

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Behavioral Health Services and Medications

Rule Number(s): 5160-30-02

Date: 10/17/2016

**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☐ Rescinded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.**

This new rule implements one component of the restructuring of services rendered through the community behavioral health system known as behavioral health redesign. This development is a joint collaboration between the Ohio Department of Medicaid (ODM), Ohio Department of Mental Health and Addiction Services (OhioMHAS), and the Governor's Office of Health Transformation (OHT) with extensive collaboration and

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input from Ohio's behavioral health stakeholders: providers agencies, professional associations and consumer advocacy organizations. The policy changes will achieve the desired goals to:

- Develop new services for individuals with high intensity service and support needs;
- Improve health outcomes through better care coordination;
- Facilitate the integration of behavioral health and physical health services

Additional information about this initiative can be found at [bh.medicaid.ohio.gov/](http://bh.medicaid.ohio.gov/)

Current rule 5160-30-02 "Coverage and limitation policies for alcohol and other drug treatment services" is proposed for amendment to add new medications and services that can be provided by opiate treatment programs and reimbursed by Ohio Medicaid. Reimbursement information is included.

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

Ohio Revised Code sections 5162.05, 5164.02

**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. The implementation of behavioral health redesign is a component of the Governor's initiative to modernize Ohio's Medicaid program. The component of redesign reflected in this rule permits Ohio Medicaid reimbursement of selected services and medications when rendered by specific behavioral health providers.

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

The proposed regulation does not exceed the provisions allowed under federal law regarding the Ohio Medicaid program.

- 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 public purpose of these rules is to codify necessary requirements and policy for a select group of Medicaid covered behavioral health services. The addition of new services and medications, which this rule implements, is a component of the Governor's initiative to modernize the Ohio Medicaid program. Eligible Ohio Medicaid providers may voluntarily decide whether or not to render these new services and/or medications.

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

Successful outcomes are measured through a finding of compliance with these requirements as determined by provider monitoring, oversight, and claims analysis conducted by ODM.

### **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.**

ODM, in partnership with OHT and OhioMHAS, engaged many diverse stakeholders in behavioral health redesign and implementation. Beginning in July 2015, a group of stakeholders (including those listed below) met biweekly to review proposed Medicaid policy and to offer revisions and suggestions. Stakeholders included:

- Public Children Services Association of Ohio
- Ohio Association of Health Plans
- National Alliance on Mental Illness - Ohio
- Ohio Psychological Association
- The Ohio Council of Behavioral Health & Family Service Providers

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- The Ohio Association of County Behavioral Health Authorities
- Case Western Reserve University
- Mental Health & Addiction Advocacy Coalition
- Ohio Citizen Advocates for Addiction Recovery
- CareSource
- Ohio Empowerment Coalition, Inc.
- United Healthcare
- Ohio Alliance of Recovery Providers
- Aetna
- Buckeye Health Plan
- Molina
- Paramount
- Ohio Association of Child Caring Agencies
- Ohio Hospital Association
- Northern Ohio Recovery Association
- Joint Medicaid Oversight Committee
- Vorys Health Care Advisors
- Ohio Family and Children First
- Signature Health
- Greater Cincinnati Behavioral Health Center
- Nationwide Children's Hospital
- Ohio Children's Hospital Association

In addition to this main stakeholder group outreach to and feedback from stakeholders was also accomplished through the behavioral health redesign website, specific white papers, and surveys.

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

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Throughout the behavioral health redesign development process, stakeholders provided input consisting of comments, requirements, and design suggestions which impacted decisions made concerning Medicaid policy and the proposed rules. This feedback resulted in the addition of these new services and medications as well as impacted related policy decisions such as reimbursement rates. Slides from presentations made to the larger stakeholder group, which includes policy suggestions made by stakeholders, are available at [bh.medicaid.ohio.gov/](http://bh.medicaid.ohio.gov/)

Stakeholders will have additional opportunities to comment on behavioral health redesign during the public comment review period and public hearing that will be held for this rule.

**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?**

Medicaid provider claims data and analysis was used to determine Medicaid consumer impact and to develop various budget models that will fund the provision of the medications and services stated in this rule.

**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 proposed rule was necessary in order to implement these new services and medications in such a way as they could be reimbursed by Ohio Medicaid therefore no alternative regulations were available or appropriate.

**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.***

No, a performance based regulation was not deemed appropriate as this rule is not related to provider performance but rather permit eligible providers to render and be reimbursed for these services and medications.

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

ODM worked with OhioMHAS on the development of this rule as part of behavioral health redesign. Throughout this process, a listing of impacted rules across agencies was kept and updated regularly. When necessary, rules in Ohio Administrative Code Chapter 5160-30 refer to other ODM and OhioMHAS rules related to providers and services.

**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.**

Beginning January 1, 2017, eligible providers will have the option to begin providing the new services and/or medications and billing Medicaid.

ODM has been working, and continues to work, with OhioMHAS to educate providers and Medicaid clients regarding behavioral health redesign of which this rule is a component. This has been accomplished through the use of biweekly meetings of a large stakeholder group, meetings with individual stakeholders and advisory organizations, the behavioral health redesign website, and one series of seven regional educational trainings held in the summer of 2016 and another series of eight regional trainings to be held in the fall. Webinars of these trainings will also be available.

**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;**

The approximately 12 opiate treatment providers that participate in the Ohio Medicaid program and render community behavioral health services.

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

There is no adverse impact on these providers. Any costs associated with this rule would be a result of the decision made by a provider to voluntarily render the services and medications listed in the rule and be reimbursed by Ohio Medicaid. There are no provider fees, fines, or penalties associated with this rule.

**c. Quantify the expected adverse impact from the regulation.**

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**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 question is not applicable as there is no adverse impact to providers as a result of this rule.

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

The regulations and requirements codified in this rule is necessary in order to expand the Medicaid services and medications that can be rendered by behavioral health providers to Medicaid consumers needing behavioral health services.

**Regulatory Flexibility**

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

To ensure uniform and consistent treatment of Medicaid providers, no alternate means of compliance is available, and no exception can be made on the basis of an entity’s size.

**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?**

This does not apply as the rule does not impose any fine or penalty for a paperwork violation.

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

Medicaid providers in need of technical assistance can contact Medicaid Provider Assistance at 1-800-686-1516. Providers may also obtain detailed information about behavioral health redesign at [bh.medicaid.ohio.gov](http://bh.medicaid.ohio.gov) or from one of the numerous regional training sessions offered prior to January 1, 2017 by ODM and OhioMHAS staff.