

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: Peer recovery services and certified peer recovery supporter

Rule Number(s): 5122-29-15 and 5122-29-15.1

Date: February 16, 2018 _____

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☐ Rescinded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.

5122-29-15 was updated in July, 2016 and 5122-29-15.1 was introduced at the same time. In the time since these rules became effective some issues have arisen that need to be addressed through amendments.

First, paragraph (H) has been added to 5122-29-15 to require certified service providers to report disqualifying events for a certified peer recovery supporter employed by the provider or volunteering for the provider.

Second, both rules have been modified in light of concerns that the peer recovery supporter credential is not intended as an independent credential. The Department intended for individuals obtaining the peer recovery supporter certification to work under supervision of a qualified behavioral health clinician. In the time since these rules have been adopted, some individuals are not working under proper supervision.

The Department is amending the rules to move the supervision requirements to the certified peer recovery supporter rule, and require supervision of all individuals using this credential. Supervisors are required to have peer experience, or a clinical license that includes a behavioral health background.

The other change of significance is in 5122-29-15.1(G) and the addition of a three year exclusion period for those individuals who have had their peer recovery supporter certification revoked or denied.

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

ORC 5119.36

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.

Peer services are required to be part of the state certification process in order to be a Medicaid Billable service, per the Centers for Medicare and Medicaid Services (CMS). The Department has adopted both 5122-29-15 and 5122-29-15.1 in order to provide Ohio with a CMS compliant peer service program.

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

OhioMHAS has exceeded provisions set forth by CMS in order to do their due diligence in protecting a vulnerable population.

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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 Centers for Medicare and Medicaid Services (CMS) issued federal guidance in 2007 stating the Peer Services may only be paid for by Medicaid if the state has a certification process. Ohio Mental Health and Addiction Services has worked closely with Ohio Department of Medicaid to develop and submit a 1915(i) program as a state plan amendment which would add Peer Services to the menu of Medicaid Billable services for individuals in the behavioral health system.

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

The Department will continue to monitor the peer programs for cost effectiveness in reducing the cost of behavioral health care.

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 out drafts of the rule amendments in December 2017 for public comment through the Department's website and administrative rules mailing list. After receiving comments on the initial drafts, the Department made modifications and repeated the process in January 2018.

The Department received comments from the following:

Ohio Citizen Advocates for Addiction Recovery

Ohio Association of County Behavioral Health Authorities

Focus on Friends

Sandusky Artisans Recovery Community Center

Perry Behavioral Health Choices

Robby's Center

The Ohio Council of Behavioral & Family Services Providers

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

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After the December 2017 comments, the Department was urged to remove the proposal that all certified peer recovery supporters be employed by a certified service provider. This was the primary feedback the Department received, and the rules were changed to the drafts currently being proposed. Now the rules require that all peer recovery supporters be supervised by a clinician with proper experience or credentials.

The January 2018 comments primarily requested that nurses and physician assistants be added to the list of eligible supervisors in 5122-29-15.1. This is a request the Department is declining as those credentials do not necessarily have behavioral health experience or knowledge.

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?

The original rules were written to satisfy CMS requirements and included protections for a vulnerable population. The proposed changes are based on data the Department has received on how the supporter certification has been used.

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?

The rules represent the requirements of the CMS and Medicaid billing 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.*

Service delivery is not specified, it is the qualification and training that the rules specify. The delivery of the service is then left as an open-ended description of the types of items that maybe provided rather than a prescriptive list of definite items.

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

The Department is the regulator for behavioral health services, and is currently the only state agency taking on the task of the peer recovery supporter certification.

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.

OhioMHAS has developed a certification application, re-certification application, pledge, and conflict of interest process consistent with the R.C. 119 hearing and appeal process. OhioMHAS will review each applicant to ensure they have completed all pre-requisites to certification and have passed the background check. In order for re-

certification to occur, applicants must complete 30 hours of continuing education and again pass the background check. As the certifying entity, all applicants will have to meet the minimum requirements set forth in the rule.

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;**
Any provider of community mental health or addiction services who is certified by the Department pursuant to R.C. 5119.36.

- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
Providers will have some administrative overhead of adding this as a service to their existing certification, but not generally beyond the cost of doing business for adding any other line of business. They may experience an increase in certification fees per 5122-25-08.

Individuals obtaining professional certification will incur the cost for the criminal records check. Trainings needed for individuals to become certified are at no cost to the individual and there is no cost to the individual for certification.

- 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.

The cost of adding the peer recovery service for a community mental health or addiction service provider is expected to be nominal beyond the cost of the employee and related business expenses. Certification fees will be dependent on the provider’s budget for the service, and would not incur any fee unless over \$75,000 annually.

Individuals seeking certification will need to obtain criminal records checks. Generally, those can be obtained for less than \$50, and for those individuals not already employed by a provider the Department will work to provide grant money to cover the cost of the records check. Required training for applicants is at no cost to the individual and OhioMHAS has grant funding available to individuals who are not currently working to cover the cost of travel to and from the training cite.

The required supervision is a cost that is a normal cost of business, and aside from a sole operator, would be a part of an employee cost. Nevertheless, despite the cost of supervision for peer recovery supporters, this is not intended to be an independent credential and certified individuals must work within a supervisory structure.

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

The intent of the peer service is to allow for Medicaid billing. The use of the peer recovery supporter certification outside of that billing system requires the Department to provide safeguards for a vulnerable population when the services are provided with the imprint of approval by the Department.

Regulatory Flexibility

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

Any business that wishes to bill Medicaid for this service must follow the requirements, and business size does not matter for the individual credential.

- 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 works with both providers and individuals to remedy violations where no ill-intent was present, including errors in paperwork and process.

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

OhioMHAS staff and a peer services vendor will be available to assist small businesses with the technical assistance needed for compliance.