

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Mental Health and Addiction Services

Regulation/Package Title: Peer Recovery Services

Rule Number(s): 5122-29-15, 5122-29-15.1

Date: December 29, 2015

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☐ Rescinded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.

Rule 5122-29-15 sets forth the requirements of a redesigned peer service. Peer recovery is a service intended for those with mental illness or a substance use disorder, or both, and is intended to support that person's recovery. The service may be provided in a number of ways and settings, but must be provided by someone who is qualified by experience and training to provide the service.

Rule 5122-29-15.1 sets forth the requirements for becoming a certified peer recovery service provider. An individual wishing to obtain this certification must pass criminal records check, obtain training, pass a Department administered test, and be in recovery themselves.

After receiving stakeholder feedback during the first public comment period, the rule was split into two parts which separates the professional certification from the service definition. Also significantly changed do to stakeholder input is the criminal records check and exclusion for criminal offense provisions. The rule now only requires a clean criminal record check for three years prior to application, provides a shorter list of excluded offenses and only those which are serious enough to warrant permanent exclusion from certification, and a waiver provision has been added.

Additionally, there was some confusion as to role of these rules and the need to provide "grandfather" provisions for those currently providing peer services. The peer recovery service is one of the services that can be provided by a provider certified by the Department pursuant to OAC Chapter 5122-25. Providing the service as a certified service provider is primarily done so as to enable funding through Medicaid, a board of alcohol, drug addiction, and mental health services, or similar funding source listed in OAC 5122-25-01. In order to provide the service as a certified provider, the provider must use individuals who have received the professional certification as set forth in proposed 5122-29-15.1.

Those engaged in peer recovery work currently that do not wish to work with Medicaid or other state payer sources, may continue to do the work they are engaged in. In order to have peer services as a Medicaid billable service, the Department must seek out a professional certification process. Currently, no other state agency or board is certifying peer recovery professionals, and the Department is taking on the task to allow for the Medicaid service.

Of those individuals currently engaged in peer recovery services, it is estimated about half are fully trained and qualified for the certification. These individuals need only submit an application for certification. Of the remaining individuals, most likely only need the online training and the Department administered test. Currently, the Department administer the test

at various locations around the state as needs arises but is endeavoring to have the test fully online in the near future.

There is no need to “grandfather” existing individuals providing peer services, as they may continue to provide services if their payer source allows. Individuals may find that they need to obtain the certification in 5122-29-15.1 because their employer is a OhioMHAS certified service provider and requires their employees to be qualified pursuant to the service definition in 5122-29-15 in order to receive funding. The Department is working to ease this transition as much as possible.

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.

Yes. The Centers for Medicare and Medicaid Services (CMS) issued federal guidance in 2007 stating the Peer Services may only be paid for by Medicaid if the state has a certification process. Ohio Mental Health and Addiction Services has worked closely with Ohio Department of Medicaid to develop and submit a 1915(i) program as a state plan amendment which would add Peer Services to the menu of Medicaid Billable services for individuals in the behavioral health system.

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

OhioMHAS has exceeded provisions set forth by CMS in order to do their due diligence in protecting a vulnerable population.

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 Centers for Medicare and Medicaid Services (CMS) issued federal guidance in 2007 stating the Peer Services may only be paid for by Medicaid if the state has a certification process. Ohio Mental Health and Addiction Services has worked closely with Ohio Department of Medicaid to develop and submit a 1915(i) program as a state plan amendment which would add Peer Services to the menu of Medicaid Billable services for individuals in the behavioral health system.

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

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OhioMHAS will be responsible for monitoring the certification program and the number of individuals served through the 1915(i). OhioMHAS will also be able to measure the success of this regulation by conducting a cost benefit analysis for the duration of the state plan amendment to show how the use of peer services reduces cost of behavioral health care.

Development of the Regulation

6. 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 information in the regulation has been vetted numerous times during OhioMHAS presentations and workgroups, OhioMHAS planning council, the Behavioral Health Re-Design Core Group, Medicaid staff, individuals with lived experience of mental health or substance use disorders, or both, and behavioral health providers.

