

**MEMORANDUM**

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

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: May 25, 2018

RE: **CSI Review – Peer Recovery Services and Certified Peer Recovery Supporter Rules (OAC 5122-29-15 and 5122-29-15.1)**

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 two amended rules submitted by the Ohio Department of Mental Health and Addiction Services (MHAS) on February 16, 2018 for review. Two comments were received during the comment period that closed on March 12, 2018 and MHAS sent its response to comments to the CSI Office on March 13, 2018.

The two rules in this package address peer recovery services and the certification of peer recovery supporters. Ohio Administrative Code (OAC) 5122-29-15 and 5122-29-15.1 were both addressed in a previous round of rulemaking in July 2016. The current rulemaking is intended to address several concerns that have been raised by stakeholders in the time since the rules took effect. Amendments to the rules require certified service providers to report disqualifying events for a certified peer recovery supporter, require qualified supervision of certified peer recovery supporters, and add a three year exclusion period for individuals who have had their peer recovery supporter certification revoked or denied.

Prior to filing with CSI, MHAS sought input on the proposed rule changes by posting the rules online and notifying their administrative rules mailing list in December 2017. After considering stakeholder input, MHAS made modifications to the rules and repeated the process in January 2018. During the December comment period, MHAS met resistance to a proposal to require certified peer recovery supporters be employed by a certified service provider, so MHAS modified the rules to simply require certified peer recovery supporters to be supervised by a clinician with proper experience and credentials. During the January comment period, MHAS received suggestions to include nurses and physician assistants to the list of eligible supervisors. MHAS declined to incorporate this suggestion, as these two credentials do not necessarily indicate behavioral health experience or training, so the Department determined that a more narrowly tailored requirement is appropriate.

Two comments were received during the CSI public comment period. The first commenter objected to a perceived increase in the number of required continuing education hours; MHAS clarified that the requirement had simply been moved from OAC 5122-29-15 to 5122-29-15.1, and the 20 hour requirement is already standard. A second commenter raised concerns on what type of providers are subject to the rules as well as the applicability of the code of ethics. MHAS clarified that all certified service providers that provide peer services must comply with the rules and that a violation of the code of ethics is already grounds for denial of certification for peer recovery supporters.

The BIA identifies the impacted business community as all MHAS-certified service providers. As a result of the changes, providers can be expected to incur a minor increase in administrative overhead. Although not codified in the proposed rules, service providers may incur an increase in certification fees based on the provider's budget for peer support services, if the budget exceeds \$75,000 annually. In addition, individuals seeking peer support certification must submit to a criminal records check, which would cost less than \$50, and the required training is provided at no cost to the individual.

MHAS defends the rules as necessary to provide safeguards for individuals seeking treatment. The current rulemaking is proposed in response to stakeholder concerns that the peer support certification is being treated as an independent credential and that certified individuals are practicing without proper clinical supervision. In addition, the state certification process is required to include peer services as a Medicaid billable service by the Centers for Medicare and Medicaid Services.

After reviewing the proposed rules, the BIA, and the Department response to comments, the CSI Office has determined that the rules satisfactorily meet 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