



## Common Sense Initiative

**Mike DeWine**, Governor  
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### Business Impact Analysis

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

**Agency Contact Info:** mh-sot-rules@mha.ohio.gov

**Regulation/Package Title:** Certification Rules Update 2019

**Rule Number(s):** 5122-25-01, 5122-25-02, 5122-25-03, 5122-25-04, 5122-25-05, 5122-25-07, 5122-25-08, 5122-26-01, 5122-26-06, 5122-26-12, 5122-26-13, 5122-26-15, 5122-26-16, 5122-26-17, 5122-26-18, 5122-27-01, 5122-27-03, 5122-27-04, 5122-27-05, 5122-27-06, 5122-27-07, 5122-27-09, 5122-29-09, 5122-29-30, and 5122:2-1-06.

**Date:** June 18, 2019

**Rule Type:**

☒ New

☒ Amended

☒ 5-Year Review

☒ Rescinded

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. 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 (OhioMHAS) completed a review and update of the OAC Chapters governing the certification of community mental health and addiction services providers in 2016. Since that time OhioMHAS has been monitoring the effectiveness of the rules and is proposing to amend the rules in this package in order to remove operational issues. Additionally, changes to the scope of the certified services program made by HB 111 are effective on September 29, 2019. HB 111 expands the requirement of certification to nearly all alcohol and drug services providers pursuant to ORC 5119.35.

5122-25-01 is being updated to include the new scope of addiction treatment service providers.

5122-25-02 is being updated to be consistent with the services listed in OAC Chapter 5122-29, which was revised in 2018. Other provisions regarding the accredited service provider process are being updated to have better timelines or clearer requirements.

5122-25-03 and 5122-25-04 are being updated to revise the required application materials and to clarify the steps of the certification process.

5122-25-05 sets forth the process for both interim and full certification. The rule is being amended significantly enough to require a filing as a new rule. Also added to the rule are the requirements for the expanded drug and alcohol services certification.

5122-25-07 is being revised to add authority to deny or revoke certifications if providers falsify information on client records; or alter or modify their certificates. The lookback period for certification denial now also includes providers who have a principal who was part of another organization that had a certification denied or revoked.

5122-25-08 is being revised to change the certification fee structure. During 2016 the rule was amended to base the fee on the provider's annual budget using a sliding scale. This structure has not been practical to implement. The rule is being amended to revert to a fee structure based on the number of services being certified. This provides clarity as to the fee when a provider is seeking certification and is rationally connected to the workload of the certification process. The rule also contains provisions for deemed status providers, and how incomplete applications will be handled.

5122-26-01 is updated to reflect the new certification scope.

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**5122-26-06 is being updated to add personnel requirements, including requirements specific to child serving agencies, updated orientation requirements, and other recordkeeping and training updates.**

**5122-26-12 is being updated to be consistent with the new residential, withdrawal management, and inpatient substance use disorder service; and some other clarifications.**

**5122-26-13 is being updated to clarify what is meant by elderly and correct a statutory reference.**

**5122-26-15 is being updated to make clear the requirements for clients to self-administer medication on-site.**

**5122-26-16 is being updated to clarify the role of law enforcement, and documentation requirements for assessments of adolescent clients who have experienced seclusion and restraint.**

**5122-26-17 is being updated to remove duplicative material and focus the rule on accessibility and availability. This rule is being rescinded and adopted as new due to the level of change.**

**5122-26-18 is being updated to adjust a documentation deadline to business days instead of calendar days, add freedom from neglect to the client rights, make the services listed be consistent with Chapter 5122-29.**

**5122-27-01 is updated to reflect the new certification scope.**

**5122-27-03 is being updated to allow for the acceptance of case management assessments from other providers and update the requirements for plans, including clarification on what was originally intended by terms such as frequency and duration. The sections pertaining to the completion, reviewing, and documenting plans have been rewritten to be easier to understand.**

**5122-27-04 is being updated to remove a requirement related to risk of harm.**

**5122-27-05 is being updated to add clarifications regarding the discharge summary.**

**5122-27-06 is being updated to be compliant with new requirements regarding 42 CFR part 2 and provide clarity on release of records.**

**5122-27-07 is being updated restate the basis on how clients are assessed, and their level of care is determined.**

**5122-27-09 is being updated to revise the name of the service listed in the first paragraph.**

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5122-29-30 is being updated to clarify which individuals must have credentials or be qualified behavioral health specialists.

5122:2-1-06 was reviewed and updated in 2018. This rule is being reviewed for five-year review purposes only and no change to the rule is proposed.