The rule was also initially presented through the CSI review process in November 2015, and the Department received stakeholder input requesting revisions regarding the professional certification portion of the rule.

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

Stakeholders were interested in a certification that included individuals with mental illness and substance use disorders, standardized qualifications to become certified, and clearly outlined parameters around who should not be certified.

Based on the first round of public comments/CSI review, the rule has been split into separate components and the criminal records check requirements have been significantly changed.

8. 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 scientific data that was used included research studies that validated the effectiveness of peer services with the behavioral health population. OhioMHAS staff looked to 34 other states that have Peer Services as a Medicaid billable service and selected the best parts of each program to develop a regulation that is inclusive, professional, and addresses Ohio specific needs. In addition, OhioMHAS contracted with The Ohio State University to conduct a small scale research project to identify core competencies of the workforce. This information was used to develop the OhioMHAS Peer Supporter Examination.

9. **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 regulations were written in a way that would support Ohio Mental Health and Addiction Services stakeholders, Ohio Department of Medicaid, and CMS. Alternative methods of criminal records checks were considered and an approach combining methods used several other states was adopted to meet the needs of Ohio.

10. **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.**

Yes. In order to become a certified Peer Recovery Supporters, applicants must successfully pass a series of trainings and the OhioMHAS Peer Supporter Exam. The delivery of the service is then left as an open-ended description of the types of items that maybe provided in paragraph (C) rather than a prescriptive list of definite items.

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

OhioMHAS thoroughly researched existing Ohio regulations. OhioMHAS is the regulator for certified mental health and substance use disorder services, and has worked with the Chemical Dependency Professionals Board to insure that the professional certification in this rule is duplicative of the work that Board conducts.

12. **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.**

OhioMHAS has developed a certification application, re-certification application, pledge, and conflict of interest process consistent with the R.C. 119 hearing and appeal process. OhioMHAS will review each applicant to ensure they have completed all pre-requisites to certification and have passed the background check. In order for re-certification to occur, applicants must complete 30 hours of continuing education and again pass the background check. As the certifying entity, all applicants will have to meet the minimum requirements set forth in the rule.

Adverse Impact to Business

13. **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;**

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Any provider who is certified under R.C. 5119.36 and wishes to provide peer recovery services as a Medicaid billable service.

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

Providers will have some administrative overhead of adding this as a service to their existing certification, but not generally beyond the cost of doing business for adding any other line of business. They may experience an increase in certification fees per 5122-25-08 (effective date pending).

Individuals obtaining professional certification will incur the cost for the criminal records check. Trainings needed for individuals to become certified are at no cost to the individual and there is no cost to the individual for certification.

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 cost of adding the peer recovery service for a community mental health or addiction service provider is expected to be nominal beyond the cost of the employee and related business expenses. Certification fees will be dependent on the provider’s budget for the service, and would not incur any fee unless the provider’s budget for the service is over \$75,000 annually.

Individuals seeking certification under 5122-29-15.1 will need to obtain criminal records checks. Generally, those can be obtained for less than \$50, and for those individuals not already employed by a provider the Department will work to provide grant money to cover the cost of the records check. Required training for applicants is at no cost to the individual and OhioMHAS has grant funding available to individuals who are not currently working to cover the cost of travel to and from the training cite.

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

The regulatory intent has a minimal adverse impact to the regulated businesses. It allows a specific classification of the behavioral health workforce to be professionalized allowing providers to bill Medicaid for the services provided. In addition, numerous research articles have concluded that the use of peer services reduces the cost associated to the behavioral health system.

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance as CMS clearly states a standard set of qualifications need to be present for a state to have a certification that allows for Medicaid billing.

16. 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?

There will not be any fines associated with the certification process. If an error has occurred, OhioMHAS staff will reach out to applicants to provide technical assistance to correct the error.

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

OhioMHAS staff and a peer services vendor will be available to assist small businesses with the technical assistance needed for compliance.