

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

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

**Regulation/Package Title:** 5122-27, Individual Client Records

**Rule Number(s):** 5122-27-01, 5122-27-02, 5122-27-03, 5122-27-04, 5122-27-05, 5122-27-06, 5122-27-07, 3793:2-1-05, and 3793:2-1-06. Revised to include 5122-27-08 and 5122-27-09

**Date:** 7/24/2015 (Revised 9/2/15) \_\_\_\_\_

**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☒ Rescinded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.

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## **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 consolidation between the Ohio Department of Mental Health and the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), the Ohio Department of Mental Health and Addiction Services (Department) is consolidating the rules regarding the certification of services provided by mental health and alcohol and other drug addiction (AoD) service providers. As part of that consolidation, the client record rules in OAC Chapters 5122-27 and 3793:2-1 have been reviewed and consolidated into one chapter. In addition to consolidating the mental health and AoD aspects of the rules, the subject matter has been updated and revised to be more efficient and in line with changes in the field. As a result the structure of the chapter has been changed and all rules within it are being rescinded and filed as new. Certain provisions of these rules were adapted from the CMS State Medicaid Manual, section 4221, which can be found in Chapter 4 at: <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html>.

5122-27-01: This rule sets forth the providers and services the client records requirements apply to, and modifies the requirements for some services for which the general requirements would not be applicable.

5122-27-02: This rule sets forth the specific requirements for each client's record. The client record is to include such items as documentation of consent and acknowledgment of notification costs.

5122-27-03: This rule sets forth the requirement that each client shall have a individualized treatment plan (ITP). The ITP is developed in cooperation with the client and has a minimum amount of information regarding treatment as specified by the rule. The rule also sets forth specific time lines for developing the initial ITP and reviewing the ITP on a periodic basis.

5122-27-04: This rule sets forth the requirements for progress notes to be entered into the client record. Progress notes document the provision of individual services when the service is provided or on a daily to weekly basis.

5122-27-05: This rule sets forth the requirements for discharge summaries.

5122-27-06: This rule sets forth the requirements under which client information can be released and the authorization that a provider must obtain prior to releasing information.

5122-27-07: This rule sets forth AoD specific level of care protocols. While the goal is to integrate MH and AoD aspects, this is an area in which the separation is still necessary. A

future version of this Chapter will integrate both MH and AoD level of care. The rule requires the use of American Society of Addiction Medicine (ASAM) criteria for determining the level of care for clients.

**5122-27-08: This rule is being rescinded. The content is now in rule 5122-27-06.**

**5122-27-09: This rule is being rescinded. The content is being moved to OAC 5122-26-08.1, where it fits better with service provider policies and procedures.**

3793:2-1-05 and 3793:2-1-06 shall be rescinded, and the 5122-27 rules will take their place.

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

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.**

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)?**

R.C. 5119.36 requires the Department to establish certification standards and procedures, and fees, for service providers who fall under its regulatory authority. The standards in these rules are designed to insure the quality of care and the health and safety of those receiving services under programs funded and certified by the Department

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

Success of the service certification rules and program is measured by continued provider certification and compliance with these standards.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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**If applicable, please include the date and medium by which the stakeholders were initially contacted.**

The changes in this rule package have been discussed as part of the Department's Rules and Policy committee. The committee is composed of both individual stakeholders and trade groups representing both client and provider interests. Please see attached list for members.

The Committee met and discussed some or all of the rules in this package on:

January 24, 2014

February 28, 2014

May 23, 2014

June 27, 2014

July 18, 2014

August 22, 2014

September 26, 2014.

Prior to submitting the final version of these rules, the material was submitted to three separate stakeholder roundtables from April 9, 2015 to May 8, 2015. The roundtables are for Mental Health, Prevention, and Addiction; and are composed of stakeholders who are providers of services in those areas. Written comments were also received from The Ohio Council of Behavioral Health & Family Services Providers (Ohio Council).

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

Stakeholders provided extensive input on the revision of the Chapter and integration of the MH and AoD material. In particular it was requested that the material reflect closely the Medicaid requirements found in the CMS manual, referenced above. While the OhioMHAS rule does have some additional requirements, the Medicaid manual was used as the framework and the rule only deviates when it is felt necessary to carry out the statutory requirement to protect the health and safety of clients. Input from the stakeholder roundtables and the Ohio Council regarding the rules in the May of 2015 resulted in further refinement of the rules, including modifications to the treatment plan process to integrate mental health and AoD providers and to provide an efficient two-step process that allows for more flexibility in working with clients.

**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?**

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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 rules reflect the results of long discussion amongst the Department and competing stakeholder interests. Some of the rules went through several distinct versions before a consensus was reached.

**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.***

Where possible the rules are outcome focused, the directive is to have policies and procedures for a certain subject or to meet certain standards. However, by necessity to protect health and safety or to insure quality of care, the rules are process focused.

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

The rules in this package apply only to service providers who are required to be certified by R.C. 5119.36.

**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 already certifies providers of both MH and AoD services, and is in contact with the regulated community. The new client record requirements will be communicated to the field as the rules become effective.

**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 service provider as defined by R.C. 5119.36

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

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The adverse impact is the time required to keep and maintain the required records.

**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.**

This Chapter requires that each client have a record that is unique to them, and that record meet certain minimum requirements for documenting the client, the client’s treatment plan, the progress of that treatment, and how the client’s discharge is to be documented. This documentation will be conducted by the clinicians and staff of each service provider.

All providers currently certified by the Department, whether they are mental health providers certified under OAC 5122 or AoD providers certified under OAC 3793 must meet client record requirements. This rule package is part of the consolidation of the certification requirements for those disciplines and should lessen the administrative burden overall.

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

The Department is required to certify service providers to insure the quality of care and the health and safety of those receiving care from providers receiving state and federal funds.

**Regulatory Flexibility**

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

No, the rules are intended to protect the health and safety of the clients and the size of the provider business is generally not a consideration in that area.

**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?**

Penalties with regards to this rule package are a denial, suspension, or revocation of certification. The Department works with providers to insure that violations are presenting a risk to health and safety before moving forward with any disciplinary action.

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

The Department's Office of Licensure and Certification can provide assistance to any provider.