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

ORC 5119.35, 5119.36, and 5119.61.

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.*

No.

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)?

OhioMHAS is required by statute to adopt rules regarding the certification of community mental health and addiction service providers to improve the quality of certifiable services and supports or the health and safety of persons receiving certifiable services and supports.

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

OhioMHAS reviews the work of certified providers and monitors the field through outcomes data reported by providers. Rules are regularly reviewed and updated to assure the services are being provided to the community in a manner that protects health and safety.

### **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.*

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**In May, 2019, the Department asked the following stakeholder groups via email to review and provide input on this rule package:**

**Ohio Citizen Advocates for Addiction Recovery**

**National Alliance on Mental Illness – Ohio**

**The Ohio Council of Behavioral Health & Family Services Providers**

**Ohio County Behavioral Health Authorities**

**Ohio Association of Recovery Providers**

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

**The Department received input from The Ohio Council of Behavioral Health & Family Services Providers (Ohio Council) and the Ohio Association of Recovery Providers (OARP). Both stakeholder groups indicated that the time to provide a renewal application in rules 5122-25-03 and 5122-25-04 was significantly too long in advance of the expiration of the certification. The Ohio Council suggested a reversion to the existing sixty days and OARP suggested ninety days. The Department is proposing ninety days as a compromise to allow for the necessary review of applications in a timely manner. Both groups also noted a display error in 5122-25-08, in which a deleted sentence in (C)(1) appears in the draft documents. That has been resolved.**

**The Ohio Council also had concerns relating to relating to the amount of information asked for in the application process in 5122-25-03 and 5122-25-04, for example elevator permits and operating budgets. The Department has rewritten some of this language to be less intrusive and remove some redundancies. A clause allowing for the requesting of follow-up information for applications has been rewritten to be clearer about the intent of the rule.**

**The Department also clarified the wording in 5122-26-17, as the language was not clear. The Ohio Council requested the removal of the new complaint hearing provision in 5122-26-18. The Department agreed to the removal of the hearing process.**

- 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?**

**OhioMHAS reviewed input from the field concerning the recently adopted rules.**

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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?**

**OhioMHAS specifically looked at the fee rule and adopted an alternative structure.**

- 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.*

**Generally, a performance based approach is looked at first, in that providers are required to develop policies and procedures that reach goals. This does need to be balanced with the providing minimum standards for protecting client health and safety.**

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

**OhioMHAS is agency tasked with certifying mental health and addiction services providers. OhioMHAS does not overlap with other agency regulatory authority and regularly consults with other agencies in this field to insure this.**

- 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' Office of Licensure and Certification will be conducting education sessions about operational changes that providers need to be aware, particularly as it pertains to the expansion in scope of certification and those providers who are new to the certification process.**

### **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 providers of mental health and addiction services.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**  
The primary impact is through fees for certification, however providers will also incur employee time to assure compliance.
- 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 primary adverse impact in this rule package will be the certification fee change. Although the certain addiction providers who are not currently certified by the Department will be impacted by the expansion of the certification scope that is due to statutory changes and not directly due to the changes in the rules. Likewise most other changes in the rules are intended to correct the rules where they are unclear or ambiguous in intent.

The Department is changing the certification fee structure from a fee based on the provider’s total annual budget, to a fee based on the number of services being certified. The Department has found that many providers have had difficulty developing budget numbers for the purpose of the certification fee, and the proposed structure is directly related to the amount of work required by the Department in certifying the provider.

Under the current rule providers can be subject to a maximum fee of \$4000. If a provider is seeking certification for every service under the new rule, they would incur a maximum fee of \$2800. There are new fees for application resubmission due to being incomplete and for a third non-compliant application resubmission. The Department intends to have a new electronic submission portal operational when these rules are effective, at which point an incomplete application will only be possible if the provider submits the wrong documents. Fees for deemed status providers who only have partial deemed status are being implemented, as the Department must still certify the providers’ remaining services.

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

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**OhioMHAS is required by statute to implement rules that establish certification standards for certifiable services and supports that are consistent with nationally recognized applicable standards and facilitate participation in federal assistance programs.**

**Regulatory Flexibility**

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

**There are no exemptions or alternatives, the rules are intended to protect the health and safety of clients. Peer run organizations are exempt from certification fees.**

**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?**

**OhioMHAS works with providers to educate and fix problems rather than proceed with administrative penalties.**

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

**OhioMHAS intends to assist providers and make available educational resources about the current rules and upcoming changes.**