

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Mental Health and Addiction Services

Regulation/Package Title: Residential State Supplement

Rule Number(s): 5122-36-02 and 5122-36-04

Date: February 2, 2017

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☐ Rescinded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.

The Residential State Supplement (RSS) program statute is being updated in the proposed budget to take effect on July 1, 2017. In order to remain current with the statutory authority, the rules governing the RSS program are being aligned and will be set to go into effect after the statutory change takes place. ORC 5119.41 is being

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amended to move the eligibility requirements for RSS from statute to rule, this is to allow Ohio to be more responsive to the needs of the RSS recipients and the Department to be better able to respond to RSS funding allocations.

5122-36-02 is the rule for RSS non-financial eligibility, and is being amended to update and correct the listed appropriate living arrangements. The amended rule will allow for the intended non-institutional settings as defined in ORC 3721.01, 5111.89, or 5119.34. The preference is for the settings regulated by the Department under ORC 5119.34, but the rule will allow for the other settings when there are no other facilities available. The rule also continues the practice of allowing all RSS participants to remain in the living arrangement they are in at time of the rule's adoption; only new and moving participants would need to meet the requirements of the amended rule.

5122-36-04 is the rule that sets the responsibilities of the participating living arrangements. The amendment to this rule removes out of date paragraphs regarding accommodations, supervision, and personal care services; as well as a reference to the provision of financial records and mental health plans of care. The rule does make two new requirements. First, the living arrangement cannot act as the representative payee for RSS benefits as this presents a conflict of interest. Second, the Department will begin a quarterly RSS resident verification survey after this rule is effective. This survey is to verify that RSS participants are in the appropriate living arrangements they have told the Department they are residing in. This verification is required as part of the prospering auditing of funds of this Federally required program.

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

ORC 5119.41

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 RSS program is Ohio's state supplementary payments program required under 20 CFR Part 416. In order for the state to receive Medicaid reimbursement, the state supplementary program must be maintained.

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

The RSS program uses budgetary funds appropriated for its use by the General Assembly.

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)?

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RSS provides financial assistance to adults who have increased needs due to a disability that is not severe enough to require long term care in an institution, such as a nursing home or hospital. Individuals use RSS, which supplements their income, to pay the monthly allowable fee (or “rent”) for accommodations, supervision, and personal care services at eligible living arrangements in the community. The supplementary income provided by the RSS program allows for individuals to remain in the least restrictive settings, benefitting both the individual and the state.

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

The RSS program is striving to serve more individuals with the resources available, success of the amended regulations is measured by increasing the number of participants.

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.

The Department met with the Ohio Adult Care Facilities Association (OACFA), on January 4, 2017. OACFA is the stakeholder organization that represents residential facilities regulated by the Department and which are the businesses impacted by the changes in these rules. The representative payee change and the resident verification survey were presented to OACFA both for its input and to ask for its assistance in communicating the changes to the stakeholders. OACFA presented no objections to either change.

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

No changes were needed after the meeting with OACFA.

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?

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?

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The Department considered several different methods of confirming RSS participant residency, including electronically completed verifications by either participants or living arrangements, monthly surveys, residency acknowledgments initiated by living arrangement operators. It was determined that surveys sent to each living arrangement that they could complete and return, and doing so quarterly, was the least intrusive manner in which to meet the compliance requirements.

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.

Not applicable.

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

The RSS program is administered by the Department, in cooperation with the Department of Medicaid. The Department has worked to insure there is no duplication across the program.

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 will communicate to all participants and living arrangements through letters as the effective date approaches. Technical assistance will be available for any living arrangement operator that requires it when the surveys begin.

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.

This will impact only those residential facilities that have residents who are RSS participants. The impact will be the time it takes to complete the quarterly surveys, which should only take a few minutes of an employee’s time to fill out and mail or fax back to the Department. The total cost is expected to be negligible.

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

The Department is required to verify the expenditures of RSS funds and this was determined to be the least intrusive manner in which to gather that data.

Regulatory Flexibility

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

No, the business impact has to apply evenly across all facilities.

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?

The Department will work with all living arrangement operators to work towards to full compliance with the survey requirement, the intent is data gathering rather.

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

The Department has technical resources who will reach out to living arrangement operators to provide any information needed.

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