

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: Provider financial reporting. _____

Rule Number(s): 5122:1-5-01 _____

Date: 10/13/2017 _____

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☐ Rescinded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 Ohio Department of Mental Health and Addiction Services (Department) is conducting the required five-year review of OAC 5122:1-5-01. This rule establishes the annual budget, financial reporting, and independent financial audit requirements for community mental health and addiction services providers (providers). It is similar in nature to OAC 5122:1-3-01, which sets similar standards for county ADAMHS boards and was reviewed and updated in 2014.

The intent of the rule is to insure that certified providers are maintaining good business practices with regards to budgets and financial reporting. The rule is not intended to add burdensome business practices, only to provide a minimum standard of financial accountability.

There are insurance implications with this rule.

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

ORC 5119.10 and 5119.22

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, in that this rule allows the Department to assure the proper expenditure of federal funds when specific programs or grants require such tracking.

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)?

This rule fulfills the role of gathering financial information in order to facilitate the operation of a community behavioral health information system pursuant to ORC 5119.22.

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

By rule the Department is to receive copies of financial audits from certified providers annually. Receipt of the audits indicates compliance.

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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 put this rule out for open stakeholder public comment from September 8, 2017 through September 22, 2017. During that period no comments were received directly from stakeholders. However, the Department also reached out to the Ohio Council of Behavioral Health & Family Services Providers (Ohio Council). The Ohio Council provided input from their stakeholders concerning paragraph (D)(1)(c), and the requirement that providers submit any management letters produced during the annual audit to the local ADAMHS Board.

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

The Ohio Council expressed a concern that management letters contain proprietary information. By submitting the management letters to the ADAMHS Board, this could lead to the provider's trade secrets becoming public knowledge. The Department reached out to both its own fiscal office and the Ohio Association of County Behavioral Health Authorities for input on the value of the management letters to an ADAMHS Board.

The management letters are used by some ADAMHS Boards as a tool for gauging the financial health of the provider. While a management letter will only be an instrument that will be issued for a small percentage of Ohio's certified service providers, it continues to be a valuable source of information on where and how scarce resources are being expended.

In response to the concerns expressed by the Ohio Council, the Department responded with the solution that in some cases the management letters may be classifiable as trade secrets per ORC 1333.61 and could be protected from disclosure as public records in that manner. This will be an individualized determination that each provider will need to make and should consult with their own legal counsel should the situation arise.

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?

None, these are the industry standard accounting standards.

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 rule requires financial reporting to insure the proper expenditure of state and federal funds that the Department is responsible is disbursing. The provider may be required to provide this financial information for other entities, but that is why the rule keeps to industry standards for reporting.

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 continue to require all certified providers to gather and submit this information.

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;
All certified providers of community mental health and addiction services.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
Providers will need to prepare budgets and financial statements, and have independent audits conducted. These cost employee time and the expense of an outside vendor.
- 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 preparation of budgets and financial statements are regular business practices and should not be extra expenses. The rule does not require any unusual or special preparations for these instruments. The annual audit is also routine business expense that most businesses will incur. Audit firms usually charge between \$50-\$100 an hour depending on the type of work being performed and who from the firm is doing the work. Total costs will vary from provider to provider depending on the total size of the business.

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

The Department has a duty to safeguard the expenditures of state and federal funds, and to gather provider financial information for the community behavioral health system. The rule is written to make use of standard business practices and incur as little extra work as possible for providers.

Regulatory Flexibility

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

No, all providers are expected to meet the minimum standards of good business financial practices.

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?

There are no fines for violation of the rule. Providers could face certification revocation for failure to follow the rule. However, the Department always works first with providers to resolve non-treatment issues rather than pursuing revocation.

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

The Department's Office of Licensure and Certification has staff that can assist any provider that has questions or concerns with the requirements of the rule.