



## MEMORANDUM

**TO:** Howard Henry, Ohio Department of Mental Health and Addiction Services

**FROM:** Christopher Smyke, Regulatory Policy Advocate

**DATE:** November 14, 2017

**RE:** **CSI Review – Provider Financial Reporting (OAC 5122:1-5-01)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

### Analysis

This rule package consists of one amended rule submitted by the Ohio Department of Mental Health and Addiction Services (ODMHAS) on October 12, 2017 for its statutorily required five-year review. Four comments were received during the comment period that closed on November 3, 2017 and ODMHAS sent its response to comments to the CSI Office on November 7, 2017.

Ohio Administrative Code (OAC) 5122:1-5-01 outlines the requirements regarding annual budgets, financial reporting, and independent financial audits for ODMHAS-certified service providers. Proposed amendments to the rule update terminology and a statutory reference, but do not add new requirements.

Prior to filing with CSI, ODMHAS subjected the rule to a public comment period from September 8 to September 22, 2017. The department received input from Ohio Council of Behavioral Health & Family Service Providers (Ohio Council), who was critical of the inclusion of management letters among the required documents for submission. The Ohio Council asserted that the requirement makes any proprietary information in the management letters subject to

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public records request. Upon researching the issue further, ODMHAS determined that proprietary information in management letters may be classified as trade secrets under ORC 1333.61 and thus protected from public disclosure.

Four comments were received during the CSI public comment period. A representative of River Centre Clinic expressed concern over requiring audits from for-profit providers that do not receive public funds and a representative of Woodman Primary Care expressed concern that the rule did not cover non-community-based facilities. ODMHAS responded to each comment, indicating that each concern seemed to be a misinterpretation of the rule; ODMHAS does not require financial audits of providers who do not receive public funds and the terms, as defined in ORC 5119.01, do include non-community-based providers. A representative of a small provider objected to the audit requirement stating that it is a burden on smaller businesses and a compilation would be a more appropriate. ODMHAS defended the requirement, noting that smaller firms would incur lower costs for financial audits, commensurate to the size and scope of the operation. In addition, ODMHAS stressed that the information provided by the audits are crucial to the Department's oversight of public funds. Finally, the Ohio Council weighed in on the rule again, reiterating their concerns over the submission of management letters. ODMHAS discussed the issue with its internal fiscal office and the Ohio Association of County Behavioral Health Authorities (OACBHA). OACBHA members indicated that the management letters are typically only applicable to larger entities who represent a slim share of the market, and that the letters provide valuable information on the provider community. Ultimately, ODMHAS elected to retain the requirement and determined that the benefit of management letter submission outweighed the potential impacts on a relatively small number of providers; the Department also noted that in the ten years that the rule has been active, there have been no issues with disclosure of proprietary information.

The BIA identifies the impacted business community as all ODMHAS-certified providers of community mental health and addiction services. The impact includes employee time to prepare budgets and financial statements, as well as the monetary cost to employ an outside vendor to conduct an independent financial audit. The BIA notes the cost of a financial audit can vary greatly based on the size of the firm and who is conducting the audit, but generally estimates the cost to be \$50-\$100 per hour.

ODMHAS defends the rule as necessary to safeguard public funds and ensure that certified providers are maintaining good business practices from a financial standpoint. Although there appears to be ongoing disagreement regarding the use of management letters, ODMHAS appropriately addressed stakeholder concerns and justified its proposed course of action. After reviewing the proposed rule, the BIA, and the Department response to comments, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule package is justified.

**Recommendation**

For the reasons explained above, the CSI office does not have any recommendations for this rule package.

**Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Department of Mental Health and Addiction Services should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Emily Kaylor, Lt. Governor's Office