

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid

Regulation/Package Title: Specialized Recovery Services Program

Rule Number(s): 5160-43-04.

Rule 5160-43-01, 5160-43-02, and 5160-43-08 are not subject to CSIO review, but are being included for reference

Date: March 14, 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☐ Rescinded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.

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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.

The SRSP will provide Medicaid eligibility and HCBS to adults with a diagnosis of SPMI and diagnosed chronic conditions who meet the financial, clinical, needs and risk eligibility criteria specified in the State Plan Amendment and in the rules set forth in Chapter 5160-43 of the Ohio Administrative Code (OAC).

The proposed amended OAC rule 5160-43-04 specifies the services an individual may receive while enrolled in the program, what the services include, and the requirements for providers of those services.

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

ORC Section 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.

Yes, this proposed regulation is being adopted in conjunction with the 1915(i) Medicaid State Plan Amendment (SPA) which will allow Ohio to participate in a federal program. Under Section 1915(i) of the Social Security Act, States can offer a variety of services under a State Plan Home and Community-Based Services (HCBS) benefit. The SPA must be approved by the Centers for Medicare & Medicaid Services (CMS) in order to receive federal funding. In order for CMS to approve a 1915(i) SPA, a state must make certain assurances concerning the operation of the program. These assurances are specified within the 1915(i) SPA. The proposed rules will allow ODM to implement the Specialized Recovery Services Program while safeguarding the health and welfare of individuals participating in the program and ensuring provider compliance to prevent fraud and waste.

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

This rule is consistent with the federal requirements found at 42 U.S.C. 1396n, 42 C.F.R. 441.730 and the 1915i SPA.

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 this OAC Chapter is to provide necessary and beneficial Medicaid eligibility and home and community-based services (HCBS) to individuals diagnosed with severe and persistent mental illness and diagnosed chronic conditions. The rule requiring this BIA establish HCBS provider requirements to ensure the health and welfare of individuals enrolled in the program.

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Through this rule we are providing important services to a vulnerable population while protecting these individuals and ODM from potential problems. This rule is consistent with other Medicaid-administered HCBS program provider requirements and expectations.

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 standards as determined by provider monitoring and oversight.

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.

Stakeholder Group includes:

- University Hospital of Cincinnati
- UH Hospitals of Cleveland
- Cincinnati Children's Hospital
- Nationwide Children's Hospital
- Akron Children's Hospital
- Cleveland Clinic
- James Cancer Center at OSU
- Miami Valley Health
- Jewish Hospital
- Kidney Care Centers
- Ohio Solid Organ Transplantation Consortium
- Ohio Hematopoietic Stem Cell Transplant Consortium

On February 16, 2017, draft OAC rule 5160-43-04 was emailed to the stakeholders and they were also asked to provide feedback by February 23, 2017.

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

- As a result of sharing the draft rule with the stakeholders listed above, we received feedback from Allison Blagg, Kidney Care Center and Donna Sturgill of Ohio Hematopoietic Stem Cell Transplant Consortium. No changes were made at this time.

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?

No scientific data was used to develop the rule or the measurable outcomes of the rule.

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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?

ODM staff discussed alternative regulations related to this population of individuals, however, it was determined that the submission of a 1915(i) Medicaid State Plan Amendment (SPA) would be the best course of action for Ohioans. Alternatively, these individuals who will be eligible for the Specialized Recovery Services Program (SRSP), would have no longer been eligible for Ohio Medicaid and would have received health care through Medicare and/or private insurance most likely received through the federal health care exchange. These alternatives generally do not incorporate the level and type of services being offered to individuals through the SRSP.

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 is not deemed appropriate for this program and would not meet federal requirements.

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

The SRSP is the first program of its type in Ohio and ODM determined that this regulation does not duplicate any existing Ohio regulation.

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.

ODM plans to communicate the additional eligibility criteria within this regulation through training and outreach activities.

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 community impacted includes providers of behavioral health services choosing to provide these home and community-based services (HCBS), ODM-contracted case management agencies providing recovery management services, and ODM-contracted Public Consulting Group (PCG) the provider monitoring/oversight contractor.

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

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5160-43-04 Requires providers of individualized placement and support – supported employment (IPS-SE) and peer recovery support to be certified by OhioMHAS in accordance with ORC Section 5119.36 and to maintain a record for each individual served in a manner that protects the confidentiality of the record. This rule requires recovery managers to have training specific to their work with this population. Recovery managers are also required to maintain a record for each individual served in a manner that protects confidentiality.

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.

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- The cost of certification through OhioMHAS is based upon the budget of the agency that is applying for certification. The fee schedule showing the correlation between the agency's budget and the certification cost is located in OhioMHAS OAC rule 5122-25-08. A provider already certified by OhioMHAS, requesting to add an additional service(s) pays a fee based only upon their budget for the new service(s), not their entire budget. When the agency has appropriate accreditation from The Joint Commission, CARF, or COA there is no certification fee owed to OhioMHAS.
- Record retention is a requirement of all Medicaid providers and is not specific to the Specialized Recovery Services Program (SRSP). The cost of maintaining a record of services provided to the individual can vary depending on the size of the provider agency, the amount of services provided and the method of retention. When asked this question during stakeholder outreach efforts, providers informed ODM that they do not track the cost of this expense; however it is included in their overall administrative costs. The estimated overhead cost per person served varied by agency but ranged from 15% to 20% which includes unrelated items such as supervision, record keeping, internet service, etc. Another agency estimated that their cost is \$373 a month or \$4,481 annually. Administrative costs are incorporated into the Medicaid payment rate resulting in at least partial reimbursement for these costs.
- The training required of the recovery manager is in line with the current training requirements. The recovery management service is provided by ODM-contracted case management agencies and the training of the case management agency staff is a requirement within the scope of work and specifications of deliverables of the current contract. The estimated timeframes to complete the various trainings is between thirty and ninety minutes. Based on the Bureau of Labor Statistics data, the average salary of a recovery manager is between \$21.88/hour for a social worker and \$32.04/hour for a registered nurse (RN). Based on this information, the expected cost for a social worker to complete a training can be

between \$10.94 and \$32.82 per training. The expected cost for an RN to complete the training can be between \$16.02 and \$48.84 per training. The training requirements set forth in this rule are consistent with professional standards, and are imposed for program integrity purposes.

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

Provider participation in this program is optional and at the provider's discretion. Service providers will have the opportunity to expand their current array of services to include these new services. Compliance with provider certification, licensure and incident reporting criteria is consistent with the Medicaid program, providers who choose to participate may incur administrative costs associated the compliance with these requirements. All participating providers will be subject to these requirements. These requirements are necessary to comply with federal law to ensure health and safety and to ensure program integrity.

Regulatory Flexibility

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

The goal of patient safety is not dependent on business 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?

ODM does not impose administrative fines or civil penalties on small businesses for a first-time paperwork offense; therefore this section is not applicable.

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

The Ohio Department of Medicaid, Bureau of Provider Services renders technical assistance to providers through its hotline, (800) 686-1516.