 less per person, and eliminate out-of-state travel costs.

ODMH block grant funds the Center for Innovative Practice (CIP). CIP offers consultation and technical assistance to agencies on implementation of IHBT service.

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