

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

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

**Regulation/Package Title:** Preadmission Screening and Resident Review (PASRR)

**Rule Number(s):** 5122-21-03

**Date:** 6/19/2014

**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☐ Rescinded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.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

States must meet federal requirements for Preadmission Screening and Resident Review for individuals with developmental disabilities and mental illness detailed in 42 C.F.R. 483.100 to 42 C.F.R. 483.138. The regulations require a determination that a person requires the level of services provided in a nursing facility prior to the person's admission to a nursing facility. Rule 5122-32-03 sets forth processes to be followed by the Ohio Department of Mental Health and Addiction Services to determine whether Ohioans with a serious mental illness (SMI) requires the level of services provided in a nursing facility and whether the individual requires specialized services for mental illness.

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Changes to the rule have been made necessary by House Bill 59 of the 130th General Assembly, which removed the availability of the “hospital exemption” from hospitals or units licensed or operated by OhioMHAS. Previously, R.C. 5119.40 allowed for individuals being admitted to a nursing facility directly from a OhioMHAS hospital or a OhioMHAS licensed hospital to bypass the preadmission screening process. This exemption has been removed and the rule is being updated to reflect the change. Individuals being admitted from other hospitals can still qualify for the exemption.

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

R.C. 5119.40

**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.*

Yes; the rule implements the federal Preadmission Screening and Resident Review program codified in 42 C.F.R. 483, Subpart C, to ensure that only persons who require the level of services provided by a nursing facility are admitted to nursing facilities.

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

Not applicable; the rule does not exceed the federal requirement.

**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)?**

Ohio is required to implement the federal program. Additionally, the removal of the hospital exemption for individuals coming from OhioMHAS hospitals or licensed hospitals, such as psych-wards in larger hospitals, ensures that individuals are being matched with the proper care for their needs.

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

The regulation is successful when only those individuals who truly require the level of services provided in a nursing facility are admitted to nursing facilities and when individuals with serious mental illness who have been admitted to nursing facilities receive specialized services that meet their needs.

**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.**

The Ohio Hospital Association and Operators of freestanding psychiatric hospitals were informed of the change to the Ohio Revised Code and pending changes to the Ohio Administrative Codes in a long-term care services and supports transmittal letter (LTCSS-TL) 13-08, which was signed by Director John McCarthy of the Department of Medicaid on September 26, 2013.

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

Although the rule was not changed due to discussions with stakeholders, as the rule change is being driven solely by the statutory change, OhioMHAS received direct feedback from stakeholders about the impact of the change statutory and rule change. This feedback was used to inform the development of a process to expedite Pre-Admission Screening determinations on patients being discharged from hospitals and units that were impacted by the change to the Ohio Revised Codes. OhioMHAS and other state agencies involved in the multi-agency implementation of Pre-Admission Screening and Resident Review concluded the turnaround time of 48-hours was the minimum amount of time that would be needed to ensure the integrity of the clinical assessment and determination process required under federal law.

**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?**

Data regarding the number of individuals transferring or being admitted to a nursing facility from a psychiatric hospital or a psychiatric unit within a hospital were reviewed and considered to inform the process set forth in paragraph (H) of the rule to ensure evaluations could be conducted in a timely manner.

**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?**

Alternatives within the rule itself were not viable as this rule implements a federal and state requirement and there is little flexibility in what can be done in the situation. However, the Department has determined a method of reducing the impact of the rule change on the hospitals covered by the rule, and will be implementing expedited reviews for those hospitals.

**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.***

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No; this rule is a safeguard to ensure that individuals with serious mental illness are not admitted to nursing facilities unless they require the level of services provided in a nursing facility.

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

Staffs of the Ohio Department of Medicaid, the Ohio Department of Developmental Disabilities, and the Ohio Department of Mental Health and Addiction Services work together to ensure the agencies' respective rules and the processes set forth therein are well-coordinated and are not duplicative. The OhioMHAS rule is limited to its facilities or facilities licensed by the Department.

**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 is coordinating with the Ohio Department of Medicaid, the Ohio Department of Developmental Disabilities, the Ohio Department of Aging, the Ohio Department of Administrative Services, and the state Contractor to simultaneously implement new rules for a smooth and uniform transition throughout Ohio.

**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 business community impacted by this rule change are the OhioMHAS licensed hospitals and psych-wards.

Estimates developed in conjunction with the business community predict that for each individual who remains in a hospital or psych-ward awaiting preadmission screening costs the facility approximately one thousand dollars per day. The federal guidelines

for conducting preadmission screening recommend completing the screening within seven to nine business days from the time of the request from the facility. The Department has typically completed the screening in two to three business days. Based on average of a seven calendar day turnaround for screenings and 1,800 screenings per year, the total cost to stakeholders is \$12.6 million a year. Due to the change in the statutory authority, stakeholders are already impacted by the loss of the hospital exemption regardless of the proposed rule change.

In an effort to mitigate the impact of this rule change on the impacted facilities, the Department is implementing through policy an expedited screening process. The expedited screening will be completed in no more than forty-eight hours after the request is received from the hospital. The expedited screening is expected to cost the Department up to \$500,000 per year to conduct, with seventy-five per cent of that cost reimbursed by the federal government.

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

These rules are being amended to comply with statutory changes to the hospital exemption policy in accordance with section 5119.40 of the Revised Code.

**Regulatory Flexibility**

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

The federal requirement for preadmission screening does not permit any such changes for small businesses; however the expedited screening will be available to all impacted businesses and should help to significantly mitigate the impact of this rule change.

**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?**

It is the policy of the Department to waive penalties for first-time or isolated paperwork or procedural regulatory noncompliance whenever appropriate. The Department believes the waiver of these penalties is appropriate under the following circumstances:

1. When failure to comply does not result in the misuse of state or federal funds;
2. When the regulation being violated, or the penalty being implemented, is not a regulation or penalty required by state or federal law; and
3. When the violation does not pose any actual or potential harm to public health or safety.

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

The Department's PASRR bureau will be working closely with all impacted businesses to provide updates and answer any questions. Training and information for taking advantage of the expedited screening will be made available.